

THE LIFSHUTZ FAMILY EDITION

Daf Delights

שעשועי הדף

Interesting Halachos, Fascinating Discussions,
and Delightful Insights



- SANHEDRIN -

BY RABBI ZEV REICHMAN

שעשועי הדף

סנהדרין

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Daf Delights
Sanhedrin

Rabbi Zev Reichman

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לכבוד

הבחור הבר מצווה

עקיבא אברהם פייערשטיין נ"י.

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לאהבת תורה ויראת שמים.

יהי רצון שיעלה מעלה במעלות התורה

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Their devotion to Torah, the Jewish nation, and family is a source of strength and inspiration.

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אשר זעליג וויס
כגן 8
פעה"ק ירושלים ת"ו

בס"ד

י"ג סיון תשע"ז

הן שמעתי על פועלו הגדול של הרה"ג ר' זאב רייכמן שליט"א רב בק"ק ענגלוואד ניו ג'רזי שמאהב את התורה על עם ישראל ובמסגרת שיעוריו בדף היומי נותן בכשרון רב למשתתפי שיעוריו לטעום משעשוע ודבשה של תורה בשאלות אקטואליות, ועתה העלה על הכתב בשפה ברורה ובנעימה את ההגיגים והרעיונות שהעלה בפני חברים מקשיבים משתתפי שיעוריו.

ברכתי להרה"ג שליט"א שיזכה תמיד להגדיל תורה ולהאדירה כשאיפתו הטוהרה, ורק שמחה ונחת יהיה מנת חלקו כל הימים.

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ישיבת שער התורה – גרודנה

Yeshivath Shaar Hatorah – Grodno
117-06 84th Avenue, Kew Gardens, NY 11418
(Tel) 718-846-1940 (Fax) 718-850-7916
shaarhatorah@gmail.com

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הרב קלמן מאיריים הלוי עפשטיין
ראשי הישיבה

הס"ט
 א כבוד יידי ויקרי המתע' ל' זאב קן מחותני הפגא' הגאון פנים זבי רייטלן שליטא
 אמרו חז"ל: ואהבת את ד' אלקיך. יפא ש"ל מתהרהר אז ידק... מה הקויות אלהים אזי
 אשני אלו אלא אלא תורה... כמה נעים לרכו, כמה מתקנים געו... אזי הפסק אור, ואמר
 אי דברי אלה ישראל וכו' אב קן ארפאג.
 יידי הר"ר זאב נ' מקים מלמדים ז"ל האם נקרה, קמטא ומתען קמת דם הקויות, קמטא
 התנועות וזו ידו מתהרהר עס אמי.
 וא כאל יתחק יידי קהקפת התורה ביחודים לפני קהלת ואלו אידען לא זכו למערה
 אלא "המחוקים מדקט, ועבר צבובים" שקמהק, וזו ידו יחודיו החיאו קחצו קמטא אהתם
 אים התורה ולהפקידי ד' ירום אמתי אב.
 למה החלט היה זאב נ' אלו גדת אלאמי קיחצו קאל - ומאמתי אטם אפני
 אלא מנה אקחו, יתנו קהא בלומדים מדבריו הדינים והמאמרים.
 אהיה שיק מחל אל חיל זקלא מלמדים אהקב את הקויות ולתיסן אתרה
 שז"ל קרבנות דקהק' שזכה קול דם אמת הרבנות שמה' אחות ים נחת בקבוסה
 גל יוצה שמו.

קהל צ"ה וידיעות
 אלו ואל הפסן שבי

ישיבת רבנו יצחק אלחנן
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 2540 Amsterdam Avenue / New York, NY 10033 / (212) 960-5344

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 full of profound insights and wonderful
 stories to enrich the study of
 May all of you be blessed
 with in your learning the
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Rabbi Hershel Schachter
24 Bennett Avenue
New York, New York 10033
(212) 795-0630

הרה"צ רבי שחטר
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כל יבוסו אן יבוסו הר"ר זלצני -
איקה אמתגס אלזק פנינע וקרנא אפרסאלט
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סבא חן תלמידי רחמן, איהל"ל דדקרו,
ט אצה נעבאלן, אהר"ל רשעל אהמלרסאלט
הישלצה.

הר"ר זלצני,
רבי שחטר
ניו יורק

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Introduction

In his introduction to his work *Eglei Tal*, Rav Avraham Bornstein argues that pleasure and delight are integral to Torah learning. The finest Torah learning, *Torah Lishmah*, is defined as learning with love, when one connects to one's studies and deeply internalizes the lessons. We unite with that which we enjoy and therefore delightful study is an elevated form of Torah for its own sake rather than Torah that is forced upon oneself. These essays are an attempt to fulfill the mandate of encouraging such *Torah Lishmah*. They contain short, enjoyable discussions about Tractate Sanhedrin. The commentaries are accessible, relevant, and engaging and will hopefully increase consideration and gratification of Divine thoughts.

We have been blessed in our Shul, East Hill Synagogue of Englewood, New Jersey with a vibrant culture of Torah study. Our *Torat Moshe Daf Yomi* Group is one of the pillars of our communal experience. The study of a daily page of Talmud has added a powerful spiritual dimension to the lives of many. This publication is an attempt to spread the joy of daily Torah study to an audience wider than those who attend *daf yomi* each morning. I have attempted to cultivate insights related to each *daf* on *Sanhedrin* from a variety of sources, translate them into English, and spread them for others to enjoy. I am certain that this effort was realized due to the merit of

our holy community. May it bring blessings to the entire community, partners in the sacred task of *harbatzas Torah*.

These essays deal with Halachic topics and are not intended to constitute the final word. Please address a competent Halachic authority to determine your actual practice regarding any of the issues the articles cover. The discussions are merely an attempt to trigger interest and study. The Talmud is a source of genius, legal guidance, and religious inspiration. These commentaries help demonstrate that Torah is comprised of instruction for every aspect of our lives. Hopefully, they will help us all renew our commitment to *Hashem's* rules guiding all facets of life.

There were many who helped this project come to fruition.

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SANHEDRIN

Finally, my wife Chana and I feel overwhelming appreciation to Hakadosh Boruch Hu for all the ברכות He has bestowed upon us. May Hashem bless all of us with the sweetness of Torah and may He place the delights of Torah in our hearts and in the hearts of our children and keep them there forever.

Zev Reichman

Adar, 5779

Sanhedrin 2**Can A Majority of the Thirty Members who Came to the Building Meeting Obligate All The Residents of the Building?**

Our *Gemara* deals with the laws of courts. The supreme court of the Jewish people was the *Sanhedrin*, the court of seventy-one sages. The *Gaon* of Vilna, in his commentary to *Shulchan Aruch (Choshen Mishpat 163:9)*, teaches that the taxpayers of a city bear the status of the city's supreme court. Just as the *Sanhedrin* resolves disputes by taking a vote and following the majority, if some taxpayers would prefer to pay for a particular expense and others do not, all should convene, each should state their sincere view, a vote should ensue, and all must follow the majority's decision. According to the *Gra* the source for this law is a *Gemara* in *Bava Kamma (116b)* which states that all partners in an enterprise have the status of the *Sanhedrin* in regards to their enterprise.

Shut Chasam Sofer (Choshen Mishpat Siman 116) was asked about a town of a hundred taxpayers and a dispute regarding taxes. The town leadership had publicly called for a meeting to decide on a proposed tax increase but only thirty individuals attended the meeting. The individuals who attended had an open discussion and the majority voted to approve the higher tax rate. Some of those

who had not appeared, refused to accept the decision of their fellow citizens. They argued that since only thirty individuals voted, it was not a majority decision and thus, were permitted to disregard it. *Chasam Sofer* ruled that the decision accepted by the attendees to the meeting was binding to all. There had been a public announcement detailing the meeting. And anyone who chose to ignore it was giving their power of attorney to those who attended. The decision to avoid a meeting is in and of itself a form of expressing an opinion about the matter at hand. In addition, it is the widespread practice that towns decide matters based on the majority of those who attend town meetings. If we would not decide until we actually polled each member of the town, issues would never get resolved.

Rav Zilberstein was asked about a dispute in a co-op building. The building leadership had called for a public meeting of the residents. Most of the attendees had voted that the elevators in the building were only to be used to transport residents, they were not to be used for transporting building materials, such as paint and cement. An individual who was not present at the meeting claimed that most of the residents had not attended the meeting and therefore the verdict was not binding, implying that he may still transport paint and building materials in the elevator. *Rav Zilberstein* ruled that the man was mistaken. If there is a public meeting of partners, anyone who chooses not to attend is expressing his opinion and vote via his absence. He is handing over a power of attorney form to those who chose to attend the meeting. The decision of the majority of those who were present is binding to all the residents of the building and therefore in the case of the building materials the resident may not use the elevator for these materials, especially since they could easily damage the elevator (*Chashukei Chemed*).

Can a Sinner Get Lashed in Our Days?

Our *Mishnah* teaches that the punishment of lashes is to be meted out by a court of three while *Rabbi Yishmael* was of the opinion that a court of twenty three sages was required to dole out this penalty. *Rambam* writes that the reason tractates *Sanhedrin*, dealing with judges, and *Makkos*, dealing with lashes and punishments, are next to each other in the Talmud is to teach that only a judge who is an expert, someone who is part of the chain of experts that goes back to *Moshe Rabbeinu*, may impose lashes. Ordinary Jews do not have the right to mete out lashes to each other. The Torah states (*Devarim* 25:2), “It will be if the wicked one is liable to lashes, the judge shall cast him down and strike him, before him, according to his wickedness.” When the Torah refers to a judge, it is defined as an expert, someone who is part of the chain of *semichah* (*Minchas Chinuch mitzvah* 594 entry 2).

In the days of the *Mahari Beirav* (*Shu”t Mahari Beirav siman* 63), there was a large population in Safed, Israel of Jews who had escaped the clutches of the Spanish Inquisition. These *anusim* had led Christian lives. Eventually they had escaped from Spain and made their way to the Land of Israel. During their time in Spain, they had eaten on *Yom Kippur* and performed other sins that carried the penalty of *kareis*, premature death. They learned that if a person receives lashes, his *kareis* sin is forgiven. They wanted to receive lashes in order to gain atonement. *Rambam* rules that to administer lashes, one has to be a sage who possesses *semichah*. The chain of rabbis dating back to *Yehoshua*, having been ordained by *Moshe*, has been broken since the fourth century and the Roman persecutions. *Rambam* is of the opinion that if all the rabbis in the Land of Israel assemble and agree to ordain a sage as a member of the august Mosaic society of sages, the chain can be recreated. To help the *anusim*, *Mahari Beirav* attempted

to execute *Rambam's* proposal. He attempted to coax all the rabbis in Israel to consent to renew the chain of *semichah* and ordain a sage who would then ordain others and the chain would be revived.

Maharlbach (Kuntres Hasemichah) disagreed with *Mahari Beirav*. He argued that lashes for a sin only atone when, prior to his act, the sinner was warned, by witnesses, that his actions would garner a punishment of lashes. If he sinned despite a warning, the lashes would be Biblical. The *anusim* had never been warned before they sinned. Their lashes would never be deemed Biblical lashes and would never be able to expiate *kareis* sins. There was no need to renew *semichah* to help the *anusim*.

There are early authorities who rule that lashes are not an option in our times, even if *semichah* would be renewed. *Derech Mitzvosecha* writes that according to the *Semag (Lavin 213)*, lashes can only be meted out at a time when the Jews have a *Beis Hamikdash*. *Nimukei Yosef (end of Makkos)* quotes *Rav Natrunai Gaon* that he was presented with a message from heaven that it is impossible in our days to execute lashes. They require an assessment by the court as to how strong the sinner is and how many blows he can sustain. Only when there was a Holy Temple was the court able to correctly determine assessments. Now that we do not have a Holy Temple, the option of lashes is pointless. According to the opinions that lashes may only be imposed when the Holy Temple exists, even if *Mahari Beirav* would have succeeded in renewing *semichah*, the option of lashes would still not have existed (*Mesivta*).

Can Miun Be Performed in Our Days?

Sanhedrin begins by listing situations that require a quorum of

judges. Among many laws, it teaches that *miun* must be performed in front of three judges. What is *miun*?

According to the Torah, a father may marry off his daughter who is a minor. If a father accepts *kiddushin* from a man on behalf of his daughter who is a minor, the marriage would take effect. The Sages legislated that if there was no father, a mother or a brother may marry off the minor. However, the marriage would only be Rabbinic. Were the young girl to merely declare her refusal to remain in the marriage, the marriage would be annulled retroactively. This declaration of refusal is *miun*. For *miun* to take effect, it must be performed in front of three judges.

Rav Menachem of Mirzburg issued an enactment that in our days *miun* may not be performed at all for a variety of reasons. He was concerned that people may think that a married woman can exit a marriage without a *get*. In addition, he was troubled by a concern raised in *Gemara Bava Basra* (138b) which discusses the concept of a *beis din* that errs. *Rav Menachem* was worried that the young girl would perform *miun* in a mistake-prone court. They may allow her to reject the marriage without verifying her age. She may be too old for *miun*. Perhaps she was older than twelve, legally an adult, and they would still permit her to perform *miun* and abandon her husband without a *get*. *Maharshal* (*Yam Shel Shelomo Yevamos perek 13:7*) records another fear. If *miun* were performed in our days, perhaps a girl who was married off by her father would be allowed to leave with *miun*. A minor married off by her father is Biblically married and her marriage can only end with a *get* or death of the husband.

In the year 5252 (1492 CE), a *miun* ceremony was performed by the great *halachic* authority, *Rav Ya'akov* Pollack. *Rav Ya'akov* disagreed with the view of *Rav Menachem*. His mother-in-law had betrothed his sister-in-law, *Sulka*, to *Rav Ya'akov Tzenzer*. *Rav*

Pollack permitted the girl to leave with a mere refusal to remain in the marriage. Others argued with him and claimed that there was a *takkanah* not to perform *miun*. He argued that the enactment had never been widely accepted. The controversy became exceptionally heated. *Rav Ya'akov* had to leave Prague, where he had lived. He fled to Cracow and set up his *yeshivah* there. This *yeshivah* helped turn Poland into a Torah center for hundreds of years.

Maharshal ruled that we may not perform *miun* in our days. He even claimed that *Sulka's* second marriage did not work out successfully. *Rama* (*Even Ha'ezer siman 125*) was a pupil of the students of *Rav Ya'akov Pollack*. He ruled that *miun* may be performed even in our days. *Shu"t Ba'al Hatanya* (*siman 21*) argues that you cannot state that Jews have accepted a custom not to perform *miun*. *Miun* is a rare event. A custom may not become established on the basis of matters that rarely occur. *Aruch Hashulchan* (*siman 155:59*) finds the ruling of *Rama* difficult. He writes that in his generation it is unheard of for a *miun* to be performed. Every court will require a minor interested in leaving a marriage to receive a *get* from her husband in order to exit (*Mesivta*).

Do We Need a Beis Din to Give a Get?

B*ava Basra* (174b) seems to state explicitly that there is no need for a *beis din* to deliver a *get* from husband to wife. The *Gemara* relates a story. *Moshe bar Atzri* guaranteed the *kesubah* of *Rav Huna*, his son. He promised that if *Rav Huna* would divorce his daughter-in-law and be unable to pay the *kesubah* sum, he would provide the funds. *Rav Huna* was a Torah scholar who was impoverished; he

and his wife did not have sufficient funds to live on. *Abaye* advised *Rav Huna* to divorce his wife. She would then bring the *get* to her father-in-law *Moshe* and receive the *kesubah* funds; thereupon *Rav Huna* may remarry her. This would allow them to garner funds. *Rava* challenged *Abaye* regarding this proposal. The *Mishnah* teaches that if a wife tries to collect her *kesubah* from her guarantor, the court will force her husband to take an irrevocable oath to never benefit from her. We worry that husband and wife may be plotting to attain the *kesubah* funds from the guarantor and then proceed to remarry. It would be unfair. Therefore, we force the husband to commit not to remarry. *Rava* consequently asked how *Abaye's* proposal would help. The court would obligate *Rav Huna* to swear to never remarry his wife. *Abaye* answered, "Does every *get* need to be performed in court?" *Rav Huna* may divorce outside of court and not take the oath. This *Gemara* seems to indicate that a husband may give his wife a *get* without the involvement of a court and it will be deemed valid.

Noda Biyehudah (*Tinyana Even Ha'ezer siman* 114) deals with the question of whether a *get* needs a *beis din*. A *rav* had arranged a *get*. For court proceedings, he used himself, his son-in-law, and another man. The question was raised about the validity of this *get*. A son-in-law cannot be a member of the same court as his father-in-law since he is a relative. This *get* was not derived from a kosher *beis din*. Was it therefore not a kosher *get*?

Noda Biyehudah points out that *Rabbeinu Gershom* had a different version of *Bava Basra* 174. According to this version, *Abaye* responded to *Rava*, "Would every *get* have to be performed in front of a prominent court? *Rav Huna* could give his *get* in front of a court of simple individuals." According to this reading, a *get* must be performed in a court; albeit a court of simple individuals is also sufficient.

Noda Biyehudah proved from *Rashi's* comment on our *daf* that a *get* must be performed in court. The first *Mishnah* in *Sanhedrin* lists actions that require a court of three. It mentions monetary judgments, *chalitzah*, and *miun* ceremonies. *Rashi* writes that *miun* applies to when a young girl rejects Rabbinic marriage. The Rabbis legislated that sometimes a mother or brother may marry off a girl who is younger than twelve. However, the girl has the right to walk out of that marriage through *miun*. *Rashi* explains that *miun* is to be performed in front of three, for the Sages modeled their law on the Biblical law, “*Kol detikkun rabbanan ke'ein deOraisa tikkun.*” The Biblical model for *miun* is a *get* that a husband gives to a wife. *Noda Biyehudah* therefore was of the opinion that *Rashi* was teaching that a *get* must be given in front of a *beis din* of three.

Chida in his responsa, *Shu"t Chaim Sha'al (cheilek 1 siman 39)* records in the name of the *Tumim* that the custom is to require three for the arrangement and delivery of a *get* based on the words of *Targum Yonatan*. *Targum Yonatan (Devarim 24:1)* writes that the husband is to write a scroll of divorce from his wife in front of the court. To conclude, there are *Rishonim* who seem to teach that a proper *get* requires a court of three (*Me'oros Daf Hayomi, Mesivta*).

Sanhedrin 3**May a Judge Misrepresent His View to Try to Get the Court to Arrive at What He Feels Is the True Verdict?**

According to *Rav Acha*, Biblically a single judge can decide questions of loans and monetary obligations. The judge also does not need to be an expert. The requirement for three judges in these cases is Rabbinic. The Rabbis were concerned about completely ignorant street loiterers issuing rulings. They therefore enacted that even in cases of loans, three judges are mandated. Hence, at least one of the three will likely be somewhat expert.

Imagine the following scenario. A dispute arises regarding a loan. Three “judges” are seated to adjudicate. One is learned, the other two are street loiterers. The one who is learned may think one way while the other two may think differently. The unlearned usually resent the learned. He cannot convince them to view matters as he does. If the issue comes to a vote, the learned arbitrator will see his side lose, two to one. A corrupt ruling may ensue. Can the learned “judge” use subterfuge? Is he allowed to claim, “I am unsure?” *Shulchan Aruch* (*Choshen Mishpat siman* 18:1) rules that if one of the three judges claims that he is unsure, we add two more judges to the case. All

five judges discuss the case. Hopefully, with the added arguments the judge who is uncertain will reach a decision and we will then have a vote and ruling. If the learned man claims that he is unsure and two more are added, perhaps they will argue for the position he sought and once there will be many more voices on his side, the correct ruling will ultimately triumph. Is a judge allowed to lie about his position in order to get the court to eventually arrive at what he feels is the true verdict?

The answer to this question is an argument.

Shvus Ya'akov (cheilek 1 siman 138) reasons that a judge may falsely state that he is undecided, in order to cause two additional judges to join the case, thereby maneuvering the court to rule in the manner that he believes is accurate. His motivations are pure; they are for the sake of Heaven and it is permissible to lie and deceive for the sake of peace. True justice is compared by our literature to peace. The verse (*Zecharyah 8:16*) states, “*Emes umishpat shalom shiftu beshàareichem*”—“Truth, and justice of peace judge in your gates.” Therefore, the judge may say, “I do not know,” even when in truth he is sure that he does know, in order to accumulate more judges and lead the court to the correct ruling.

Shu”t Beis Ya'akov (siman 15) strongly disagrees. He rules that a judge may not claim that he does not know when, in fact, he does know. A judge who says he is undecided may cause others to disrespect him and the authority of the court. It is immoral. *Birkei Yoseif (Choshen Mishpat siman 18:3)* also prohibits the judge from using subterfuge. If there are three hearing the case, one judge thinks one way and the other two another way, the judge who is in the minority must state his opinion. If he can sway the others to change their mind, he is fortunate. If he cannot convince them, it is not his responsibility to do so. We should not attempt to outsmart

our Creator. We should follow the system He created. If the system seems to us to emerge with a ruling we do not agree with, we should accept the will of Hashem with faith. Only with honesty can we merit to have the blessing of Hashem and success in judgment (*Mesivta*).

If a Firstborn Does Not Know if His Father Was a Kohein, Levi, or Yisrael, Must He Redeem Himself?

The Torah commands the firstborn son of a *Yisrael* to be redeemed by his father or by himself by paying five shekel to the *Kohein*. When thousands of our brethren moved from the former Soviet Union to Israel in the 1990s, the following question often arose. The Soviets had persecuted our faith. For seventy years there had been almost no Torah education and *mitzvah* observance in the lands the Communists occupied. Many Jews were oblivious to their identity. Individuals were unaware whether they were *Kohanim*, *Leiviyim*, or *Yisraelim*. When these Jews arrived in Israel, they did not know if they were obligated to redeem the firstborn sons. These Jews asked, “Do our firstborn sons need *pidyon haben*?”

Perhaps the majority should be followed. Most Jews are not *Kohanim* or *Leiviyim*. If one does not know his father’s identity perhaps he is to assume that he is part of the majority—he is a *Yisrael*—and therefore there is an obligation of *pidyon haben*. On the other hand, redeeming a firstborn is a monetary act and *halachah* rules that a mere majority is not sufficient proof to extract money. If Reuvein buys an ox and then discovers that the ox is violent and cannot be used for labor, Reuvein is not entitled to a refund. The seller may

claim, “You are from the minority who buy oxen to slaughter them.” The buyer cannot allege that since most purchase oxen for labor he too certainly procured the ox for labor; since it is unusable for farm work he is entitled to a refund. “*Ein holchin bemamon achar harov*”—in monetary law, a majority is not sufficient proof to extract funds. Perhaps the Soviet emigres are not obligated to redeem themselves.

Tosfos (s.v. *dinei*) on our *daf* is a source authorities quote to resolve this question.

The *Gemara* taught that we do not require a unanimous agreement between the judges to issue a ruling in a monetary issue. Since the Torah specifies that a majority of judges is adequate for a ruling in life and death questions, it is certainly enough for a ruling on monetary law. *Tosfos* ask, if that is the case, why do we say that we do not follow a majority to extract funds? A majority is enough to convict in matters of life and death. It should be sufficient to extract money.

Tosfos answer by distinguishing between majorities. According to *Nachalas Tzvi*, *Tosfos* teach that the fact that most buy animals for labor is not a strong majority. There is a strong minority that purchase oxen for slaughter. When there is a strong minority against a majority, the claim buttressed by the majority is not strong enough to extract funds. However, in a case of a truly strong majority, such as the fact that most witnesses will not know what day *Rosh Chodesh* fell on, such a majority is effective even to extract funds. According to this point of view, when there is a very strong majority, the majority may extract funds. There is a very strong majority to the argument that in our case the individuals are obligated in redemption. Most Jews are not *Kohanim* or *Leiviyim*. *Shu”t Haelef Lecha Shlomo* (*Yoreh Dei’ah siman* 286) and *Shu”t Binyan Tziyon* (*siman* 104) both rule that when a person is oblivious to the identity of his father, he still must redeem himself from a *Kohein*.

Is he obligated to recite a blessing? *Shu"t Haelef Lecha Shlomo* argues that since the blessing is not required for an effective redemption, when one redeems himself based on a majority, he should not recite a blessing. *Dagul Meirevavah (Yoreh Dei'ah siman 305:10)* also rules that a majority is not enough proof to enable a blessing to be recited (*Chashukei Chemed*).

Sanhedrin 4**Is There a Biblical Prohibition Against Frying Steak in Butter?**

Our *Gemara* discusses the question of how to interpret verses. Do we primarily follow how a word is spelled or do we mostly look to how tradition tells us the word is read? The *Gemara* sought to prove that we follow the word's pronunciation from the verse prohibiting milk and meat. The Torah states (*Shemos* 23:19) , לא תבשל גדי בחלב אמו , "Do not cook a kid goat in its mother's milk." If we look to how the word is read, the verse states not to cook meat in milk. However, if we were to focus on the spelling, בחלב, which is also the way to spell "in the fat of," the verse would not be prohibiting meat with milk; it would merely prohibit meat with fat called *cheilev* from its mother. The *Gemara* ultimately states that perhaps, generally, we would take into account how a word is spelled rather than how it is pronounced. However, in this case the Torah also used the word "cook," תבשל. As a result, here it must mean milk and not fat. *Rashi* explains that the *Gemara* is teaching that there is a difference between cooking and frying. Cooking takes place with a liquid such as water. Frying takes place with a fat such as butter. The Biblical prohibition is regarding cooking. Milk is likened to water and therefore one cooks with milk. However,

the fat of the mother would never get cooked with meat; it would fry the meat. The Torah did not prohibit frying. It did not use the Hebrew word for frying, טיגון. Therefore, here we need to follow the way it is read, and understand that the verse is prohibiting cooking meat with milk. *Tosfos* (s.v. *derech bishul*) explain the *Gemara* differently. The *Gemara* is teaching that milk and meat only become prohibited once they are cooked together. *Cheilev*, the fat of the mother, is prohibited even before it touched the meat. The Torah in this instance is certainly not teaching anything about meat and fat. We would not need a verse to prohibit *cheilev* with meat. The fat is prohibited before it gets cooked with the meat. Our verse is teaching about a prohibition created by cooking two things together; thus it must refer to meat and milk.

Poskim point out that the dispute between *Rashi* and *Tosfos* on how to explain the *Gemara* has major ramifications for practical law. Is there a Biblical prohibition against frying a steak in butter? According to *Rashi*, our *Gemara* is teaching that the Torah only prohibited cooking milk and meat, and frying is not cooking. If so, there would be no Biblical prohibition of frying steak with butter. However, according to *Tosfos*, our *Gemara* did not distinguish between frying and cooking. Our *Gemara* merely states that milk and meat only become prohibited after they are joined together with heat. They are not items that were already prohibited beforehand. According to *Tosfos*, frying is included in cooking. Just as I cannot cook milk with meat, I cannot fry meat in a milk fat. *Pri Chadash* (*Yoreh Dei'ah siman* 87:2), *Pleisi* (there), and *Pri Megadim* (introduction to laws of milk and meat) all suggest that the issue of steak with butter is dependent on the dispute between *Rashi* and *Tosfos*.

Maharam Schif (*Chullin* 117b) rules that meat fried in butter is not considered meat cooked with milk; one may benefit from it, as it is not the Biblically prohibited meat cooked in milk. *Minchas Ya'akov*

(*Soles Leminchah kelal 85 law 3*) also rules leniently about meat with butter.

Pri Megadim in fact rules that he would even permit one to eat meat fried in butter in a case of great financial loss.

Shu"t Kessav Sofeir (siman 52) is strict. He quotes the *Rashba* who considered frying to be cooking in a Biblical sense. He rules that meat fried in butter is Biblically meat cooked with milk; it cannot be eaten nor can one derive benefit from it. *Chochmas Adam (kelal 40:1)* is also strict about meat fried in butter (*Mesivta*).

Can a Jew Attend a Cooking School and Observe the Cooking of Milk with Meat?

Our *Gemara* discusses the verse that prohibits us from cooking meat and milk. A practical challenge about these laws applies to cooking schools. A young man in the United States wanted to learn to be an expert chef. He applied to a culinary school and gained admission. He then realized that they would be cooking milk and meat. He notified the school of his dilemma. They informed him that he would not have to perform the actual cooking. He could merely stand and observe while gentiles cooked meat and milk. By watching, he would learn the tricks of the trade. He approached *Rav Zilberstein* and asked if he was permitted to attend the school. The Torah repeats the prohibition against meat with milk three times. We learn from this repetition that we may not cook milk and meat, we may not eat meat cooked with milk, and we may not benefit from meat cooked with milk. Perhaps observing and learning is considered receiving benefit and therefore prohibited?

Rav Zilberstein points out that a comment by the *Chazon Ish* to a *Gemara* in *Bechoros* may shed light on our issue. *Bechoros* (45a) relates the following story. The Sages wanted to know how many limbs there are in the human body. The students of *Rabbi Yishmael* procured the body of a prostitute whom the king had ordered to be burned. They cooked the body and it came apart. They counted two hundred fifty-two limbs. *Chazon Ish* questioned how they could do this. One may not derive benefit from a lifeless human body. How could they use the body for the purpose of education? He answers that the act of looking is not a benefit. When the Torah prohibits deriving benefit, it is defined as being unable to gain something of monetary value from the item. One would not charge another individual for the privilege of looking at the pieces of a human corpse. Therefore, it was not prohibited for them to learn a matter of Jewish law from the body. Perhaps then we can state that one would be permitted to look at the cooking of milk and meat for looking at a matter is not considered gaining benefit from it.

Rav Zilberstein ultimately concludes that our young man may not attend the cooking school. *Chazon Ish* argues that people do not charge others for the right to look at a dead body. However, in our case, the school charges tuition. The observing and learning in cooking school is a matter of value. It is worth money and one may not derive benefit from milk cooked with meat. Therefore, our young man should not attend the school as doing so will require him to benefit by learning commercially valuable secrets from meat cooked with milk (*Chashukei Chemed*).

Sanhedrin 5**Does a Rabbi Appointed by the Secular Government Have Authority?**

The Jewish community of *Bavel* was led by the *Reish Galusa*. The *Reish Galusa* was a descendant of the Davidic Dynasty. He was appointed leader of the Jews by the Persian ruler. Our *Gemara* teaches that if the *Reish Galusa* grants permission to a sage to judge and that judge errs in his ruling, he does not have to pay. The judges authorized by the *Reish Galusa* could even judge in the Land of Israel. The Jewish leader in Israel, the *Nasi*, did not have the same powers as the *Reish Galusa*. If he appointed a judge, that man would not be permitted to judge in *Bavel*.

Shu"t Rivash (*siman* 271) deals with a dispute that erupted among European Jewry. In the year 5123 (1363 of the Common Era), King Charles V of France appointed *Rav Matityahu*, a student of the *Ran* and *Rabbeinu Peretz*, as the chief rabbi of Paris and France. He gave him the authority to appoint rabbis and to administer a *yeshivah* in France. He presented him with a special title, *Moreinu*. In 5147 *Rav Matityahu* died. His son, the scholar *Rav Yochanan*, assumed his father's position with the approval of King Charles VI. A dispute broke out. *Rav Yeshaya bar Abba Mari*, a student of *Rav Matityahu*,

claimed that he was the rightful successor, and he should be the one appointing rabbis and administering the *yeshivah*. The rabbi of Vienna in Austria, *Rabbeinu Meir bar Baruch Halevi*, supported *Rav Yeshaya*. He ruled that *Rav Yeshaya* was the rightful chief rabbi of France and if anyone assumed a rabbinic role without *Rav Yeshaya's* permission, the *gittin* and *chalitzos* arranged by the usurper would be disqualified. *Rav Yochanan* was supported by the *Rivash* and *Rav Chasdai Crescas*.

Rivash derived from our *Gemara* and *Rashi's* commentary on it that *Rav Yochanan* was the rightful chief rabbi of France. *Rashi* explains that the power of the *Reish Galusa* came from the secular Persian authorities. The Persians placed him in a position of great strength. In Israel, the Romans and Christians ruled. They did not grant much authority to the *Nasi*. The *Reish Galusa* has added power in Jewish law because he was lawfully appointed by the secular government. Therefore, in his case, *Rivash* argued that since King Charles VI was the lawful authority over France, his granting the rights of chief rabbi to *Rav Yochanan* had standing. *Rav Yochanan* was the rightful authority. *Rabbeinu Meir* was in Austria; he had no standing in France. His ruling was to be ignored. According to *Rivash*, a government appointment of a rabbinic authority is meaningful in the eyes of Jewish law as well. *Perishah* (*Choshen Mishpat* 3:12) and *Urim Vetumim* (*Choshen Mishpat* 3:6) disagreed with *Rivash*. They argued that the reason the *Reish Galusa* had power was because he was a direct male descendant of the Davidic Dynasty. *Rashi* only meant to add that he was not opposed by the secular authorities. Secular authorities, however, cannot grant authority to a rabbi who is not of the Davidic Dynasty. The fact that King Charles VI supported *Rav Yochanan* was not enough to declare *Rav Yochanan* the rightful leader of French Jewry.

Shu"t Chasam Sofer (Choshen Mishpat siman 19) also deals with a scenario regarding a government-appointed rabbi. A rabbi had lobbied the government and the authorities had appointed him *rav* of that town. The townspeople turned to the *Chasam Sofer* and asked if they were obligated to respect the rabbi and his rulings.

Chasam Sofer answered that it is wrong for a leader to be appointed against the wishes of the congregation. *Gemara Berachos (55a)* teaches that Hashem consulted with *Moshe* and the Jewish people to ensure they agreed to the appointment of *Betzalel*. Every leader needs to obtain the approval of his flock. This rabbi had assumed the position without the community's consent. *Chasam Sofer* encouraged the people to approach the gentile rulers and ask them to rescind the appointment and assign a scholar approved by the majority of the community. After he completed his response, *Chasam Sofer* further added that the rabbi's termination should not be executed contentiously. The townspeople should plead respectfully with the gentile government that the rabbi be reassigned to another prominent position, such as head of the court. However, someone who was never desired by the majority of the community does not deserve the title of *rav (Mesivta, Hamevaseir Torani)*.

Sanhedrin 6**Is a Rabbi Obligated to Teach Halachos That May Be Difficult for His Listeners?**

Our *Gemara* teaches about the mandate not to fear any man. The following question was posed to *Rav Yitzchok* Zilberstein. A teacher of Torah taught a class of *halachah* in a synagogue. The attendees at the class were uneducated and therefore not always respectful to tradition. He was up to *Bava Kama* 38a which includes a law that is not politically correct. Modern sensibilities would have a trying time with it. The teacher asked the *Rav*, “Should I teach the law? Perhaps I should skip it and move on to a discussion that would be easier for people to accept.” The teacher worried that if he taught the law, his listeners would become distraught and annoyed with him.

Sanhedrin 6b teaches that if two litigants attend court and one is pleasant and the other is disagreeable, if the judge has not yet heard their claims, or he has heard their arguments but he is not yet sure who is in the right, he may recuse himself from the case. Due to distress about having to issue a ruling against the tough litigant and consequently having to deal with unpleasantness, the judge may step away. However, if the judge hears the arguments and sees that the amiable litigant is in the right, he cannot recuse himself. The

Torah commands the judge not to fear anyone. He cannot allow his trepidation to cause him to conceal what he believes is the truth. He must fearlessly speak truth in the face of power. Perhaps our case is likened to a judge who already perceives who is correct. The Torah commands the judge not to feel apprehensive. He should speak the truth, trusting that *Hashem* is alongside him. He should teach the law, even though the listener may not want to accept it.

Rav Zilberstein points out that *Yerushalmi (Sanhedrin 2:1)* relates that *Reish Lakish* once stated a *halachah* that upset the *Nasi*. Even when the *Nasi* was upset, *Reish Lakish* did not back down. “Do you think that because of fear, I would not state the Torah truth? *Rav Shimon bar Rav Yitzchak* taught that when we are publicizing Jewish law we are working with *Hashem*. There is no need therefore to hold anything back due to fear.”

Rav Zilberstein encouraged the scholar to act similarly to *Reish Lakish* and teach *Bava Kama 38a*. He should pray beforehand that *Hashem* help him, and that the students should accept the Torah truth (*Chashukei Chemed*).

Why Is It the Priest Who Purifies the Leper?

Our *Gemara* discusses the difference between *Moshe* and *Aharon*. *Moshe* was a practitioner of absolute justice. *Moshe's* attitude was “Let the law break through a mountain.” *Aharon* sought peace. *Aharon* lied to create peace and would pursue peace at the expense of truth. *Aharon* preferred compromise to strict justice. The *Rebbe* of Alexander suggests that our *Gemara* is the reason a *Kohein*, a descendant of *Aharon*, is needed to purify a person from *tzara'as*, leprosy.

Tzara'as is a punishment for evil speech and gossip, *lashon hara* and *rechilus*. *Lashon hara* and *rechilus* are generally true. The person who shares negative words that people express justifies it as love of truth. "I love truth," he says, "I must inform my friend of the offensive statements people are saying about him." This is why his purification is with a descendant of *Aharon*. *Aharon* believed that peace trumped truth. *Aharon* falsified for the sake of peace. *Aharon* taught that compromise is ideal. Therefore, when the leper meets with the *Kohein*, he is reminded of what the priest represents; he learns to prefer peace, and to avoid his error of excess love of truth (*Hamevaseir Torani*).

Sanhedrin 7**Does a Judge Have to Tell the Litigant the Reason for His Ruling?**

When judges issue a ruling, should they inform the parties of the reasons for the verdict or can they simply say, “Reuvein is guilty and Shimon is innocent?”

Shulchan Aruch (*Choshen Mishpat siman* 14:4) rules: “Some say that if the judge sees that the litigant suspects that he was judged unfairly, he has to explain to him the reasoning of his ruling, even if the litigant did not ask for an explanation.” *Tumim* (3) and *Pischei Teshuvah* (8) in the name of the *Chasam Sofer*, both rule that even if the litigant has not asked for an explanation, the judge should at the very least offer an oral rationale to the litigant, and explain to him the reasoning behind the ruling.

Shelah Hakadosh (*Parashas Mishpatim Torah Ohr*) derives the need to tell a litigant the reason for the ruling from our *Gemara*. Our *Gemara* teaches that when you leave the court you should emerge singing. Even if you were convicted, be joyful. You were saved from the sin of theft. This is teaching that the judge must explain the ruling. If the judge does not do so, it will not be possible for the litigant to sing. Only once he understands why he was mistaken will he sing about the discovery of the truth. Judging honestly partners

the judge with *Hashem* in the creation of the world. When *Hashem* made the world, each creature was created willfully. The horse knew he would be made a horse and he was happy and satisfied that he was not created a dog. So too, when the judge explains his reasoning, the litigant can happily accept it, just as the creatures happily accepted how *Hashem* made them. Once the ruling is explained, the judge is a partner with *Hashem* in creation (*Chashukei Chemed*).

Final Judgment and the Need to Record Novel Torah Thoughts

Our *Gemara* provides different explanations for a verse in *Mishlei* (17:14), “*Poteir mayim reishis madon velifnei hisgala hariv netosh.*” One explanation is that a judge may offer a compromise only before he hears the litigants’ claims. Another explanation of this verse is that the soul is first judged, in the next world, about water—the matter of learning Torah. *Tosfos* (s.v. *ela*) find this lesson difficult. In Tractate *Shabbos* (31a) we learn that the soul is first asked if “*Nasata venatata be'emunah*”—“Did you give and take with faith?” This, seemingly, is a question regarding business ethics. The soul is asked if it was faithful and honest in all business transactions. If we are first asked about business then we are not first asked about Torah. Hence, what is the matter that we are judged on first?

Maharit (*Sanhedrin* 40a) quotes *Radbaz*’s answer to the seeming contradiction. *Gemara Shabbos* meant to state that man is asked if he gave and took honestly in Torah. Torah study requires effort. It is a struggle to try and truly grasp the truth of Torah. Some study Torah insincerely. They seek to impress others with their intellectual brilliance. They engage in a creative yet outlandish

analysis called *pilpul*. The first question the soul is asked in the next world is about its study of Torah. Did you learn in an honest and true manner? Did you try to understand what the lesson truly signified? Did you study in a style that could lead to discovery of the *halachah*?

Yalkut HaMe'iri suggests that included in the mandate of honest study of Torah is the obligation to document your novel Torah insights. In business, a storekeeper must keep virtuous records. If he notes who purchased on credit and for how much, then he will not end up collecting from the wrong people or the wrong amounts. The combination of our *Gemara* and the *Gemara* in *Shabbos* teaches that we are to study Torah as an honest businessman performs business. We have to transcribe our novel insights so that we not forget them. The first question we will be asked in the final and ultimate judgment will be about our method of learning. If we did not make the effort to write down our novel insights, we did not learn as an honest businessman who retains efficient records to ascertain he does not forget. We may fail in our first ultimate test.

Is it said in the name of the *Gra* that he gave a different answer to the contradiction between the two *Gemaras*. *Shabbos* (31a) imparts that a verse in *Yeshayahu* teaches about the six orders of *Mishnah*. Over there, the order of *Zera'im*, laws about seeds, is referred to as *Emunas*, faith. Our *Gemara* teaches that the first question we are asked is about Torah. *Gemara Shabbos* said the first question in the next world is about faith; it meant to say that the first question is whether you learned the Torah about seeds. "Did you give and take in faith?" means "Did you try hard to study the laws of seeds which are called faith?" According to the *Gra*, we have to learn all of *Mishnah*, and especially the agricultural laws of Israel, for that will be the first order of inquiry from the Divine court (*Mesivta, Hamevaseir Torani*).

Sanhedrin 8

If a Judge Received a Mishlo'ach Manos Gift from a Person, Must He Now Recuse Himself from a Court Case Involving That Person?

Our *Gemara* relates a story about *Rav*. *Rav* had been hosted by an individual who came before *Rav*. “You were my guest, were you not?” he asked. *Rav* answered, “Yes, you hosted me.” The man then said, “I am glad you remembered. I have a court case. I would like to bring it before you.” *Rav* recused himself. “I cannot serve as your judge.” *Rav* seems to teach that if a man seeks to ingratiate himself with the judge, the judge must recuse himself. *Tosfos* (s.v. *pasilna lach*) argue that *Rav* did not have to recuse himself. He did so because he was exceedingly pious. *Poskim* teach that if a judge feels that he is predisposed positively to a person, he should recuse himself and not judge that individual.

Chida (*Birkei Yosef Choshen Mishpat* 9:12) writes that if a judge received a gift of *mishlo'ach manos* on Purim from a man, he may not later judge that man. Even if it is for a court set up in the *zabla* method, in which each side chooses one judge, he cannot allow himself to be chosen for one side, for as a gift recipient he will be biased and cannot judge impartially. *Rav Shmuel Abuhav* (*Shu"t Dvar*

Shmuel siman 191) disagrees. If the judge receives an annual gift of *mishlo'ach manos* from this person, it will not create bias. He may accept the *mishlo'ach manos* and later judge the gift giver. However, if the judge feels that the man who sent him the *mishlo'ach manos* was vying for bias in order to impact the case, he should recuse himself and not judge the man (*Rav Yehuda Zoldan*).

If You Find Two Lost Bags, One Has a Lot of Money, the Other a Little, and You Can Only Return One, Should You Return the Larger One?

R*av Yitzchok* Zilberstein derives from a comment of *Erech Shai* to our *Gemara* that when you are faced with two lost objects, one worth more and one worth less, and you can only return one of the items, you should return the one that is worth more.

Our *Gemara* offers interpretations for the phrases in the verses in the Torah about appointing judges. *Moshe* told the judges (*Devarim* 1:17), “*Kakaton kagadol tishma'un*”—“Hear the small issues like the big ones.” *Reish Lakish* states that this means that a case about a *perutah* should be considered as beloved to the judges as a case about a hundred *manah*. Asks the *Gemara*, “What was *Reish Lakish* trying to teach us?” Did he mean to teach that when a case about a small amount comes before the judges, the judges should deliberate and try to get to the truth? They are undoubtedly required to take every case seriously! We do not need a lesson from a verse to teach us that. The *Gemara* explains that *Reish Lakish* meant to teach that if a case regarding a small amount appears before the judges first and

later a case about a larger amount comes before them, they must first adjudicate the smaller case. They cannot leave the smaller case in order to deal with the larger issue.

Erech Shai finds this discussion difficult. *Reish Lakish* himself is of the opinion in Tractate *Yoma* (33a) that a person may not leave a *mitzvah*—“*ein ma'avirin al hamitzvos*.” Once a *mitzvah* comes to you, you must fulfill it. You cannot leave it for another *mitzvah* opportunity. Why then is there a need for a special verse to tell judges that they cannot leave the small case that came to them first to deal with a larger case that came before them second?

Erech Shai answers based on the *Chacham Tzvi* (*siman* 106). The rule of *ein ma'avirin al hamitzvos* only applies when there are two different commandments. Once I touch a *tallis* I cannot leave it to put on *tefillin*. However, when you have two *mitzvah* opportunities of the same *mitzvah*, you may leave one act that came to you initially for a second act that came second if the later act is more significant. Here we are dealing with the same *mitzvah*, judging fairly and helping the innocent reclaim his funds. We would have thought, based on the normal rules, that when a second case comes before the judges for a larger sum, the judges should interrupt the first case they are dealing with and resolve the second issue. Hence, the need for the verse, “*Kakaton kagadol tishma'un*,” the verse teaches that in judgment, when one case came first, it should be dealt with first. According to *Erech Shai*, if two cases would come together before the judges simultaneously, one for a large amount and the other for a small amount, the judges should choose to first take the case for the larger amount. The larger amount is more significant. *Pesachim* (20b) states that the Sages were concerned about a large loss as opposed to a minor loss. Therefore, if two wealthy individuals arrive in court, one with an issue regarding a large amount and the other regarding

a small amount, the court should first hear the case with the larger amount.

In light of these ideas, *Rav* Zilberstein suggests that if you find two lost bags belonging to different wealthy individuals, one with a large sum of money and the other a small sum and you can only return one, you should return the one with more money. Just as *Erech Shai* rules that when two cases come before the judges concurrently, the court should deal with the larger amount first, when two lost objects present themselves to the finder, he should perform the larger *mitzvah*, returning the more valuable lost bag first (*Chashukei Chemed*).

Sanhedrin 9**Can You Participate in A Siyum
if You Did Not Learn the Tractate?**

Tosfos Chachmei Angliyah (s.v. *lo*) explain that in our *Gemara Rabbi Akiva* is teaching that when there are three witnesses and two of them are convicted of being false, since other witnesses testify that they were elsewhere at the time they claim they saw the event, all three witnesses are punished. The Torah states that a matter can be established by two or three witnesses to link and equate a group of two witnesses with a group of three witnesses. This teaches that one who joins a group of sinners gets punished alongside them, even though he himself may not be as guilty as they. If this is true about sin, since the side of blessing is stronger, it is certainly true about a *mitzvah*. One who joins a group performing a *mitzvah* will be rewarded with them, even if he did not perform the *mitzvah* as much as the others.

Someone asked *Shu"t Mishneh Halachos* (*cheilek 11 siman 449*) if he could actively participate in a *siyum* for a tractate he did not learn. His friends in *shul* had completed a tractate and had invited all to come to the *siyum*. Was he allowed to join them in reciting the *Hadran* prayer, when he had not learned with them?

Rav Klein argues that our *Gemara* is the source that illustrates

that he can join in the *siyum* and the *Hadran* prayer. Our *Gemara* teaches that *Rabbi Akiva* taught that if one who joins with sinners gets punished with them, certainly one who joins with individuals fulfilling a *mitzvah* is rewarded with them. The person asking was joining those who performed the *mitzvah* and was therefore included with them. He receives the same reward. He may recite the prayer of *Hadran* with them. *Hadran* is phrased in the plural form; it means, “We will return to you.” Perhaps the reason this prayer was composed to be recited in the plural form was that it was always intended to include others who had not learned the tractate. The entire group should pray that we are to return to the tractate again and again. Perhaps this prayer is mostly for the individual who has not learned. He is the one who needs to pray that Hashem should open his heart and he should merit to learn and return to the tractate again and again.

Many *poskim* discuss the issue of someone who joins a *siyum* without having learned the tractate, and whether he is entitled to the benefits of a *siyum*, such as eating meat during the Nine Days or breaking the firstborn fast on *Erev Pesach*. *Mishnah Berurah* (470:10) writes that it is our practice that firstborn join in with a learner who is completing a tractate and they are then considered part of his *Siyum*; they then are permitted to eat on Passover eve (*Mesivta*).

Can You Join with a Sinner to Say the Vayechulu Prayer on Friday Nights?

Our *Gemara* discusses the dispute between *Rabbi Meir* and the Sages about a man who accuses his wife of being disloyal and should

therefore not have to pay the *kesubah*, *motzi sheim ra*. *Rabbi Meir* said that a case of *motzi sheim ra* is judged by three judges. The Sages say it is to be decided by twenty three judges. The *Gemara* suggests eight possibilities regarding their argument. One of them is that the dispute between *Rabbi Meir* and the Sages is similar to the disagreement between *Rabbi Yossi* and *Rebbe*.

If three witnesses come to testify in court on a matter of life and death and the third witness had not issued the warning with the other witnesses and it is revealed that he is a relative or otherwise disqualified from testimony, *Rabbi Yossi* is of the opinion that he causes the rejection of the entire group. *Rabbi Yehudah* is of the opinion that while the third man is rejected, the testimony may stand with the other two. The *Gemara* is suggesting that in our *Mishnah's* case, the husband came and brought three witnesses who stated that the wife had been disloyal. The third witness had not issued a warning with the other two and turns out to be a relative. *Rabbi Meir* agrees with *Rabbi Yossi*. All three are rejected. Without witnesses she cannot be put to death. However, she may lose her *kesubah*. Since the witnesses are disqualified, the issue becomes a question of monetary obligation which is to be judged by three judges. The Sages agree with *Rebbe*. According to them, since the third witness did not issue a warning, he cannot drag down the other two witnesses. He is banned while the other two stand. Since it is a case with two witnesses claiming there was a violation deserving of a death penalty, the Sages state that there is a need for a court of twenty-three judges to hear the case. Matters of life and death are to be adjudicated by a court of twenty-three judges.

Rav Yitzchok Zilberstein points out that *Torah Temimah* connects the idea that a single disqualified witness can ruin an entire group of witnesses to the prayer of *Vayechulu* that is recited on Friday nights.

During the Friday evening service, we customarily recite the verses from the Book of *Bereishis* about how the Almighty completed all of His creation of heaven and earth on the sixth day and He rested on and sanctified the Sabbath day. *Tur (Orach Chaim siman 268)* writes that there is a custom to recite these verses aloud while standing as a delivery of testimony that *Hashem* created the world. Testimony is to be recited aloud while standing up. *Mishnah Berurah (268:19)* writes in the name of the *Taz* that since it is testimony, it should be recited by two. If you miss the communal recital because you had a longer silent *Amidah*, seek another individual to join you and recite *Vayechulu* together. Can one recite *Vayechulu* with someone who is a sinner and disqualified from testimony?

Gemara Shabbos (119b) records the lesson of *Rav Chisda* in the name of *Mar Ukva*. He taught that when a person prays on Friday night and says *Vayechulu*, the two angels that escort him place their hands on his head and say, “And your sin has been removed and your crime atoned for.” *Torah Temimah (Tosefes Berachah Bereishis 2:1)* suggests that our *Gemara* is the reason for the lesson of *Rav Chisda*. Our *Gemara* teaches that when there is a group of witnesses and one of them is disqualified, according to *Rabbi Yossi*, this witness causes the entire group to be rejected. On Friday nights, we are all part of one group of witnesses declaring that *Hashem* made the world in six days. If one member of the community is disqualified, he would cause the entire group to be ineligible. This is why the angels lay their hands on the individual and wipe away his sins as he articulates *Vayechulu*. Therefore, *Rav Zilberstein* rules that you may join with a sinner in reciting *Vayechulu*. As the two of you recite *Vayechulu* all the sins are forgiven; hence, you are both considered kosher witnesses (*Chashukei Chemed*).

Sanhedrin 10**Can the Man Who Accuses the Chazzan of Slapping Him Testify Against the Chazzan?**

R*ama* (*siman* 420:1) teaches that there is an ancient ban against Jews who physically assault other Jews. They are automatically in *cheirem* and without the ban being removed, they cannot join in a *minyán* of ten. They certainly cannot serve as the *chazzan* for a *minyán*. A man comes to the *rav* of the *shul* with a claim. He maintains that the *chazzan* slapped him in the face and should lose his right to serve as the prayer leader. The *chazzan* claims that this is all fabricated, that he never hit the man. Can the man bring another witness and, jointly, would the two of them be deemed credible? If the two men both testify that the *chazzan* did indeed strike the victim, would the *chazzan* lose his position? Is a man able to testify against his friend when he harbors vengeful feelings within him? Perhaps *halachah* demands of witnesses that they be impartial; maybe the victim's frame of mind disqualify him from serving as a witness.

Rav Zilberstein points out that according to *Maharit*, our *Gemara* sheds light on this question.

Our *Gemara* deals with the concept of splitting the words of testimony. *Rava* taught that if a husband came to court and testified

that *Reuvein* had engaged in marital relations with the husband's wife, the husband and another witness may come together, resulting in *Reuvein's* conviction and death. The wife would not be put to death based on the testimony. A husband is related to his wife; a relative cannot testify on behalf of or against another relative. We accept the words of the husband that *Reuvein* had relations with a married woman; we reject the words of the husband that the married woman was the husband's wife. *Maharit* (*cheilek 2 Choshen Mishpat siman 80*) finds this lesson difficult. How can the husband's words about the man who had relations with his wife be acceptable to a court? The husband undoubtedly hates the man; he is filled with a desire for vengeance. How can his testimony be accepted?

Maharit derives a remarkable law from the *Gemara*. *Halachah* disqualifies someone who has a financial interest in testifying. If someone stands to earn money, he cannot testify. We suspect that his financial bias is causing him to say certain things. His words are not accepted. However, if a person is filled with animosity and retaliation, his testimony will be accepted. Honest testimony is a significant Torah principle. It is one of the Ten Commandments. *Halachah* trusts that the man with the animosity will control himself and testify honestly. *Mordechai* (*Sanhedrin remez 695*) also derives from our *Gemara* that relatives of a murder victim are acceptable witnesses in court against the murderer. *Rama* (*Choshen Mishpat siman 33:16*) rules this way as well. He writes that relatives of a murder victim may testify against the murderer, and relatives of an individual who was struck may testify against the perpetrator and thereby cause him to be expelled from the synagogue. There is no gain to the victim, who was struck, from their testimony.

Shu"t Radbaz (*cheilek 4 siman 231*) disagrees with *Maharit*. He is of the opinion that relatives of a murder victim cannot testify about

the murder for they are heavily biased. They seek to avenge the spilled blood. If the relative believes someone murdered his relative, he will do everything he possibly can, even testify dishonestly, to seek revenge and watch the murderer receive his comeuppance. *Halachah*, according to the *Radbaz*, disqualifies witnesses who have any bias. It does not have to be only regarding the possibility of loss of money.

To return to our case, according to *Mordechai* and *Maharit*, the victim may testify against the *chazzan*. Since the victim does not have a financial interest in the matter, he is not a *nogei'a be'eidus*. However, according to *Radbaz*, the victim cannot testify against the *chazzan*. He claims he was struck, according to his words, and is naturally upset and seeking revenge. One who might be seeking revenge is not an impartial witness. His words would not be accepted (*Chashukei Chemed*).

Why Do We Stand When We Bless the Coming Month?

In *shul* it is customary to recite a prayer and a blessing about the *Rosh Chodesh* that will occur during the coming week on the Shabbos before *Rosh Chodesh*. *Magein Avraham* (*Orach Chaim siman 417*) writes that it is our practice to stand during this prayer. *Igros Moshe* (*Orach Chaim cheilek 1 siman 142*) was asked by Rabbi Ephraim Greenblatt about this law. Why should we stand when reciting this prayer?

Rav Moshe answered that there were two stages to the sanctification of *Rosh Chodesh*. The first was judicial; the second was national. Witnesses would stand before the three judges who would cross-

examine them, deliberate and then issue a ruling. They would declare *Mekudash*, the day is sanctified. The judges sat during testimony and while they issued the ruling. Many Jews, representing the entire nation, would stand around the judges during the proceedings. They would respond to the ruling by declaring, "*Mekudash Mekudash.*" Just as the crowd around a court during a *chalitzah* ceremony stands, the crowd around the court during the consecration of *Rosh Chodesh* would stand and declare, "*Mekudash Mekudash.*"

In our days, our courts do not issue a ruling about the date of *Rosh Chodesh*. The rulings were issued in the past in the court of *Hillel* when he created the calendar. The nation, however, is still supposed to accept the ruling. Shabbos in *shul* is the time when the largest communal representation is available. When we all stand during the prayer of *Birkas Hachodesh* we are reminding ourselves of the crowds that would stand around the judges in Jerusalem. Our prayer is our form of our acceptance of *Hillel's* ruling. Since the crowd that accepted the ruling was to stand, we too have the custom of reciting this prayer while standing (*Mesivta*).

Sanhedrin 11

Can We Offer Sacrifices in Our Time Without a Beis Hamikdash?

According to *Ya'avetz*, our *Gemara* is the historical source that sacrifices may be offered even without a standing Temple in Jerusalem.

Our *Gemara* deals with adding a month to a year. It teaches that a month may only be added to the year if the *Nasi* agrees to the addition. It also teaches about the reasons the court would use to justify adding the month. It mentions that there were three primary considerations the judges would consider: if the wheat was not going to be ripe by *Nissan*, if fruits were going ripen by *Shavuot*, and if the months of *Nissan* and *Tishrei* would fall out during the correct season. The *Gemara* mentions that there were other considerations that would sometimes buttress these primary considerations. If the judges saw that the goats and sheep were still thin, and therefore the *Korbanos Pesach* would be weak and not as respectful as possible, that could be added to a primary consideration and justify adding a month. The *Gemara* relates a story about *Rabban Shimon ben Gamliel*. He sent a letter to the Jews in *Bavel* informing them that the chicks were not yet big enough, the sheep and goats were thin, and that the wheat had not yet ripened, and therefore he had added thirty days to the year.

This story is difficult. The concern about goats, sheep, and birds is only relevant when we have a *Beis Hamikdash*. When we have a *Beis Hamikdash* we can offer sacrificial animals and the women who give birth are required to bring birds as offerings. Then, if the goats are too thin and if the birds are not yet big enough, there is an issue. However, when we do not have a Temple, we do not offer sacrifices. *Rabban Shimon ben Gamliel* was *Nasi* after the loss of the Temple. His father, *Rabban Gamliel*, was *Nasi* following the destruction of the Temple. *Gemara Makkos* relates a famous tale that *Rabban Gamliel* was with *Rabbi Akiva* and other Sages when they witnessed a fox coming out of where the Holiest of Holies had stood. *Rabban Shimon ben Gamliel* only became *Nasi* after his father. He certainly was the leader after the Temple stood. So why was the immaturity of the animals a reason for him to add days to the year?

Ya'avetz (Shu"t Ya'avetz 21:89) suggests that our *Gemara* is proof that sacrifices may be offered even without a Temple. Mount Moriah still retains its holiness. Even today, if an altar would be built on the precise spot on the mountain, offerings may be brought. In the days of *Rabban Shimon ben Gamliel*, there were good relations between certain Rabbis and the Roman authorities. The Romans allowed the Rabbis to keep an altar on the Temple Mount on its correct location. Communal sacrifices were brought on that altar. *Korbanos Pesach* were also brought on that altar. *Rabban Shimon ben Gamliel* added days to the year to enable the goats to grow because in his days, after the loss of the Temple, sacrifices were still offered on the holy mountain. *Rambam (Hilchos Beis Habechirah 6:16)* also rules that we may offer sacrifices in our days even though we do not have a *Beis Hamikdash*. *Kaftor Vaferach (perek 6)* records that *Rabbeinu Yechiel* of Paris, in the year 5017, wanted to go to Jerusalem and offer sacrifices.

Many authorities did not feel that sacrifices may be offered in our

time (see *Avodah Tamah*, *Shu"t Maharsha* [*Orach Chaim siman* 15], *Migdal David*, and the *Haskamah* of the *Yeshuos Yisrael to Derishas Tziyon*). Does our *Gemara* pose a problem regarding their position? *Ya'avetz* has another interpretation for our *Gemara*. Perhaps they did not present offerings following the loss of the Temple. However, as Jews we are to prepare for the imminent rebuilding of the Temple. For this reason, *Rabban Shimon ben Gamliel* added days to the year when he saw that the goats were too thin. He was preparing the nation; if the Temple was to appear, they would have suitable goats for *Korban Pesach*. Ultimately, *Ya'avetz* writes that he thinks his first explanation of the *Gemara* is more accurate (*Mesivta*).

May a Teacher Ask a Student to Tattletale?

A child in the class misbehaved but the teacher was unaware of the child's identity. Is the teacher allowed to try to get a class member to inform him of the identity of the wrongdoer? Can he ask or demand of someone to come forward and report the misbehavior?

Rav Moshe Feinstein (*Igros Moshe Yoreh De'iah cheilek 2 siman* 103) writes that it is wrong and unseemly for a teacher to ask or demand of a student to report a fellow student. It will lead students to disregard the prohibition against *lashon hara*. Our *Gemara* teaches about the importance of preserving dignity and sometimes hiding the identity of the sinner in order to prevent shame. The *Gemara* relates that when *Hashem* told *Yehoshua* that Jews had sinned by taking from the loot of Jericho, the Almighty did not identify the sinner. He merely said, "The Jewish nation has sinned." *Yehoshua* asked, "Who did it?" *Hashem* responded, "Am I a talebearer? Will I

run to report a person to authorities? You can figure it out through a lottery.” A teacher therefore should act like the Almighty and should not pressure a student to report the misdeeds of another student.

Shu”t Shevet Halevi (cheilek 9 siman 34) seems to disagree. He writes that it is necessary for the teacher to discover who misbehaved in order to educate him. It is part of the *mitzvah* of *chinuch*. It is not *lashon hara* to inform a teacher of the misbehavior of a student so that the student may be disciplined. *Shevet Halevi* points out, though, that just as our *Gemara* taught about dignity, the teacher should try and preserve the dignity of the student who misbehaved. He should not ask for a public report. Rather, the student should tell him in private who misbehaved. *Rav Zilberstein* adds that even if one feels that the student can report the misdeed, it is best for the teacher to have the student merely hint at the identity and not state it explicitly. *Chafetz Chaim (Hilchos Lashon Hara kelal 10 Be’er Mayim Chaim entry 11)* proves from our *Gemara* that when there is a way to determine the information without an explicit statement, the roundabout way is preferable. *Hashem* refused to relay *Achan’s* name to *Yehoshua*. It would not have been *lashon hara* for *Hashem* to inform *Yehoshua* that *Achan* had taken from the loot of Jericho as such information was required to save the Jewish nation. However, since the option of the lottery existed, *Hashem* told *Yehoshua* to discover it through a lottery. So too, in our case, the teacher should encourage the student to merely hint at the information, so that he will not explicitly state the negative information regarding his friend (*Chashukei Chemed*).

Sanhedrin 12**Should You Light Chanukah Flames with Wax Candles Now or Should You Wait to Light Oil Later?**

A man wanted to light his *menorah* with oil for he wished to fulfill the *mitzvah* of *menorah* in the finest way. He did not have any oil in his home so he sent his son to the store to purchase some. The boy called back and said that there was a long line and it would take him twenty minutes to acquire the oil. What should the man do? Should he light wax candles now so as to fulfill the mandate of *zerizin makdimin lemitzvos*, those who have alacrity rush to fulfill *mitzvos*? Or should he wait and attain the oil so that he will fulfill the *mitzvah* in a nicer manner?

Shu"t Shevus Yaakov (*cheilek 1 siman 34*) deals with this question when discussing the four species. If a person had a standard set of four species that he can wave now but if he waits an hour or two, he can acquire a more beautiful *esrog*, should he wait, or should he fulfill the *mitzvah* straightaway?

Shevus Yaakov concludes that if he can get the finer set on that day, he should wait. One may wait, even a long time, to fulfill a *mitzvah* in a more desirable way. Such behavior is also a display of

zerizus—he is displaying passion to fulfill the *mitzvah* in the best manner. Our *Gemara* is a proof for this perspective.

Our *Gemara* discusses the fact that when most of the Jewish nation is impure, communal sacrifices may be offered in the Holy Temple despite the impurity. There are two ways of understanding this law—either impurity is pushed aside when the community is impure, *tumah dechuyah betzibur*, or there is no issue whatsoever with impurity when the community is impure, *tumah hutrah betzibur*. The *Gemara* states that according to the view of *tumah dechuyah betzibur*, the court would be entitled to add a month to the year and make it a leap year, so that people will be pure for the offering of *Korban Pesach*. Consider this law. When the majority is impure, people are allowed to bring communal offerings like *Pesach*. Nevertheless, our *Gemara* taught that we may delay the *Korban Pesach* by a month to enable people to become pure and thereby bring offerings, in a better manner, in a state of purity. Apparently, we are allowed to delay in order to perform a *mitzvah* in a finer fashion. According to this logic, in our case, the man should wait for his child to return with the oil. Just as the nation would wait to perform the *mitzvah* of *Korban Pesach* in a superior fashion, so too should the man wait with lighting his *Chanukah menorah* in order to fulfill the *mitzvah* in a better manner.

Ultimately, *Rav Zilberstein* argues that perhaps *Chanukah* candles differ from *Korban Pesach* or waving the four species. If *Nissan* is delayed and *Pesach* occurs a month later, it is still a full and complete observance of *Pesach*. If a person waits and waves his four species later in the day, he fulfills the *mitzvah* of waving the four species fully. However, if he waits to light *Chanukah* flames, he will not perform the *mitzvah* fully. Part of the *mitzvah* of *Chanukah* candles is to light them at the precise time, as the stars emerge, not earlier or later (see

Shulchan Aruch Orach Chaim siman 672:1 and the *Mishnah Berurah* there). Therefore, *Rav Zilberstein* argues that the man, in our case, should light the wax candles he has available now, and not wait for the oil. *Shu"t Pri Hasadeh (cheilek 3 siman 109)* does not agree with this argument. He rules that even in the question of *Chanukah* flames, one should wait a bit in order to fulfill the *mitzvah* in the best possible way (*Chashukei Chemed*).

Sanhedrin 13**Why Was Hillel Called by His Name
and Not Rabbi Hillel?**

Our *Gemara* mentions that *semichah*, the ordination of rabbis as members of the society that may issue rulings on matters of fines, requires three judges in the Land of Israel. This *Gemara* is the reason for a distinction in how different Sages are referred to in the Talmud. *Rav Sherira Gaon* and his son *Rav Hai Gaon*, leaders of the *Gaon Yaakov Yeshivah* in *Bavel*, wrote a letter to explain the titles Sages have in the Talmud. Why are some Sages called *Rabban*, others *Rebbi*, others *Rav*, and some—like *Hillel* and *Shamai*— only referred to by their names?

They explain that there is a hierarchy of titles. “*Gadol Meirav—Rebbi, Gadol Meirebbi —Rabban, Gadol Meirabban—Shman*”—“Greater than *Rav* is *Rebbe*, greater than *Rebbe* is *Rabban*, greater than *Rabban* is the name by itself.” The greatest individuals did not have any title preceding their name. Our fathers, *Avraham, Yitzchak*, and *Yaakov*, all the prophets, kings, and members of the Great Assembly are not given titles. It was only at the end of the Second Temple era that the title *Rabban*, Our Master, was added before the names of the top leaders of the nation in Israel, the *Nesi'im*. *Rebbe* was placed before the name of the other Sages in the Land of Israel.

Sefer Yuchsin explains the reason for this new practice.

At the end of the Second Temple era, the Jewish nation was split between the Jews who were loyal to and accepted the Oral Torah - the *Perushim* - and Jews who rejected the Oral Torah and devised for themselves interpretations of the Torah text, *Tzedokim*—Sadducees. The Sages wished to distinguish between rabbis who were loyal to the whole Torah and the Sadducee scholars. They therefore added the title *Rebbe* preceding the names of the *Perushi* scholars. The title *Rebbe* indicated that the scholar was loyal to the Oral Torah and a worthy member of the chain of Sages stretching all the way back to *Moshe Rabbeinu*.

Rav Sherira Gaon and *Rav Hai Gaon* explain that Sages of Israel were called *Rebbe* and Sages in *Bavel* were called *Rav*. The reason for this is our *Gemara* which teaches about *Semichah*. *Semichah* is not accomplished by the teachers merely laying hands on the student. It is achieved when the masters declare that he is a scholar worthy of ruling on matters of financial fines and that he deserves the title of *Rebbe*. Ordination was limited to the Land of Israel. In *Bavel* they did not dole out *semichah*. To illustrate the difference, the Sages of *Bavel* were titled *Rav* and only the Sages of Israel were bestowed the title of *Rebbe*. *Rebbe Zeira* moved from *Bavel* to Israel. In *Bavel* he was known as *Rav Zeira*. Following his move, he became *Rebbe Zeira*. In fact, *Gemara Kessubos* (43b) expresses a doubt regarding a particular law if it was taught by *Rav Zeira* or *Rebbe Zeira*. The question revolved around whether it was taught by *Rav Zeira* when he was in *Bavel* or taught when *Rebbe Zeira* had already moved to Israel.

Rabbi *Akiva Eiger* (introduction to his *Shu"t*) writes that if he could, he would terminate all the titles that are currently given to rabbis. Sometimes, the titles are excessive and are a form of improper flattery. At times, the titles may cause arrogance. And finally, if

the rabbi does not appreciate the titles because he feels they are insufficient, a dispute may ensue.

Hillel was not called Rabbi *Hillel*, for greater than being called by an honorable title is being referred to by name. Our leaders idealized lack of honorable titles. The titles were only instituted well after the era of *Hillel*, as a reaction to the Sadducees. Rabbi *Akiva Eiger* argues that we should return to the way things were originally (*Me'oros Daf Hayomi*).

Sanhedrin 14**Why Does Gaining a New Position
Remove Sins?**

Our *Gemara* continues to discuss *semichah*. It discusses *Rebbe Zeira*. When *Rav Zeira* came to Israel, the other Sages wanted to grant him *semichah*. He initially hid from them because he had heard from *Rebbe Elazar* that fame is dangerous. Keep a low profile and you will thrive. He then heard from *Rebbe Elazar* that if someone gains a position of importance, all his sins are forgiven. Consequently, he sought to make himself available to those who ordain. He willfully accepted *semichah* and became *Rebbe Zeira*.

Rav Gershon Edelstein quotes the *Me'iri* who provides an explanation. *Hashem* gifts a leader with new capabilities. If *Hashem* allows someone to become a leader it is a sign that he is deserving of this greatness. *Hashem* cares for His nation. He gifts the leader with a new temperament. The leader is given abilities to influence. He is given wisdom to guide. He is granted pedagogic capabilities in order to educate and inspire his people. Since he becomes a new person, his sins are forgiven. They were performed by someone else. This new man, the leader, starts afresh with no sin.

Rav Gershon Edelstein pointed out that in the Torah we have a

tale that is similar to the story of our Gemara. The Torah tells us that *Moshe* complained to *Hashem* about how hard it was to carry the burdens of the Jewish nation alone. *Hashem* told him to give from his spirit to seventy elders who would assist him. Due to their humility, two sages, *Eldad* and *Meidad*, chose to stay back in the camp. *Hashem* granted them prophecy. They had been invited to join the seventy sages and appear before *Moshe*. Yet, in humility, feeling that others were worthier, they stayed back in the camp and therefore received blessings. The others were imbued with *Moshe's* spirit; *Eldad* and *Meidad* received prophecy directly from *Hashem*. *Rebbe Zeira* was also humble and avoided the honor. Only when he realized that there was no one else as worthy as he and that it was from Heaven that the other Sages sought to elevate him, did he accept the ordination. Humility emerges from faith. If you have strong *emunah* that all is from *Hashem*, you credit your achievements to *Hashem* and do not feel that you are superior to others. A Jew is a natural believer. We need to remove the distractions and allow our natural *emunah* to emerge. With strong *emunah* we will credit *Hashem* for our achievements and will become people of humility who receive direct Divine blessings (*Oneg Shabbos*).

Sanhedrin 15**Can You Fulfill Your Obligation of Four Species with an Esrog Still Attached to the Tree?**

Our *Gemara* records a dispute between *Rabbi Meir* and the Sages about a field filled with fruit trees laden with ripe fruit. *Rabbi Meir* is of the opinion that while the fruits are still physically attached to the tree, *halachah* considers what is about to be picked to be detached. The Sages disagree. According to the Sages, whatever is actually on the tree is considered by *halachah* to be attached. This dispute affects the law of oaths.

Only conflicting claims about movables create an oath obligation. If *Reuvein* claims that *Shimon* owes him one hundred bushels and *Shimon* admits to owing twenty and denies the other eighty, there is a Biblical oath obligation. What is the law when *Reuvein* claims he gave *Shimon* fifteen trees with fully ripe fruit to watch and *Shimon* admits to getting five trees with fully ripe fruits to watch and denies the other ten? Would there be an oath obligation? Are they arguing about movables or are they arguing about land that is attached? *Rabbi Meir* is of the opinion that fruit about to detach is considered detached. According to *Rabbi Meir*, there is an oath obligation. According to the

Sages, there is no oath obligation. *Reuvein* and *Shimon* are arguing about trees attached to the earth. What is attached to the ground is considered ground and there are no oath obligations for land.

Shu"t Mishneh Halachos (*cheilek* 11 *siman* 522) raises an interesting question pertaining to the view of *Rabbi Meir*. On *Sukkos* there is a *mitzvah* of taking the four species—*lulav*, *esrog*, *haddasim*, and *aravos*. If the *esrog* was fully ripe but still on the tree, could you fulfill your *mitzvah* of four species by holding it? According to *Rabbi Meir*, a ripe fruit is considered detached from the tree, for it is about to be removed. Therefore, perhaps you can fulfill the *mitzvah* of four species with such a fruit. *Shu"t Mishneh Halachos* argues that you cannot fulfill the *mitzvah* with a fruit that is still on the tree. The *Torah* (*Vayikra* 23:40) commanded us to take the fruits, “*Ulekachtem lachem bayom harishon*”—“And you shall take for yourselves on the first day.” Holding onto a fruit still attached to a tree is not an act of taking. Taking must be complete, *lekichah tamah*. *Halachah* may consider the fully ripe *esrog* to be off the tree, but holding onto it is not a full act of taking and cannot fulfill the *mitzvah* obligation.

In his book *Tzelach* to Tractate *Shabbos* (131a), *Rav Landau* also deals with this question. He argues that holding a fruit in your hand is an act of taking. Taking is defined as holding it in your hands. Once you hold the *esrog*, you have fully taken it, and therefore if *halachah* considers the *esrog* to be legally detached, you should be able to fulfill the *mitzvah*. *Rashash* (*Sukkah* 42a) is of the opinion that you fulfill the *mitzvah* of *esrog* and four species by placing your hand fully on the items, even if they are on the table and you did not lift them up. According to *Rashash*, one should be able to fulfill the *mitzvah* of four species according to *Rabbi Meir* by merely holding a fully ripe *esrog* that was still on the tree. *Minchas Pittim* (*siman* 652) and *Bikurei Yaakov* (*siman* 651:30) argue that the term *lekichah*

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denotes taking something detached. They argue that if the *esrog* is still attached to the tree it cannot be taken in a manner sufficient to fulfill the mandate of “*Ulekachtem lachem bayom harishon*” (*Mesivta*).

Sanhedrin 16**The Best Learning Is at Night: When, During the Night, Should One Try to Learn?**

Our Sages teach that the most special learning of Torah occurs at night. Torah at night is called song and one who learns at night merits to have a special Divine chain of grace on him during the day. *Rambam (Hilchos Talmud Torah 3:13)* writes that a person gains most of his wisdom from his learning at night. *Shu"t Arugas Habosem (Orach Chaim siman 1)* addresses the question of when, during the night, is the learning most special. Is the best time to learn at the beginning of the night? Is the student who pushes himself to stay awake and keep learning, even though he is tired, the individual who merits to have the chain of grace? Alternatively, perhaps it is the second half of the night that is most special. Maybe it is wise to go to sleep once one is tired and to plan to wake up early so that as the night ends, he is up and learning *Hashem's* wisdom. Is it the end of the night that should be filled with learning to merit *Hashem's* blessings?

Shu"t Arugas Habosem argues that our *Gemara (Sanhedrin 16a)* proves that the ideal time to learn is the end of the night. Our *Gemara* relates that King David would go to sleep with a harp hanging over his bed. In the middle of the night, a northern wind would blow and

create music on the harp. David would then awaken and study Torah from the middle of the night until the morning. If David insisted on waking at midnight and learning until morning, this underscores that it is best to sleep during the first half of the night and to learn during the second half of the night. He adds that oftentimes dreams grab a person and he does not awaken as he intended to learn before dawn. It is therefore wise to exercise the practice of learning as you are going to sleep. Fall asleep with Torah thoughts; then in the morning, your dreams will not prevent you from rising and learning to greet the dawn.

Chasam Sofer (*Koveitz Teshuvos siman 31*) is of the opinion that the norm is to learn during the first half of the night. He uses this law to explain the practice not to learn on *Nittel nacht*, the night of December 25th. On *Nittel nacht* the Christians attend a midnight prayer service. This might serve in Heaven as a source of challenge against the Jews. Prosecuting angels may argue, “Why are the members of Israel asleep and gentiles awake praying?” It was the norm for Jews to remain awake and keep learning during the first half of the night. The Jews instituted a practice not to learn during the first half of *Nittel nacht*. Those who had regular nightly study sessions would miss the usual learning. As a result, they would waken at midnight to learn. In this way, the prosecuting angels would not be able to claim that *Hashem’s* nation did not have the religious passion that equals that of the nations. According to the *Chasam Sofer*, the practice of not learning at all on the night of December 25th is faulty. The origin of the custom was to try and force people to learn during the second half of the night as they usually would learn during the first half of the night. From *Chasam Sofer* we can learn that it is the learning during the first half of the night that can draw a chain of grace upon a person (*Mesivta*).

Sanhedrin 17**Does Communal Volunteering Create Joy?**

Our *Gemara* explains the Biblical episode of *Eldad* and *Meidad*. *Moshe* had sought help; *Hashem* had told him to gather seventy elders and give them some of his spirit. *Eldad* and *Meidad* were supposed to be among the seventy sages but did not appear and instead stayed back in the camp. They were humble and felt undeserving; they thought they were not worthy to be leaders of the nation. Nevertheless, *Hashem* granted them prophecy. According to one opinion, they declared, “*Moshe* is destined to die and *Yehoshua* to lead the Jews into the Holy Land.” *Yehoshua* heard their prophecy and was very distraught. He ran to *Moshe* and demanded that *Moshe* put an end to their prophecy. How could *Moshe* put an end to their prophecy? He could have appointed them to communal responsibilities. *Tosfos* explain that a prophet only receives prophecy when he is in a state of joy. It would have saddened them had *Moshe* appointed them to a position of collecting charity, or other communal needs. They would feel dejected by the pain Jews suffer and would not have been able to continue to receive prophecy. *Moshe* refused *Yehoshua’s* request. It emerges from our *Gemara* that communal efforts lead to sadness.

Do communal involvements truly cause sorrow? *Shulchan Aruch* (*Orach Chaim* 93:2-4) quotes two interpretations of a passage

in the *Talmud Yerushalmi*. According to the first interpretation, the *Yerushalmi* is teaching that involvement in the needs of the community is likened to Torah learning. It is innately pleasurable and creates a feeling of joy. Just as one should study Torah to sense joy before stepping forward to *Hashem* in prayer, one may work for the community and then pray. If communal involvement creates joy, how would communal responsibilities silence the prophecies of *Eldad* and *Meidad*?

Shu"t Shevet Halevi (*cheilek 1 siman 40*) suggests an answer to this question by distinguishing between degrees of communal volunteering. There is a difference between taking on a project and devoting oneself fully and totally to communal needs. *Yehoshua* was proposing that *Moshe* involve *Eldad* and *Meidad* in a complete effort on behalf of communal needs. Such a job would have inevitably, ultimately depressed them. *Talmud Yerushalmi* is teaching that volunteering for a single communal project and trying to help the community is a source of pleasure and joy. If you are busy with a single project, your volunteering will lead to joy; it is a positive manner in which to get oneself into the correct frame of mind to enter *Hashem's* domain in prayer.

Shu"t Divrei Yatziv (*Likutim Vehashmatos siman 122*) offers another answer. The *Yerushalmi* perhaps deals with volunteering to help the community with spiritual needs. When investing effort to teach Torah or encourage prayer, there is great joy. However, in our *Gemara*, *Yehoshua* was proposing that *Eldad* and *Meidad* be tasked with involvement in communal physical needs. Hearing of poverty, illness, and other physical requirements leads to sadness and prevents prophecy.

Another answer *Shu"t Divrei Yatziv* proposes is based on the commentary of the *Sefer Chareidim* to the *Yerushalmi*. When you

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are involved in communal matters and succeed in accomplishing what you embark upon, you feel joy. Such joy is akin to the joy of Torah study. It is a wonderful way to prepare for prayer. In our *Gemara*, *Yehoshua* was proposing that *Eldad* and *Meidad* be given many communal tasks. Inevitably, many of the endeavors would fail which would create sadness and depression. To conclude, while some communal volunteering creates joy, our *Gemara* also indicates that there are forms of communal volunteering that do not engender joy (*Mesivta*).

Sanhedrin 18**Can I Accept upon Myself the Punishments
Due to Others?**

The *Mishnah* on our *daf* teaches about respect we have to bestow upon the *Kohein Gadol*. When he suffers the loss of a relative, we tell him, “*Anu kaparas’cha*”—“We are your atonement.” *Rashi* (s.v. *anu*) explains that we are informing him, “We are in your place for all the misfortune that might be due to you. It should come upon us.” The *Mishnah* also teaches about the honor we are to offer kings. It never mentions that we tell the king who is a mourner, “*Anu kaparas’cha*.” Why did the *Mishnah* neglect to mention that we are to tell the mourning king, “*Anu kaparas’cha*?” *Kol Haramaz* answers that the king is not always a great Torah scholar, whereas the *Kohein Gadol* is generally a great Torah scholar and teacher. The *Kohein Gadol* is the teacher of the Jewish nation and deserving of special honor. Only he merits that we profess to him, “*Anu kaparas’cha*.”

Poskim find this concept difficult. Can I accept upon myself the suffering due to someone else? Why should a mere declaration make the suffering someone else deserves come to me?

Ma’avar Yabok (*Sifsei Renanos perek 21*) rules that if you are required to fast and someone else fasts on your behalf, his fast can

benefit you. In fact, he teaches that many held the custom that when they knew they were in need of atonement they would offer money to a friend to fast for them. The friend would fast and accept suffering on himself. The man who hired him would gain atonement. This may be performed for those who have passed from this world as well. If you fast and accept discomfort on behalf of someone who has died, you can create forgiveness for him. The reason why this is effective is that all Jews are responsible for each other. On the level of the soul, each Jewish soul is connected to every other Jewish soul. Since I have in my soul a bit of another Jew's soul, my fast or acceptance of suffering may create forgiveness and atonement for him.

Shulchan Aruch (Yoreh Dei'ah siman 240:9) rules that after a parent passes away, every time the child, for the first twelve months, mentions his parent, he is supposed to state, "*Hareini kapparas mishkavo*"—"Behold I am his atonement (now) that he has passed." *Shu"t Betzeil Hachochmah (cheilek 6 siman 17)* finds this difficult. A child must honor a parent, but if there are any costs associated with the honoring, the parent should compensate for the costs. Why should a child accept punishment upon himself? If the child will suffer then the child will be paying for the honoring. Isn't the *halachah* that honoring the father is *mishel av*, from the father's account? He answers that *Rav Moshe* Feinstein had already addressed this question. *Rav Moshe* explained that "*Hareini kapparas mishkavo*"—"Behold I am his atonement (now) that he has passed" is not meant to be accepted in a literal sense. It is a declaration of honoring a parent. It will not cause the child to receive the punishment that was due to the parent. It is merely a statement that the child wishes he would receive whatever misfortune the father should have received. *Rav Moshe* is of the opinion that in our *daf* as well, the statement does not actually cause Jews to acquire the sufferings the *Kohein Gadol*

was to have received. The statement “*Anu kaparas’cha*”—“We are your atonement” is a statement of honor. We wish we could acquire your punishments. According to *Rav Moshe*, in actuality no one can suffer for anyone else. We are judged exclusively on our own merits (*Heichalei Hatorah*).

A Shul Is a Mini-Mikdash

When *Rav Meir Shapiro zt”l* served as the *rav* of Piotrakov there was a *shul* that was known as “*Di Kalta Shul*, The Cold Synagogue.” This was an old house of prayer and had been built without an oven inside to warm it during the winter. During the cold Polish winters, most of the congregants would avoid it and pray in other *shuls*. A new *gabbai* was appointed to this *shul* and decided to facilitate a change. He wanted to install several stoves in the sanctuary. Hence, the *shul* would be warm during the winter and would be used by many, the way it had once been. Before he instituted the change, he asked *Rav Shapiro* if it was permissible to modify the structure of a *shul*. *Rav Shapiro* informed him that he would ask his teacher, the Chortkover *Rebbe*.

Rav Shapiro went to the *Rebbe* of Chortkov for *Shabbos Chanukah*. Whenever *Rav Shapiro* came, the *Rebbe* would honor him and invite him to eat with him at his table. This *Shabbos* was no different and the *Rebbe* invited *Rav Shapiro* to sit with him. The *Rebbe* began the conversation, “*Rav Shapiro*, the winter is cold. What do you think should happen with the old *shul* that never had a stove built in it? Should they put in a stove?” *Rav Shapiro* was amazed that the *Rebbe* was discussing the very issue he had come to ask about. He told the

Rebbe, “I actually came with this very question. Is it permissible to change the synagogue and add furnaces? It was not built with furnaces but now it is very cold and people leave during the winter.” The *Rebbe* responded, “Tell me what you think for you must have been thinking about the question.” *Rav* Shapiro responded, “I think that we should not allow it. *Sanhedrin* (18b) teaches that a *Kohein Gadol* cannot sit and deliberate about adding a month to the year. He will have a bias. An added month would delay *Yom Kippur* and cause it to fall out close to winter and the cold season. On *Yom Kippur*, the *Kohein Gadol* has to immerse five times in a *mikvah* and walk barefoot on the stone Temple floor. His bias will lead him to vote against adding a month, so that the floor will be less frigid. Why is the *Kohein Gadol* concerned about cold floors? Let them install stoves and light bonfires. The floors will then be heated and warm. Apparently, it was not right to install stoves in the *Mikdash*. Every *shul* is a mini-*Beis Hamikdash*. It would not be appropriate to install stoves. In addition, *Gemara Sukkah* (51b) teaches that due to a problem of excess mingling, the Sages instituted a major renovation and built a balcony in the sanctuary for the women. Apparently, only when facing a major spiritual need are we allowed to alter the structure of a holy space.” The Chortkover *Rebbe* agreed with the sentiments of *Rav Meir* Shapiro.

Shu”t Maharam Brisk (*cheilek 1 siman 35*) argues that the stoves of those times differed from our stoves. *Bava Kama* (82b) teaches that no clay-making stoves were set up in Jerusalem because they were dirty, sooty, and smoky. Since the stoves of those times would blacken the walls of *shuls*, *shuls* were built without stoves. Our heating implements are different. They do not dirty the walls and instead produce clean heat. Therefore, all would agree that today’s ovens and heaters may be added to *shuls* (*Daf al Hadaf*).

Sanhedrin 19

The Grandson Was Raised by the Grandfather: Is He Entitled to Say Kaddish for the Grandfather?

Our *Gemara* teaches that if you raise an orphan in your home, the Torah considers it as if you are the parent of the child. This has led to interesting *Halachic* discussions.

Shu"t Chacham Tzvi (siman 93) discusses counting a *golem* to a *minyan*. According to *Gemara Sanhedrin*, sages can create a man-like creature through meditating on the holy words of the book *Sefer Yetzirah*. *Chacham Tzvi* wonders if such a creature could be counted as one of the ten men needed to form a *minyan* and enable the recital of *Kaddish* and *Kedushah*. He tries to bring a proof from our *Gemara*. Our *Gemara* teaches that if someone raises an orphan it is as if he is the father of the orphan. Therefore, since the sages create the *golem* and raise him, it should be considered that the sage who made the *golem* is the father of the *golem*, and the *golem* is an ordinary Jew, a child of a fellow Jew, and therefore should be eligible to count for a *minyan*. Ultimately, *Chacham Tzvi* rules that a *golem* cannot count for a *minyan*. The *Gemara* relates that *Rebbe Zeira* killed a *golem*. If the *golem* could help us make a *minyan* or recite *Kedushah*, *Rebbe Zeira* would never have taken his life.

Rav Shlomo Kluger (Chochmas Shlomo, Even Ha'ezzer 1:1) is open to the idea that a man who raises an orphan has fulfilled the Biblical obligation of *peru urevu*. According to the *Taz (Yoreh Dei'ah siman 242)*, whenever our Sages say that something is as if, they mean it is identical to the matter they are comparing it to. Here our Sages said, *ke'ilu yelado*, as if he gave birth to him. They are inferring that raising a child is utterly and completely similar to giving birth to a child. It therefore may enable a person to fulfill *peru urevu*.

Shu"t Harama (siman 118) was asked by *Anschel Teizenger* for a favor. *Anschel* was raising his grandson, his daughter's son. He did not have any sons. In those days, only one person would recite *Kaddish* for the community. *Anschel* was worried that after he died, no one would recite *Kaddish* for him. He asked the *Rama* to give him a note stating that his grandson was entitled to lead the community in *Kaddish* for his grandfather.

The *Rama* acquiesced and explained why the grandson should get some of the *kaddishim*. First of all, he argued that a grandson is obligated to give honor to his grandfather. In addition, in this instance, the grandfather was like a father; he had helped raise the child. Our *Gemara* teaches that if you raise someone, it is as if you gave birth to that individual. This grandfather had hired Torah tutors for his grandson. He was therefore also like a *Rebbe* to the child. He was the reason the child would merit the World to Come. All should honor their Torah teachers even more than they honor parents, for the Torah teacher brings a person to the next world and a parent only brings a person to this world. *Rama* ultimately proposed a compromise. The grandson should say one *Kaddish* and the mourners for parents should get to lead two *Kaddish* prayers.

The *Steipler Gaon (Chayei Olam chapter 31)* suggests that our *Gemara* can help an individual who is childless. If a man does not

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have children, he should take on himself the financing of the Jewish education of a Jewish child until the child becomes a *Torah* scholar. Raising a child, or providing him with a Jewish education, leads the donor to be considered like the father of the child. In the eyes of the Heavenly court, it is deemed that the man left children in this world by leaving scholars in the world (*Me'oros Daf Hayomi*).

Sanhedrin 20**How Much Honor Must We Give
a Gentile King?**

Our *Gemara* explains that when the Jews asked for a king in the days of the prophet *Shmuel*, *Shmuel* delivered a frightening description of what the king would do to the subjects. The king must be revered and respected. All must stand in awe of him. *Shmuel* dramatized the powers of the king to instill reverence among the people. In *halachah* we must even give great honor to a gentile king. Some Rabbinic enactments were suspended in order to give the gentile king honor. In our times, countries like England and Holland have a symbolic king. Are we obligated to give them such great honor?

Shu"t HaRadbaz (*cheilek 1 siman 296* in the name of *Ra'avad*) teaches that *halachah* does not accord great honor to regents who merely fulfill symbolic roles of kings. Only a king who “can put to death by his judicial rulings and no one can overturn his decisions is considered a king who deserves great honor and regard.” As part of the honor we are obligated to give kings, when we see a king, we should recite a blessing (*Orach Chaim siman 224:8*). This obligation to honor creates many questions that *poskim* discuss.

In many places, it was customary for the Jews to greet the king

with a Torah scroll. *Poskim* discuss this custom. Is it appropriate to carry a Torah scroll for such a purpose? *Pis'chei Teshuvah* (*Yoreh Dei'ah siman 282:1*) discusses this issue and rules that it is acceptable to carry out a *Sefer Torah* for this purpose. What is the law in a city that has no *eiruv*, and there is a Rabbinic prohibition on carrying items there on Shabbos? If the king is visiting on Shabbos, can the Jews carry out the *Sefer Torah* to bestow honor upon him? *Beis Lechem Yehudah* (*Yoreh Dei'ah siman 282:7*) rules in the name of *Radbaz* that the Torah may be taken out; however, they should carry it in increments that are less than four *amos*, or they should have two Jews carry it together, since when two perform a *melachah* it is no longer a possible Biblical violation. *Kessav Sofeir* (*Shu"t Orach Chaim siman 37*) was even more lenient. He permits carrying a *Sefer Torah* to greet a king on Yom Kippur that fell out on Shabbos.

On the birthday of the king, in some locales, a great meal would be prepared in his honor. *Poskim* permitted Jews to play the musical instruments for that meal on *Yom Tov Sheini shel Galuyos*. *Ohr Samei'ach* (*Hilchos Yom Tov 6:14*) was asked if this was correct and he concluded that it was an accurate ruling.

In the year 5180, on the seventeenth of *Shevat*, a miracle occurred in Saragossa, Spain. The Sefardic community held the practice of bringing out the *Sefer Torah* to greet the king. They began to have doubts and felt that perhaps it was not respectful to the scroll to carry it out each time the king visited. The scroll was in a large silver case and they decided to remove the scroll. They would still come out with the empty case and no one would realize that the scroll was not inside. The community was informed that the king was scheduled to visit on the seventeenth of *Shevat*. They intended to greet him with the empty case. Unbeknownst to them, there was a Jew who had converted to Christianity who had tipped off the king. He informed the king that

the Jews were mocking him with an empty case. The night before the king arrived, the *shul's* attendant had a dream in which he was told to quickly go to the synagogue and make sure to place the scroll back in the case; he did so. The next morning the king arrived and he turned to the Jewish delegation and asked them to open the case. The Jewish elders turned white with fear. The attendant confidently opened the case; the scroll was inside. The community was spared and the king was pleased to see that the Jews respected him. The day was established as a Purim-like holiday¹. Each year the Jews of Saragossa celebrated the seventeenth of *Shevat* with a festive meal to memorialize the miracle and salvation that had occurred when the Christian king had visited (*Me'oros Daf Hayomi*).

1. Just as Purim celebrates a miracle of a Divine salvation, many communities, when they would merit a Divine salvation, would establish days on the calendar for Purim-like celebrations. The Jews of Saragossa would celebrate the seventeenth of *Shevat* as such a holiday.

Sanhedrin 21**Did the Two Sets of Tablets Have
the Same Type of Lettering?**

According to *Radbaz* (*Shu"t Radbaz siman 442*), based on a lesson in our *Gemara*, the two sets of Tablets had two different types of Hebrew letters.

The squared form of Hebrew letters that we have in our Torah scrolls, *tefillin*, and *mezuzos* is called *kesav Ashuri*. There is another way in which to represent the sounds of the Hebrew alphabet. These letters are called *kesav Ivri*. There was a time when the Jews of Israel used *kesav Ivri*. The Samaritans still use *kesav Ivri*. They have Torah scrolls written in *kesav Ivri*. *Radbaz* in fact writes that he checked a Torah scroll that was owned by Samaritans and found that it was written in *kesav Ivri*.

When the *Ramban* moved to Israel, he made an addition to his commentary to the *Chumash*. He related that in Akko he came into possession of an ancient half *shekel* coin. The coin had unusual letters on it. He asked a Samaritan what they meant. The Samaritan explained to him that the letters spelled *שנת ארבע לגאולת ציון*, the fourth year to the redemption of Zion. These letters were *kesav Ivri*. The Samaritan translated them with ease, because the Samaritans still

used this script. In modern Israel, the five *agora* coin and the ten *shekel* coin contain reproductions of these words.

A dispute emerges in our *Gemara*. Was the *kesav Ashuri* always used by the Jewish nation? *Rabbi Elazar HaModa'i* is of the opinion that we have always used *kesav Ashuri*. However, *Rav Chisda* explains that according to *Rabbi Yossi* originally we used *kesav Ivri* in our Torah scrolls. It was only when *Ezra* ascended from *Bavel* to Israel, because of the prophecy that *Ezra* would be the one through whom the Torah will be given to Israel, that we switched from *kesav Ivri* to *kesav Ashuri*. This is difficult. *Gemara Shabbos* teaches that the letters on the tablets *Hashem* gave to *Moshe* were chiseled fully through the stones. The letters ך and ם stayed up through a miracle. This is problematic. In *kesav Ivri*, these letters are not completely enclosed by lines. The letter ם is fully enclosed in *kesav Ivri*. If originally we had *kesav Ivri*, why was there a need for a miracle to keep the letters ך and ם up?

In fact, in the *Talmud Yerushalmi* it is written that it was the letter ם that stood miraculously. *Radbaz* however suggests another answer. The two sets of Tablets had different types of letters. According to all opinions, the first set was written in *kesav Ashuri*. Hence the lesson of *Gemara Shabbos* that the ך and ם were held up by a miracle. The *Gemara* is referring to the first *Luchos*. However, after the Jewish nation sinned with the golden calf, *Hashem* took away *kesav Ashuri*. He then had the second set of Tablets, and subsequent Torah scrolls, written in *kesav Ivri*, until the days of *Ezra*, when the urge for idolatry was annulled. According to *Radbaz*, the Torah was precise in stating that Godly writing was found on the first Tablets. This is a reference to *kesav Ashuri*; it was on the first *Luchos*. The second set of Tablets had the same words but it did not contain the same letters (*Me'oros Daf Hayomi*).

Sanhedrin 22**Does Each Person Merit to Marry the Soulmate?**

Our *Gemara* teaches that it is as hard for *Hashem* to match up a couple as it was for Him to redeem the Jews from Egypt and split the sea. The *Gemara* deliberates about what we learned regarding *Hashem's* preordination of each soul's match. Didn't we learn that forty days before the formation of the child a voice pronounced in Heaven that the daughter of so-and-so is intended for so-and-so?

The *Gemara* answers that the heavenly proclamation is for *zivug rishon*, the first match; the second match is based on one's actions and is as difficult as the splitting of the sea. *Me'iri* (introduction to *Sotah*) has a unique understanding of the *Gemara*. A marriage that is arranged by parents for their children who are minors is considered *zivug rishon*. A minor is not held to account for his or her sins or *mitzvos*. The marriage of a minor is therefore not a match of merits; it is an act of providence based on the original declaration from before birth. However, when adults marry, it is called *zivug sheini* and it is a match based on merits.

Chasam Sofer (*Shu"t* 7:34) extends this idea further. *Ari Hakadosh* teaches that when a soul is created, *Hashem* creates a match for it

based on its disposition and temperament. This original match is called *zivug rishon*, the soulmate. However, once it enters the world, the soul begins to evolve. The person chooses to perform actions and his actions change him. By the time the person marries, *Hashem* matches the individual with someone who is a good fit for him or her based on the deeds. Rarely does one ever marry the soulmate originally intended for the soul. In the ultimate future, at the time of *Techiyas Hameisim*, *Hashem* will match up each soul to its original mate, its soulmate (*Daf al Hadaf*).

Sanhedrin 23

Judges or Advocates?

Our *Gemara* deals with establishing a court for monetary disputes. It teaches that there is a process known as זבל"א, "This one chooses one and this one chooses one." If *Reuvein* and *Shimon* are in a dispute, *Reuvein* picks one judge, *Shimon* the other, and the two judges choose the third judge. Some people are sorely mistaken in regards to this law. They think that each judge may serve as an advocate. One litigant then goes to the judge he is choosing and tells him his side without the other litigant being present. He also offers the judge funds for advocating on his behalf. He may offer a bonus if the judge succeeds in convincing the other judges and gaining a beneficial outcome. *Shu"t Panim Me'iros (cheilek 2 siman 159)* criticizes such scandalous behavior; it is a desecration of *Hashem's* name.

The concept of *zabla* is problematic. Earlier in the tractate we learned that a court of three judges may impose its jurisdiction on litigants. How then is each litigant choosing a judge? Can't the court's three judges impose themselves on both litigants?

Chidushei Haran and *Hagahos Ashri* explain that if one litigant adamantly refuses to attend court, the court of three may impose themselves on him. However, *zabla* is relevant when both litigants

agree to go to court but are arguing about which court to go to; one litigant then chooses one judge, the other litigant chooses the other judge, and the two judges together choose a third judge.

Rosh (siman 2) stresses that we should not think that in the case of *zabla* each judge serves as an advocate. A judge cannot be partial to a point of view. *Zabla* is significant for it will contribute to discovery of the truth. Because one litigant appointed one judge and the other litigant the other judge, the judges will try hard to see things from the perspectives of each side and truth will emerge. Nonetheless, they are judges rather than lawyers. They must insist on all the norms of judicial practice. They cannot accept a bonus for a particular result. They must be righteous and suitable judges.

Despite all this, *Rama (Choshen Mishpat 3:1)* writes that in a place where there are established judges, the litigant being sued cannot insist on *zabla*; rather he must come to trial before the established court. Commentators (*Tosfos Yom Tov* on our *Mishnah* and *Aruch Hashulchan Choshen Mishpat 3:2*) explain that *Rama* is referring to a municipality where there is an accepted court. Once the residents accept a court upon themselves, they have removed from themselves the option of demanding to appoint a judge. They are to bring their case before the town court and they cannot refuse its summonses. *Rav Moshe Feinstein (Igros Moshe Choshen Mishpat cheilek 2 siman 3)* writes that in New York there is no official Jewish court. New York does not have a unified community. Different groups of rabbis have different courts. Therefore, in New York, if a litigant were to demand a *zabla* court, the other party would need to take part in the process and appoint a second judge, and then allow the two judges to appoint a third, and the three judges issue the binding ruling (*Me'oros Daf Hayomi*).

May a Student Issue a Ruling on a Monetary Matter in the Presence of His Teacher?

Our *Gemara* discusses the possibility of a litigant having the right to refuse a court. The *Gemara* asks: Isn't the borrower indebted to the lender? How can the borrower refuse a court or a judge? We learned that when the lender requests one court and the borrower another, the borrower cannot force the lender to travel to his court. The *Gemara* suggests that while the borrower cannot pressure the lender to travel to another court, if both courts are in the same area, the borrower may refuse to go to the lender's proposed court. The borrower may insist that the court he is proposing is nearby and therefore he may insist on his court. The *Gemara's* example of two nearby courts is the court of *Rav Huna* and the court of *Rav Chisda*.

Tosfos find this difficult. We have learned that a student may not issue a ruling in the presence of his teacher. In fact, if the teacher is within three *parsos* of the student, the student may not issue a ruling. *Rav Chisda* was the student of *Rav Huna*. *Gemara Eiruvin* (62b) teaches that even obvious questions, such as the permissibility of an egg in cheese sauce, would not be decided by *Rav Chisda* when *Rav Huna* was there. How, then, could *Rav Chisda* have an independent court near *Rav Huna*? *Tosfos* answer that the two courts were more than three *parsos* apart. However, they were both in the same municipality and therefore were considered close to each other, and a demand to use *Rav Chisda's* court was not asking of the other litigant to travel far.

Shu"t Maharik (*siman* 169) points out that *Rashi* simply writes that the two courts were in the same place. It sounds like *Rashi* is of the opinion that *Rav Chisda* would issue judicial rulings in the same

place as his teacher *Rav Huna*. *Maharik* explains that according to *Rashi*, a student cannot issue a ruling on a matter of ritual in the presence of his teacher. However, issues of monetary law are more lenient. A person may always choose to forgive money owed him. A student is allowed to issue a ruling on monetary law in the presence of his teacher, according to *Maharik's* interpretation of *Rashi*.

Toras Chaim likewise makes this distinction. He points out that *Moshe Rabbeinu* was the teacher of the Jewish nation, yet there were thousands of judges appointed to issue rulings before him. How could they issue rulings? A student cannot issue a ruling before his teacher. In light of our distinction, we have the answer. A student may issue a ruling before his teacher on a matter of monetary law. The judges dealt with monetary disputes, not questions of *kashrus* and ritual law. *Shu"t Panim Me'iros (cheilek 2 siman 29)* also allows a student to issue a ruling on a question of monetary law before his teacher.

Rav Zilberstein raises the following scenario: A *kollel* exists in a neighborhood in need of religious support. There is a head of the *kollel* and the students are studying monetary law. A man enters the study hall with a question about monetary law. He asks a member of the *kollel*. Should the member refuse to issue a ruling and defer to his teacher, the head of the *kollel*?

According to *Maharik* and *Rashi*, the law forbidding to issue a ruling in the presence of a teacher does not apply to monetary questions. As a result, according to these views, he may issue the ruling (*Chashukei Chemed*).

Sanhedrin 24

**Is It Better to Donate Seforim to a Beis
Midrash or to Publish a Book of Torah
Insights?**

Our *Gemara* teaches about the importance of teaching Torah. It teaches that *Eilam* was considered a town poor in Torah. While Torah was studied there, they did not teach Torah. A place in which Torah is not taught is considered poor.

A son approached *Rav* Zilberstein. His father had passed away. He had put aside money for ways in which to elevate his father's soul. He asked *Rav* Zilberstein how to best allocate his limited funds. Should he use the money to purchase basic texts such as a Talmud, *Shulchan Aruch*, and other works that will certainly be used at a local study hall, or should he use the funds to hire an editor to rewrite his father's notes and publish his father's Torah writings as a *Sefer*? On the one hand, purchasing basic texts will cause many people to study Torah. On the other hand, his father's work will likely not have many buyers, but the Torah scholars in the family will study his father's *Torah* and gain greatly from it. What is preferable?

Rav Zilberstein points out that many of our Torah authorities greatly encouraged the publication of books of Torah insights. *Sefer*

Chassidim (*siman* 530) writes, “Anyone to whom *Hashem* has revealed a Torah insight and he has the ability to write it, but he does not write it down, is stealing from *Hashem* who revealed the insight to him. *Hashem* gave him the thought for He desires that it be written down, preserved, and shared. The verse (*Tehillim* 25:14) taught ‘The secret of *Hashem* (is revealed) to those that fear Him, and His covenant is to be broadcast widely.’ In addition, it is written (*Proverbs* 5:16), ‘May your wellsprings spread afar.’ About this the verse (*Koheles* 12:14) declared, *יביא במשפט על כל נעלם* ; it means, ‘He will bring to justice for the fact that one is hiding the good that was revealed to him by not writing it down and spreading it.’” *Rav Moshe* Feinstein (Introduction to *Dibros Moshe Bava Metzia*) writes that each of us is obligated to study Torah and to teach Torah. The obligation to teach Torah entails an obligation to impart Torah to as many students as possible. If a person could teach one hundred and chose instead to only teach fifty, he has not fulfilled his obligation. Therefore, if one can publish *seforim* and therefore teach more students, he is obligated to do so as part of the *mitzvah* to teach Torah. *Rav Shlomo* Kluger (Introduction to *Tuv Ta’am Vada’as Tinyana*) writes that publishing more *seforim* will help hasten redemption. Each new *sefer* accelerates redemption. *Shlomo Hamelech* (*Koheles* 12:12) advised, “Make more books with no end.” *Hashem* is waiting for more holy books to emerge. Each new book assists in hastening the redemption. Therefore, if the father’s book is worthwhile and will spread widely and increase the number of his father’s students, it would seem best to apply the money on publishing his father’s insights. If, however, the father’s insights are not that significant and the book of his father’s Torah will not be widely accepted and only some family members will acquire it, it is more worthwhile to buy *seforim* for the local *shul*.

Rav Elyashiv was asked by a man who had set aside ten percent

of his income for charitable uses if he could use the funds to publish his own Torah insights. *Rav* Elyashiv told him that if his insights were novel, strong, and meaningful he should publish them. However, if they were not truly a communal contribution, it is preferable that he use his *ma'aser* funds to purchase *seforim* for the community. Books for the community will certainly be used and they will add many merits (*Chashukei Chemed*).

Are You Allowed to Encourage Gambling to Save from Chillul Shabbos?

A *yeshivah* student had engaged in efforts to save friends from *Shabbos* desecration. Later, he doubted his actions and felt guilty. He brought the following concerns to *Rav* Zilberstein. He had been with friends for *Shabbos* who were not yet *Shabbos* observant. He shared with them words of *Torah* and they were inspired. At approximately four in the afternoon they informed him that they intended to take their car and drive. He desperately wanted to prevent them from committing the grave sin of violating *Shabbos* through driving. He therefore told them that he knew of a great gambling card game and offered to teach it to them and gamble with them. They canceled their plans, remained with him, and gambled until *Shabbos* ended. Later, he felt guilty. Perhaps he had been wrong in using this tactic. Our *Gemara* teaches that one who gambles cannot serve as a witness or judge. One explanation for the law is that gambling is a form of theft. The participants do not wholeheartedly agree to lose their funds. The one who takes the winnings is stealing. *Shulchan Aruch* (*Choshen Mishpat* 370:1) rules that one may not gamble at all, for it

is Rabbinic theft. Our *yeshivah* student was worried. Perhaps it was wrong for him to have enabled theft, even though his motivation had been to prevent *Shabbos* desecration. He was especially concerned about his second friend. One of his friends had intended to drive; the other was merely going to sit in the car. The driver was liable in violating many severe *Shabbos* prohibitions while the other one would not have dishonored any major *Shabbos* laws. By getting them all to gamble, everyone was guilty of a Rabbinic form of theft. He asked *Rav* Zilberstein if he had erred in his actions.

Rav Zilberstein pointed out that *Tosfos* to *Shabbos* (4a) deal with the question of performing a small sin to save another from a great sin. *Gemara Shabbos* states explicitly that we do not tell one person to commit a small sin of scraping dough from an oven on *Shabbos* to save someone else from a large sin of baking on *Shabbos*. On the other hand, *Tosfos* point out that in Tractate *Eiruvim* (32b) the *Gemara* states that a scholar would perform the small sin of separating *terumah* from produce he is not adjacent to, in order to save an ignorant man from the sin of consuming *tevel*. *Tosfos* provide a series of answers for the contradiction.

1. In Tractate *Eiruvim* the man performing the light sin was also responsible for the likelihood of a greater sin. The *Torah* scholar had told the ignorant man to consume the fruits. Since he would share in the responsibility of the larger sin, he may perform a smaller sin to save his friend and himself from the large sin. However, in *Shabbos* (4a), the onlooker was not a part of the Biblical sin of *Shabbos* desecration and he was therefore forbidden to commit a small sin to save his friend from a larger misdeed.

2. In *Shabbos* (4a) the person who may be liable for the greater sin was at fault. He had placed dough in an oven on *Shabbos*. When someone is at fault, you should not perform a small sin to save him

from a larger sin. However, in *Eiruvin* the *Gemara* dealt with a case in which the ignorant people were not at fault at all. Since they had not done anything wrong, it was correct for the *Torah* scholar to commit a small sin to save them from performing a great sin.

Magein Avraham (254:21) quotes both of these explanations. He writes that the second response is the core answer. When a person is at fault for the major sin, no passerby should perform a slight sin to save him. *Tosfos* give a third explanation.

3. To enable someone to fulfill a great *mitzvah*, a small sin may be performed. Thus, the *Gemara* tells us that to enable the great *mitzvah* of marriage, a small sin may be performed. To help an entire community by making a *minyán*, a small sin may be performed. This might inform the ruling of *Mishnah Berurah*.

Shulchan Aruch (*Orach Chaim* 306:14) writes that if an individual's daughter is being taken away by gentiles in order to convert her to Christianity, it is a *mitzvah* on *Shabbos* to try and save her from sin. One is even allowed to walk beyond the *techum Shabbos* to try and save her from apostasy. *Mishnah Berurah* argues that this is only the case if she was taken by gentiles against her will. If she decided on her own to convert, her father need not violate *Shabbos* to try and get her to change her mind. Since she is at fault, even small sins should not be performed to stop her, as per the second response of *Tosfos*. However, *Mishnah Berurah* writes that his words apply only to Biblical violations of *Shabbos*. A Rabbinic violation of *Shabbos* is permissible in order to try and prevent all baptisms—even a daughter's willful baptism. If the father would merely sin with a Rabbinic violation, *Elyah Rabbah* rules that even though the daughter is at fault, the father should perform this small sin to enable the fulfillment of a truly great *mitzvah*. When dealing with a Rabbinic sin, even *Magein Avraham* would agree to rely on the third response of *Tosfos*. When

there is a chance of enabling someone to perform a great *mitzvah*, one should perform the small Rabbinic sin to offer the person the chance of the great *mitzvah*. Saving a Jew from exiting the faith is a great *mitzvah* for it would enable the Jew to fulfill many great *mitzvos*.

In light of this ruling of *Mishnah Berurah*, we can suggest that our man was permitted to do what he did. Gambling is a Rabbinic sin. Enabling Jewish brethren to keep a full *Shabbos* is rewarding them with a great *mitzvah*. We are allowed to perform a Rabbinic sin in order to enable someone else to perform a great *mitzvah*. All three gamblers performed the Rabbinic sin of Rabbinic theft; however, a Jew was bestowed the great *mitzvah* of keeping a full *Shabbos*. Perhaps the *Elyah Rabbah* is correct, for a great *mitzvah*, *mitzvah rabbah*, and for a communal *mitzvah*, *mitzvah derabim*, the Rabbis waive their prohibitions (*Chashukei Chemed*).

Sanhedrin 25**What Must Be Done to Return to Credibility?**

The *Gemara* relates that there was a butcher who sold meat from a *tereifah*, an animal prohibited by major wounds despite the fact that it was *shechted*. When his act was discovered, *Rav Nachman* disqualified him from serving as a judge or witness and had him removed from his position. He then repented, grew his beard and fingernails long, and *Rav Nachman* thought to restore him. *Rava* protested and said, “Perhaps he is merely acting. Maybe he is not truly regretful. It is possible that he has yet to change his character.” *Rav Nachman* asked, “So, what can he do to return to credibility?” *Rava* answered, “He can repent and go to a town where he is unknown and there return a very valuable lost object or incur an expense to save others from eating *treif*. Then his credibility will be restored.”

Shu”t Chasam Sofer (Orach Chaim siman 175) relates a story about loss of credibility. A rabbi in a town found himself stuck in an uncomfortable situation. There were rumors that the local charity collector was embroiled in an affair with a gentile woman. People wanted the rabbi to fire the *gabbai* but the rabbi refused. Later, the *gabbai* admitted that the rumors were true. He had sinned multiple times with the woman. The rabbi forced the man to resign and

informed him that as atonement he would have to publicly admit his sins. He removed the *gabbai's* status of *chaver*. The rabbi was later unsure about his actions. Should he have removed the man earlier? Furthermore, was he right to force the man to publicly humiliate himself? Finally, he wondered, what did the charity collector need to do to gain complete forgiveness? He forwarded these questions to the *Chasam Sofer*.

Chasam Sofer informed the rabbi that he was correct in his decisions. When he had first heard about the behavior of the *gabbai*, he had not received the information from two witnesses. He had heard rumors which should be ignored and disbelieved. Once the man admitted the behavior, it was correct to revoke his *chaver* status, as was instructing the charity collector to publicly apologize. The sin had been public; its atonement certainly would entail a public facet. In terms of restoring credibility, *Chasam Sofer* quotes our *Gemara*. *Rava* pointed out that sometimes individuals perform acts of atonement for show. Perhaps they want their job reinstated and pretend to be truly regretful. *Hashem* accepts a man back following regret, confession, and a genuine commitment to evolve. We do not know what is in a person's heart. Perhaps his change is insincere. Our *Gemara* taught that a person could regain his credibility once he performed a heroic act of financial probity. Such behavior, in a place where he is unknown and there is no fear that he is merely acting to impress those he disappointed in the past, proves to us that his return was sincere and true. In the instance of the *Chasam Sofer*, the community is unable to verify if the *teshuvah* is sincere and therefore he should not be given his job back.

Chasam Sofer also addresses the question of what the charity collector could do to gain full atonement. Repentance alone is enough to clean the slate for the future. However, a sin carries a penalty. Sins

that deserve the penalty of *kareis* or death from Heaven will still result in a punishment, even after the man has done *teshuvah*. To avoid such a punishment, the sinner must experience suffering. He may receive travails from *Hashem* or he may cause his own affliction. The *Gemara* states that the sin of a Jew performing intercourse with a gentile warrants a *kareis*-like punishment. The *Gemara* articulates that receiving thirty-nine lashes may save a person from *kareis*. Therefore, *Chasam Sofer* proposed that the charity collector fast thirty-nine fasts for each act of intercourse with the gentile. Perhaps such sufferings would be sufficient to save him from the *kareis*-like punishment his actions merited (*Daf Yomi Digest*).

Sanhedrin 26**Why Plans Rarely Work Out**

“**U**lla taught that thoughts ruin matters, even in regards to *Torah*.” *Rashi*’s second explanation of this line from our *Gemara* is that when a person plans, “I will learn this-and-this tractate by this-and-this date,” the plans ruin the matter. He will not succeed in accomplishing that amount of learning by that date. *Rav Gershon Edelstein (Koveitz Chizuk 5:46)* suggests an explanation for this common reality.

Oftentimes people make plans to earn profits in a particular manner. Even if the planner gains profits, it often does not happen in the manner in which he planned. The reason for this is that Heaven is the source of blessing. *Hashem* wants to teach us that He is the source of the livelihood. As a result, the ways we thought would work, do not ultimately work. *Hashem*’s plans work. Everything occurs because of His direct supervision. His help generates blessings. They come directly from Him. He wants us to realize it is not “My strength, and the might of my hand which caused this success.”

Ulla is teaching us that the same is true with *Torah* study. If a person thinks and plans, “I will learn this-and-this tractate by this-and-this date,” there is an element of ego. He thinks he has the power and that it is within his power to learn and master

matters. He thinks that if he decides, it will happen. This is not the correct path. Nothing is in our hands. All matters depend on *Hashem's* help. Rather than a definitive plan, he should have hoped that, with *Hashem's* help, he would merit to complete the tractate by a particular date. Man has the freedom to choose which means to try but successful attainment is exclusively in the hands of *Hashem*. To think, "I will certainly accomplish this" is always wrong. Everything is dependent on help from *Hashem*. The earlier commentators express this sentiment in their compositions. They often write about a topic later in the tractate, כמו שאכתוב בס"ע, "As I will write with *Hashem's* help." They knew and felt that without *Hashem's* help nothing would materialize. They credited Him with every success. They never assumed anything was in their own power. This may also be the meaning of the phrase found later in this *Gemara* that Torah is *mateshes kocho shel adam*, Torah study weakens the strength of a person. Sometimes we mistakenly think that we have strength and ability. We think that we possess *kochi ve'otzem yadi*. Torah weakens the false perception of strength. Through study of Torah a person becomes aware that *Hashem* is the source of strength. *Hashem* transfers onto the person all that he achieves. The Alter of Slabodka would say that this is the meaning of the phrase of the *Gemara*, "Ein divrei Torah miskaiymin ela bemi shemeimis atzmo aleha shene'emar 'Zos haTorah adam ki yamus ba'ohel'" — "Words of Torah only last in the person who puts himself to death for it as in the verse, 'This is Torah a man who will die in the tent (of study).'" Ego makes me think that I possess *kochi ve'otzem yadi*. Torah teaches me to put the *otzem* to death. It teaches me that it is not I who has strength; all success is from the Almighty (*Daf al Hadaf*).

Does Torah Study Always Weaken a Person's Strength?

Our *Gemara* teaches that Torah is called *Tushiyah* for it weakens a person's strength, "*Mateshes kocho shel adam.*" This is difficult. *Mishlei* (8:14) states about Torah, "*Li eitzah vetushiyah ani binah li gevurah*"—"To me is counsel and salvation, I am understanding, to me is heroic strength." This seems to indicate that Torah is a source of strength rather than a source of physical weakness. Accordingly, which is it? Does Torah weaken the student or does it provide heroic strength?

The *Gra* explains that when you initially study Torah, it weakens you. But after you begin your studies and immerse yourself in learning, you eventually reach a level of deep understanding of Torah. When you attain profound understanding of Torah, it provides you with heroic strength. The body also strengthens from the deep understanding of Torah that you possess.

Occasionally you feel weary at the end of a term of study. Choose to study a topic that interests you. Perhaps it will be practical *halachah*. When you study a topic of great interest, you will comprehend it deeply. Your *binah* will grant you strength. When Torah is understood, it provides physical strength as well (*Rav Gershon Edelman, Oneg Shabbos*).

Sanhedrin 27**Can You Break a Shiduch if You Find Flaws in the Family of the Bride?**

Our *Gemara* discusses the concept of a child suffering for the sin of the parent. The *Gemara* teaches that if a parent sins, yet his child is righteous, the child will not suffer. In regards to cases such as this, the Torah states, “Each man will die because of his own sin.” However, if the father sinned and the child continues with the same sinful behavior, when the child will be punished for his sin, he will also receive some punishment for his father’s sins. This *Gemara* was the source for a ruling of the *Noda Biyehudah*.

Shu”t Noda Biyehudah (Yoreh Dei’ah Cheilek Beis Siman 69) was posed a question by a man who had become engaged to a young woman. The father of the bride converted to Christianity, and he inquired if he could extract himself from the engagement. Was the fact that a grandfather had left the faith a significant enough disgrace to allow for an extrication from the engagement?

Noda Biyehudah ruled that the groom may break the engagement because of our *Gemara*. Our *Gemara* teaches that the verse which warns that Hashem punishes sins for up to four generations refers to children who continue in the sinful ways of their parents. The

groom therefore is entitled to fear, “Perhaps my son will leave the ways of Torah. Now that the grandfather is in possession of this transgression, my son will receive an added punishment. He will be punished for his deeds and his penalty will be amplified because it is a continuation of sins of parents. If I marry a woman who does not have any sinful ancestors, my children stand less of a chance of suffering as much from sin.”

Noda Biyehudah tried to prove his position from a ruling of the *Rosh*. *Rosh* (*Shu”t* 34:1) discussed a groom who discovers that the sister of the bride just left the faith and converted to Christianity. *Rosh* allowed the groom to break the engagement. An aunt will not cause added punishment to a sinful niece or nephew. Nevertheless, *Rosh* permitted the nullification of the engagement. Certainly, in the case of *Noda Biyehudah* where there is a danger to the children because it is a grandparent who is embarking on a path of sin, the groom is entitled to break the engagement (*Daf al Hadaf*).

Is There an Area of Halachah in Which Someone Who Eats Treif to Anger Hashem Is Treated More Leniently than One Who Eats Treif out of Appetite or to Save Money?

Typically, a sin performed *lehach'is*, to anger the Almighty, is more severe than a sin performed out of desire and weakness of character. Is there ever an exception to this rule? Can we construct a scenario in which the sinner who eats non-kosher to anger *Hashem* is actually treated more leniently than a sinner who eats the *treif* out of urges and desires?

Our *Gemara* discusses who is disqualified from serving as a witness. It teaches that a person who commits sins out of a desire for money may not serve as a witness. Perhaps he will take money and proceed to lie. Someone who eats *treif* out of desire is also willing to sin for money. He is certainly not a kosher witness. What about an individual who eats *treif* to anger *Hashem*? He is not motivated by pleasure and money. Is he a kosher witness? *Rava* thought he was in fact a kosher witness. *Abaye* ruled that he is not a kosher witness. *Halachah* is in accordance with the view of *Abaye*.

Nimukei Yosef (5b in the pages of the *Rif* s.v. *shevuas shav*) still makes a distinction between the disqualification of someone who eats *treif* for pleasure and someone who eats *treif* to anger *Hashem*. Someone who eats *treif* for pleasure is disqualified because he is not trustworthy. His urges lead him to sin against *Hashem*. They may lead him to accept money and offer false testimony. Someone who eats *treif* to anger *Hashem* is not disqualified because he is not trusted. He is disqualified because he has the title *rasha*. *Hashem* has disqualified the *rasha* from serving as a witness.

If a married man goes missing, the Sages allow for almost anyone to testify that he is dead and thereby enable the wife to remarry. *Nimukei Yosef*, according to *Ketzos Hachoshen* (*siman* 46:17), would allow a man who eats *treif* to anger *Hashem* to testify that a husband was dead. Such a man has credibility. It is a decree of a verse that disqualifies him from testimony. When testifying about a dead man, it is not *eidus* and his words are accepted. However, if a man eats *treif* out of appetite, he is not considered truthful. We suspect that because of urges, he may take money and deliver false testimony. Such a person cannot testify that a woman's husband is dead. We do not trust him. Perhaps he took money to maintain that the man was dead when, in actuality, he is alive.

SANHEDRIN

We have discovered the answer to our question. According to *Ketzos Hachoshen*, a man who eats *treif* to anger *Hashem* is treated more leniently in regards to testimony about a dead husband than a man who only consumes *treif* out of urges and appetite (*Chashukei Chemed*).

Sanhedrin 28**Can a Man Testify for His Girlfriend?**

Our *Gemara* continues to discuss which relatives cannot serve as witnesses. It teaches that a man who has consecrated his wife with the first stage of marriage, *eirusin*, cannot testify on her behalf. Even though they are not yet considered flesh relatives, the consecration testifies to intimacy of spirit. The close bond between the two renders him unfit to testify.

A man and woman are dating and they are confident that they are meant for each other. The two families are negotiating the financial terms and have not yet agreed. The engagement has not been announced yet. Everyone acknowledges that the sides will come to an arrangement and that the marriage will ensue. Is the man considered closely bound to his girlfriend? Would he be able to testify about her?

Hagahos Ashri on our *Gemara* (*perek 3 siman 20*) writes that the *Gemara* only disqualifies a man from testifying on behalf of his consecrated bride. If the couple is engaged, the man may still testify on behalf of his fiancée. Engagement is not defined as actual closeness of spirit. The formal bond of *kiddushin* creates emotional intimacy. *Rama* (*Choshen Mishpat siman 33:9*) also rules that mere

shiduchin does not disqualify members of a couple from testifying on behalf of one another. The *Gra* explains that an engagement does not create *ikruvei da'ateih*. This is underscored by the fact that a mourner is permitted to get engaged during the seven days of *shivah*. An engagement does not create an emotional closeness or joy that *eirusin* creates.

In our case, the couple is not even engaged yet; they do not have a real connection thus far. Therefore, they are allowed to testify on each other's behalf. Testifying falsely is a grave sin. Jews treat testimony with seriousness. Thus, in our case, the man would be permitted to testify on behalf of his girlfriend. Since they are not yet married at all, they are not too emotionally close to each other, and the importance of honest testimony will inspire the man to remain truthful and not speak dishonestly on behalf of his girlfriend (*Chashukei Chemed*).

Sanhedrin 29

Can One Travel on Shabbos to a Farther Hospital Since It Has a Better Atmosphere Among the Doctors?

If someone is dangerously ill on *Shabbos*, he is allowed to violate the *Shabbos* and travel to a hospital. According to *Shulchan Aruch*, he should try and minimize how much he desecrates *Shabbos*. If he can, he should perform fewer acts of *Shabbos* desecration. Based on our *Gemara*, Rav Zilberstein suggests a remarkable benchmark.

A man falls ill on *Shabbos* and requires hospitalization. He can go to a nearby hospital; however, the doctors are not friendly to each other in this hospital. His other option is to travel to a farther hospital, which will entail more violations of *Shabbos*, but it is known that there is a wonderful comradery among the doctors there. Should he violate *Shabbos* more in order to reach the hospital where the doctors are in sync?

Our *Gemara* discusses the question of who is disqualified from serving as a witness or a judge. It teaches that two Torah adversarial scholars cannot jointly serve on a *beis din*. *Shulchan Aruch* (*Choshen Mishpat* 7:8) rules in the same way as our *Gemara*. Two rivaling Torah scholars may not sit on a case together. Since they abhor one another,

they will always reject each other's ideas. The truth will not emerge. If this is true regarding a matter of Jewish law, *Rav Zilberstein* argues, it is probably true regarding medical decision-making as well. In order to form the correct medical decision, there is a need for the doctors to confer with each other, hear different thoughts, and try and reach the truth. When the atmosphere is substandard and individuals are not compatible with each other, it is quite difficult to arrive at the truth. In a hospital setting, that can put lives at risk.

Birkei Yosef extends this law to two people who have drastically different temperaments. He writes that we may not appoint two very dissimilar personalities to work together as leaders of a community. The Torah does not allow a farmer to plow with a donkey and an ox simultaneously (*Devarim* 22:10). *Sefer Hachinuch* explains (*mitzvah* 550) that it is hard for different species to work together. Therefore, we should not have a cohort of people with considerably diverse natures in the same leadership role. It will be difficult for them to maintain a working relationship and wearisome for them to arrive at the truth.

The *Tumim* (*siman* 7:12) finds the law of our *Gemara* problematic. How can Torah scholars hate each other? Torah scholars are obligated to be righteous. The Torah has a *mitzvah* prohibiting the hatred of others. In light of the lesson of *Birkei Yosef* it may be suggested that this law is not only about those who have animosity towards each other. It applies to those who have drastically divergent personalities and, as a result, do not mesh well together. A collegial atmosphere is necessary in order to arrive at the truth. If those deliberating cannot get along, due to severely clashing personalities, they cannot sit on the same court.

In light of all these sources, *Rav Zilberstein* suggests that if a man falls ill and there are two hospitals available, one closer with friction,

and one farther away with peace, he should always visit the one with the positive environment. Truth emerges in a favorable atmosphere. The presence of *Hashem* exists in amicable surroundings. The presence of *Hashem* can help the sick man recover. Where there is friction and disputes, there is no blessing (*Chashukei Chemed*).

Is There No Prohibition of Negative Speech About A Story Said in Front of Three Righteous Men?

L*ashon hara* is a grave crime. We must not share negative stories about others. The *Gemara* has a surprising scenario in which it permits sharing a story. If the negative information was mentioned in front of three individuals, you may share it with others. *Chafetz Chaim* (*kelal 2*) learns from our *Gemara* that this is not always the case.

According to *Chafetz Chaim*, the law of the permissibility to share negativity that was relayed in front of three is not a blanket permission to share all comments relayed in front of three. There are stories that may be understood in two ways. They may be understood negatively, or they may be viewed as praise. It is only stories like these that may be repeated further if they were made in front of three. Whatever is said in front of three will certainly spread further. When someone speaks of another in front of three, he is aware that they will inform others, and that eventually the subject of the story will hear what is being said. Since the speaker recognizes that the story will reach the subject, he guards himself. He will phrase the story in a neutral or positive light. As a result, if you heard it, you may retell

it. You will have heard something that was impartially or favorably mentioned. You therefore may relay it to others. However, this will not apply if something was said in front of three *tzadikim*. *Tzadikim* will not share matters further. They do not speak much about others. When a person shares an ambiguous tale in front of three *tzadikim*, he does not think that they will share it with anyone else. Accordingly, he does not think that it will get back to the subject. He therefore does not watch the manner in which he phrases it. If you heard it, you cannot spread it further.

The proof to this idea is our *Mishnah* where we are taught that following a judge's ruling, a member of the court may not inform a litigant, "I voted for you. I thought you were innocent. Unfortunately, my colleagues did not see it the same way. They voted to convict and they were the majority." If a judge were to divulge this confidential information, he would be violating the mandate not to serve as a talebearer, who betrays secrets. We can inquire the following about this. Many times, a court is comprised of more than three judges. Sometimes, a judge is unsure and judges are added. We may end up with a court of seven or nine judges. The opinions were all stated in front of three. Why then can't they be shared? The answer is that the opinions were expressed in front of three *tzadikim*. Torah judges are righteous. If something is articulated in front of righteous sages, we cannot assume it will spread further. As a result, it may not be spread. Only what was expected to be spread further, and therefore was stated in a tempered manner, may be spread further later (*Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Sanhedrin 30**When Should You Trust a Dream?**

Our *Gemara* seems to teach that dreams are never required to be taken seriously. A man's father died and he was aware that his father had left him considerable means. The son could not locate the funds and grew agitated. The amount, location of the coins, and that the coins had been consecrated with the holiness of *ma'aser sheini*—they had to be brought up to Jerusalem and spent on food to be consumed in the holy city, were all revealed in a dream. The son checked the location and found the money in the amount that corresponded to that of the dream. He asked the sages if he had to treat the coins as monies of *ma'aser*. The sages informed him that the coins were not required to be brought to Jerusalem and be used for the purchase of food. “The words of a dream are to be discounted.”

Shu"t Tashbeitz (cheilek 2 siman 128) points out that there are other lessons in the Talmud which seem to indicate that dreams are to be taken seriously. *Gemara Nedarim (8a)* teaches that a person who is excommunicated in a dream must gather ten righteous Jews who teach Jewish law to others and have them remove the excommunication. *Nedarim* seems to indicate that we should give credence to dreams. Why don't we state about a dream-based excommunication, “The words of a dream are to be discounted?”

Tashbeitz suggests that our Sages were unsure about dreams. They doubted the validity of dream messages. Perhaps the dreams convey communications from the Almighty. Alternatively, it is possible that the words of a dream are to be discounted. Our Sages were lenient about *ma'aser* coins. Most coins are not sanctified with the holiness of *ma'aser*. Despite the words in the dream, we assume that these coins are part of the great majority and are not considered holy. A vow is different. A man excommunicated in a dream may have had a vow of excommunication placed on him from Heaven. In matters of uncertainty regarding prohibitions, we should be strict.

Shu"t Shivas Tziyon (siman 52) adds a further explanation as to why we are to be strict about excommunication from a dream. Excommunication in a dream may portend danger. *Tosfos (Nedarim 8a s.v. tzarich)* explain that when a tragedy is destined to befall a person, he is first excommunicated in the heavenly realm. The dream message may be a communication from Above that grave danger is imminent. Removing the excommunication by ten righteous teachers may save his life. Matters of danger are stricter than prohibitions (see *Chullin 10a Rashi s.v. ve'ein*). We need to be cautious concerning impending danger. Even a slight chance must be treated seriously in questions of health. According to this idea, generally dreams are to be ignored, but dreams that portend risk to well-being must be taken seriously (*Daf al Hadaf*).

Sanhedrin 31**Can a Plaintiff Force the Defendant to Court
Through the Community?**

Our *Gemara* teaches about litigants forcing one another to go to court. *Shiltei Gibborim* (*daf 9 Bedapei HaRif*) deals with an enactment of the Geonic sages to encourage resolution of disputes. The *Ge'onim* legislated that if a person would like to take his friend to a trial and the friend is refusing to go, the plaintiff has the right to place a hold on communal prayer or the reading of the Torah. When individuals in the community are attempting to gather a *minyan*, the plaintiff could protest and say, "But I am being jailed by my friend. He is not responding to the judicial summons I sent him." The entire community would then be unable to *daven* or to *lain* from the Torah scroll. This would create pressure on the defendant to attend court and accept the judicial process to resolve the dispute. This enactment was made to help plaintiffs who faced threatening and fierce defendants. It occasionally meant that communities were unable to hold communal prayer for extended periods of time. These plaintiffs would be called *kovlim*, jailers.

This law caused abuse; hence, *Rabbeinu Gershom* introduced laws to limit the use of this power. He instituted that the plaintiff

could only prevent the community from having the *Ma'ariv* prayer. If he averted *Ma'ariv* three times and was still being ignored, he would have the right to hinder the Torah scroll from being returned to the ark after Torah reading on Monday and Thursday. If that did not force the man into court, he was allowed to stop Torah reading from taking place. Only if all these measures were ineffective was he allowed to prevent all the communal prayers from occurring in the city.

Magein Avraham 339:3 discusses the law in the *Shulchan Aruch* that we may not schedule court cases on *Shabbos*. He adds that ר"ג "תיקן שלא לבטל התמיד בשבת", "And R"G instituted not to stop the daily offering on *Shabbos*." What he insinuates is that *Rabbeinu Gershom* (R"G) instituted a new rule that protestors/plaintiffs could not use their rights granted to them by the *Ge'onim* to inhibit the *Shabbos* prayers of *Shacharis* and *Minchah*, which were enacted in place of the daily offering (*Me'oros Daf Hayomi*).

Is It Lashon Hara for a Doctor's Assistant to Type the Negative Report About an Intern?

Our *Gemara* teaches that after a court case, the judge may not inform the litigant, "I voted for you, but the majority voted against me." Such information would be a violation against *rechilus*. Revealing a secret is a form of forbidden gossip. A student had spread rumors related to secrets from the *yeshivah* and its court's deliberations of the previous twenty-two years. *Rav Ami* expelled this student from the *yeshivah* stating, "This is a person who reveals secrets."

Rav Yitzchok Zilberstein speculates about doctors and gossip.

Doctors train under other doctors. The young doctors receive internships in hospital departments. At the end of the year, the doctor in charge of the department writes a report for the head of the hospital about his interns. What is the law if the doctor feels that a critical report is in order? The doctor himself may certainly write it for it is gossip with a positive purpose. *Rechilus* and *lashon hara* are permitted *leto'eles*, for a constructive objective. The doctor needs to alert the leadership of the hospital to the shortcomings of his student, in order to save the hospital from hiring the unqualified. The doctor is busy seeing patients and would therefore prefer to dictate the critical report and have his assistant type it. Is it permitted for the doctor to dictate his words and she type them and forward them? Perhaps, since there is no *to'eles* in her knowing that the intern is unqualified, the doctor should not convey that information to her.

Rav Elyashiv ruled that the doctor may dictate the report and the sections in the report where the intern is named may be left blank. The physician should then fill in those sections on his own. If he suspects that the assistant would be able to identify the intern from the report, the doctor should take time out from seeing patients to write the report himself. He is permitted to inform his superiors for it is *leto'eles*. It would not be acceptable for his assistant to be informed of this negative feedback. The doctor needs to take time out from seeing patients to fulfill important tasks. Saving the dignity of the intern is a most important and meaningful task. As few people as possible should be made aware of his shortcomings.

Shu"t Tzitz Eliezer (*cheilek 2 siman 52*) disagrees. All know that it is common practice for a department head to dictate his reports to his assistant. The intern knew it would occur when he took the job. When the intern accepted the position, he was relinquishing some of

his dignity and privacy. He knew that the assistant would be made aware of his superior's thoughts regarding his abilities.

Tzitz Eliezer argues further that typing a necessary report by the assistant is considered a positive and purposeful action. If the report would be written without names, perhaps someone would fill in the wrong names. If the doctor were to take time out to write the report, his patients would suffer. Possessing the information, recording it and helping the hospital and future patients is considered negative information which is required for a positive purpose. Penning the report is considered writing *lashon hara leto'eles*. Since the intention is positive, it is not considered prohibited negative speech and it is allowed (*Chashukei Chemed*).

Sanhedrin 32

What Should a Judge Do When He Suspects That the Witnesses Are Being Dishonest?

Our *Gemara* discusses monetary court cases and cases regarding life and death. It teaches that according to Torah law, in both types of cases the judges are to cross-examine the witnesses. They should query them about where and when they witnessed the event, and exactly what transpired. If they find inconsistencies, they will discard the testimony. The *Gemara* goes on to teach that Rabbis proceeded to make a change. They feared that lenders would refuse to lend due to apprehension that their witnesses would err in the cross-examination and the loans would then never be collected. The Rabbis issued an enactment that in monetary cases there is no need to cross-examine witnesses. Only witnesses testifying regarding a capital crime are cross-examined.

Our *Gemara* teaches that even after the Rabbis stopped the cross-examination of monetary witnesses, they still left the option of cross-examination for judges who suspect that the witnesses are being dishonest. If a judge is hearing a monetary case and feels that the witnesses are being dishonest, he should cross-examine them to try and prove that they are deceitful. *Rishonim* point out that this

Gemara is different from a *Gemara* in Tractate *Shevuos* (30b). *Shevuos* (30b) teaches that if a judge suspects dishonesty, he should remove himself from the case. He should leave the court and refuse to issue a ruling. The *Rishonim* ask, “What is the right course of action, cross-examination or recusal?”

Tosfos (*Sanhedrin* 32b s.v. *kan*) suggest that if the judge is certain that there is dishonesty, he should refuse to rule on the matter. Our *Gemara* deals with a judge who merely speculates that there may be untruthfulness; when he is suspicious, he should cross-examine the witnesses.

Rambam (*Hilchos Sanhedrin* 24:3) offers another answer. If a judge suspects dishonesty, he should first interrogate the witnesses the way judges interrogate in capital punishment cases. If, after he interrogates them, he is no longer suspicious, he should issue a ruling. *Shevuos* (32b) taught about a case in which a judge interrogated the witnesses and was unable to gain clarity. He acquired no proof that the witnesses are false but he believed matters are being concealed from him; in that case the judge should remove himself.

Rosh (*Sanhedrin* 4:1) suggests a third solution to the contradiction between the *Gemaras*. It depends whose witnesses seem suspect. If the judge feels that the witnesses of the plaintiff are dishonest, he should recuse himself. However, if he suspects the defendant’s witnesses, it would not be advantageous for the judge to recuse himself. The defendant would benefit if the judge steps away. No one would rule against him and instruct him to make financial reparation. Our *Gemara* is discussing a scenario in which the witnesses of the defendant seem dishonest to the judge. At that point the judge should cross-examine them and not simply step aside. He must interrogate the witnesses until he confirms his suspicions.

The *Shulchan Aruch* (*Choshen Mishpat* 15, 3-4) combines the

opinions of the *Rambam* and *Rosh*. He rules that if a judge suspects dishonesty, he must first cross-examine. If he remains suspicious of the plaintiff following the interrogation, he should refrain from ruling. However, if he is suspicious of the defendant, he must continue to interrogate until he allays his qualms (*Eretz Chemdah, Chemdat Yamim*).

Sanhedrin 33**Why Can't a Contemporary Rabbi Rule Against the Conclusions of a Rabbi in the Talmud?**

Our *Gemara* teaches that when a rabbi or court issues a ruling and then discovers that the ruling is against a *Mishnah*, the ruling is reversed. A sage cannot rule against a *Mishnah*. The *Gemara* adds *Rav* and *Shmuel* and the Talmud to this category. A rabbi cannot rule against *Rav* and *Shmuel* or against the conclusions in the Talmud—written by *Ravina* and *Rav Ashi*. Why is this so? Why can't a contemporary sage rule against the rulings of earlier rabbis?

Kesef Mishneh (*Hilchos Mamrim* 2:1) suggests that when the *Mishnah* and Talmud were completed, they were accepted by the entire Jewish community as the last and final word. The sages of the time accepted that no one would dispute the conclusions of the *Mishnah* and Talmud. *Chazon Ish* (*Koveitz Inyanim He'aros HaChazon Ish* os 2) adds that the sages of those times, based on truth, accepted that the issues dealt with by the *Mishnah* and Talmud could not be reopened. They acknowledged how they were inferior intellectually to the Rabbis of the Talmud and *Mishnah*. If I cannot reach the intellectual levels of my predecessors, I cannot argue with them. Only someone who understands fully as much as someone else may engage in a dispute. The sages who came immediately after

the Talmud and *Mishnah* were aware that they were not on the level of the Rabbis of the *Mishnah* and Talmud. Therefore, the laws of those Rabbis cannot be overturned. According to *Ra'avad*, it is not only the Talmud and *Mishnah*. Later sages, such as *Rishonim*, cannot disagree with a sage of an earlier and greater level, such as a *Gaon* (*Rosh siman 6*). Contemporary rabbis are nowhere near the level of *Ge'onim* or *Rishonim*. We cannot issue a ruling in contradiction of their conclusions.

Rav Elchanan Wasserman (there) disagrees with this explanation. He points out that sometimes a contemporary sage is greater than those who preceded him. There is a tradition, repeated in many *Yeshivos*, that *Rav Chaim* of Volozhin testified that the *Gra*, his teacher, was as great as the *Rashba* and possibly on the level of the *Ramban*. *Rav Hai Gaon* was the youngest of the *Ge'onim* yet he was greater than all the other *Ge'onim*. *Rav Elchanan* therefore argues that the *Gra* was entitled to argue with *Rishonim*. No one can argue with the Talmud and *Mishnah* for the acceptance of the Jewish nation is the equivalent of a ruling of the *Sanhedrin*. The *Sanhedrin* represent the entire Jewish nation. *Rambam* notes that when the entire Jewish nation agrees to make one sage a *musmach*, the chain of *semichah* can restart, reason being that the entire collective Jewish nation embodies the status of the *Sanhedrin* and the ordained sages. The acceptance of the *Mishnah* and Talmud immediately by all the Jews of the time rendered the compositions as rulings of the *Sanhedrin*. No one may overturn conclusions of the *Sanhedrin*.

In *Shulchan Aruch* (*Choshen Mishpat 25:1*) we are taught that a judge cannot issue a ruling against an established *halachah*. If *poskim* of earlier generations, such as *Rama* or *Beis Yosef*, have ruled on an issue and their ruling has been widely accepted, a contemporary sage does not have the power to rule against them (*Me'oros Daf Hayomi*).

Sanhedrin 34**Is a Son Who Married and Divorced
Considered an Unmarried Son for
the Purpose of Inheritance?**

Our *Gemara* mentions that from the verse regarding inheritance we learn that judgments about inheritance, and judgments in general, must take place by day. *Rav* Zilberstein related a story that involved him and a question about inheritance.

A father had one asset, his apartment. His will stated that if his youngest son has not married, he should receive the apartment. If all the children are married, the apartment should be sold and the income divided among all the sons. The youngest son married and ultimately divorced. The father proceeded to die and the youngest son argued that since he was unmarried at the time of the loss of his father he was entitled to the apartment. The other brothers claimed that since the son had been married, all the children had gotten married and therefore the apartment should be sold and the income divided among all.

Rav Elyashiv pointed out that *Shu"t Mishkenos Ya'akov* (*Choshen Mishpat* 61) deals with a similar question. A father had stipulated in his will that after his passing, gifts from his estate should be allocated

to his grandchildren who were not yet married. There was a grandson who had married and divorced. He argued, “Since I am currently unmarried, I am entitled to gifts.” The other heirs protested. The reason the *Zayde* promised gifts to the unmarried grandchildren was because he assumed that the married grandchildren had received gifts from him when they married. “You married and received a gift from *Zayde* at the time. You chose to divorce. You made yourself single. You are not entitled to an additional gift.” *Mishkenos Yaakov* ruled that the grandson was not entitled to the gift. We follow the intent of the bequeather. He wished to single out the unmarried offspring to ensure they too would receive a gift from him . Since this grandchild was a past recipient of a gift, he was not entitled to another gift at the time of the grandfather’s death.

Rav Elyashiv ruled that in our case the intent of the individual composing the will leads us to offer the apartment to the unmarried son. The father’s reasoning was that the unmarried son was not settled in his own home and therefore required the apartment as a place in which to live. It is accurate to state that this son had been married and was only currently divorced. Nonetheless now that he was divorced, he did not have a home. The father’s apartment should be allocated to him so that he will have a place to stay (*Chashukei Chemed*).

Sanhedrin 35**Is Lifting the Hands Necessary
for the Priestly Blessing?**

K*ohanim* bless us by lifting their hands and reciting three verses to the community. *Noda Biyehudah* (*Kama Orach Chaim siman 5*) was asked about a *Kohein* whose hands shook and was unable to lift his hands. Could the priest recite the blessing with his hands down? Is lifting the hands an essential component of *Birkas Kohanim*?

Noda Biyehudah quotes *Shu"t Shevus Ya'akov* (*cheilek 2 siman 1*) who addresses this question. *Shevus Ya'akov* rules that only in the *Mikdash* is there a necessity to lift hands. Outside of the Holy Temple, a priest may recite the *Birkas Kohanim* with a blessing and not lift his hands when it is impossible for him to do so. *Shu"t HaRadbaz* (*cheilek 6 siman 117*) also allows a *Kohein* who cannot lift his hands to recite the blessing.

Noda Biyehudah disagrees. He rules that just as it is a requirement to stand, it is an absolute necessity to lift the hands. If the priest cannot lift his hands, he cannot recite the blessing. *Minchas Kena'os* (*Sotah 38a*) seeks to prove *Noda Biyehudah* correct from *Tosfos* on our *daf*. In our *Gemara* we have the supposition that killing a murderer overrules the importance of service in the *Beis Hamikdash*. The

Torah instructs us to remove the murderer from the Temple and kill him. The implication is that even when he is needed to perform the service he is taken away. *Tosfos* (s.v. *shene'emar*) find this discussion troubling. Perhaps a murderer is removed because he is disqualified from service. It is feasible that justice is not more imperative than sacrifices. Maybe the murderer is taken from the Temple because, as a killer, he could not perform the service. A *Kohein* who kills cannot recite the priestly blessing. If he cannot recite the blessing, he should certainly not be able to perform the services of sacrifices. *Tosfos* answer that a priest who killed is allowed to perform the service of sacrifices. He is only disqualified from reciting the priestly blessing. *Duchaning* is performed with the hands. We have a rule that the prosecutor cannot also serve as the defense advocate, *ain kateigor naaseh saneigor*. To lift hands in blessing that are soiled with spilled innocent blood is impossible. The murderer cannot bless; however, he may perform sacrificial services. It emerges from *Tosfos* that the essence of the priestly blessing is the raising of the hands. If *Shevus Yaakov* is correct, why is the *Kohein* who killed always disqualified from blessing the community? Let him bless the community without lifting his hands. From *Tosfos*, *Minchas Kena'os* argues that a priest who cannot lift his hands cannot recite the priestly blessing.

Magein Avraham (*Orach Chaim* 128:21) rules that lifting hands is a necessity for the priestly blessing. *Shulchan Aruch Harav* (*Orach Chaim* 128:23), *Birkei Yosef* in *Shiyurei Berachah* (128:1), and *Mishnah Berurah* (128:52) all rule against the *Shevus Yaakov* and require lifting hands for *Birkas Kohanim* (*Mesivta*).

Sanhedrin 36**Is a Judge Who Aged While a Member of the Court Removed from Capital Cases?**

Our *Gemara* teaches that an elderly sage is not appointed to the *Sanhedrin* to judge matters of life and death. The Jewish court should try and find ways to acquit the accused, *vehitzilu ha'eidah*. An older sage is far removed from the years of raising children. He is usually less caring. He does not possess as much patience as a young father. He will likely not seek arguments to acquit. While he may be endowed with much knowledge, his heart is less empathetic. What is the law regarding a man who was appointed to the court in his youth and grew old while serving in the *Sanhedrin*? Should he now step down? Must he step aside due to his age?

Me'iri states, "Some explain that we do not appoint an elderly sage to a capital case in the first instance. But, if he was appointed in his youth, and he has been judging capital cases for years and is now elderly, he is not removed from the court. His many years of trying capital cases have trained him. Even though he is old, he is in the habit of finding merit for those facing death. He does not need to step down." *Shu"t HaRashba (cheilek 6 siman 191)*, *Rabbeinu Yonah (Sanhedrin 36)*, and *Shu"t Chasam Sofer (Yoreh Dei'ah siman*

7) disagree. They are of the opinion that the reason applies even to a sage who started while young. It is human nature to become more insensitive with age. The Jewish courts must be seeking to acquit the accused. Elderly sages are often harsh. Even when a sage first ascended to the position at a young age, now that he is very old, he must step aside from capital cases (*Ma'adanei Asher Parashas Shoftim*).

How Did the Converts Shmayah and Avtalyon Serve as Members of the Sanhedrin?

Our *Gemara* teaches that a convert or an illegitimate child cannot serve on the *Sanhedrin*. Only those who are born of good lineage, like *Moshe Rabbeinu*, may become members of the *Sanhedrin*. *Pirkei Avos* lists generation after generation of leaders of the *Sanhedrin*. Among the leaders mentioned there are *Shmayah* and *Avtalyon*. One was the *Nasi* of the *Sanhedrin*; the other was the *Av Beis Din* of the *Sanhedrin*. They were converts. In light of our *Gemara*, how could they have been members of the *Sanhedrin*?

Magein Avos (1:10) suggests that *Shmayah* and *Avtalyon* were singularly special. When there is no Jewish-born sage equal in stature and learning to the sage who is a convert, the convert should be appointed to the *Sanhedrin*. *Shmayah* and *Avtalyon* had no equals. Singular converts can serve on the *Sanhedrin*. *Maharal* suggests that *Shmayah* and *Avtalyon* were not actual converts. Their mothers were born Jewish. Their fathers were converts. They were born as Jews and therefore were *meyuchasin* enough to serve on the *Sanhedrin*. *Tumim* (*siman* 7:1) also deals with this problem.

Tumim first quotes *Knesses Hagdolah*. *Knesses Hagdolah* argues

that since the nation willfully accepted *Shmayah* and *Avtalyon*, they were allowed to serve on the Sanhedrin. *Tumim* rejects this answer. The acceptance of the nation may be sufficient for rulings on monetary matters. Money may be made *hefker*. It can be forgiven to others. The *Sanhedrin* also adjudicated matters of life and death. A person does not own his life. He has no right to waive his rights to his life. His acceptance of an unqualified judge should not offer the judge the ability to judge him. *Shmayah* and *Avtalyon* were the leaders of the highest court. They led the seventy-one sages. They had the power to issue rulings on life and death. The willful acceptance of the nation should not have been enough to give them so much authority. Ultimately, *Tumim* suggests his own answer. We, the nation, cannot appoint a convert to a *Sanhedrin*. *Shmayah* and *Avtalyon* were not appointed by the nation. They were given their jobs by Hasmonean kings. The king has the power and right to put subjects to death. Since they were appointed by kings who had the power to take lives, they too may serve on a court that could take lives (*Daf Yomi Digest*).

Sanhedrin 37**Are All the Empty Jews Filled with Mitzvos?**

Our *Gemara* explains a verse in *Shir Hashirim* (4:3), “*Kepelach harimon rakaseich*,” “Your temples are like split pomegranates” to mean that *aflu reikanin shebach*—even the empty ones in you, *melei’in mitzvos karimon*—are filled with *mitzvos* like a pomegranate is filled with seeds. There is a *Halachic* ramification to this statement. *Gemara Shabbos* teaches that if a person is present when the soul leaves his friend he should tear his garment like a person who witnesses a Torah scroll being burned. Each Jew is filled with good deeds; this is why his passing is likened to the loss of a Torah scroll.

Turei Even on Tractate *Megillah* (6a) points out a seeming contradiction. *Gemara Megillah* discusses the city of *Teveryah*. It proposes that the real name of the city is *Teveryah*; it is also called *rekes* because *reikanin shebah*—the empty ones in it, *melei’in mitzvos karimon*—are filled with *mitzvos* like a pomegranate is filled with seeds. *Gemara Megillah* is seemingly teaching that only in Tiberias are the empty ones filled with good deeds. Our *Gemara* seems to say that in all places the empty Jews are filled with good deeds like a pomegranate is filled with seeds. How can this contradiction be resolved?

Ben Yehoyada answers that really all Jews, in all places, are filled with *mitzvos* like the pomegranate is filled with seeds. But if a Jew also bears many sins, the sins may override the good deeds. *Teveryah* was the place of *Rabbi Meir Ba'al Hanes*. *Rabbi Meir* is of the opinion that Jews are always considered children of *Hashem*. Even when we transgress, we are still referred to as *Hashem's* children. Since, according to *Rabbi Meir*, *Hashem* always relates to us as a father, He is always willing to accept our *teshuvah* and forgive our sins. *Rabbi Yehudah* argues with *Rabbi Meir*. He suggests that when we sin, we are slaves to the Almighty, rather than sons. As slaves, our sins are not easily forgiven. Typically, in disputes between *Rabbi Meir* and *Rabbi Yehudah*, the *halachah* follows *Rabbi Yehudah*. In *Teveryah*, since it is *Rabbi Meir's* town, *halachah* follows *Rabbi Meir*. In *Teveryah* the empty Jews are always filled with *mitzvos* because sins cannot invalidate the good deeds. In the rest of the world, empty Jews are filled with *mitzvos*, but if they transgress, they become slaves to *Hashem*. *Gemara Megillah* offers another explanation for the name *Teveryah*. It is an acronym of the phrase “*tovah re'iyasah*”—“her look was good.” Perhaps this means that *Teveryah* was a place that would inspire people to look for the good in others. Our tradition teaches that *Rabbi Shimon bar Yochai* purified the city of *Teveryah*. *Rashbi* revealed that there is a secret dimension to the *Torah*. He taught that there is a level that is hidden from simple sight. This lesson was the source of seeing good in every Jew. *Chidushei HaRim* points out that every Jew is rooted in a letter in the *Torah*. There are 600,000 letters in the *Torah* and there are 600,000 souls. Just as there is *peshat*, *remez*, *derash*, and *sod* to each letter, there is the simple, interpreted, hinted, and secret levels to each Jew. Each Jew deserves respect and regard. Even if he seems sinful, there is at least a hidden aspect that is good. *Teveryah* was the place that taught all to look for the hidden good

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in others and to therefore see the good in all. From the perspective that *Teveryah* taught, we look at all Jews and see goodness in them. *Gemara Megillah* is teaching us that from the good looks of *Teveryah* we discover that the empty ones in *Teveryah* are filled with good deeds. Our *Gemara* is teaching that this positive view extends past Tiberias and it leads us to see each Jew as filled with good deeds (*Daf al Hadaf*).

Sanhedrin 38**What Is the Significance of What Happened
on the Sixth Day?**

History is not the concern of the Talmud. We usually do not care about what happened in the past. Yet our *Gemara* tells us how *Hashem* spent the sixth day of creation. *Rav Yochanan ben Chanina* taught that in the first hour, *Hashem* gathered the dust for *Adam Harishon*. Dust from every part of the globe was pulled together to create *Adam*. In the second hour, the mud was made into a human form. In the third hour, *Adam's* limbs were formed. In the fourth hour, a *neshamah* was placed into him. In the fifth hour, he stood on his feet. In the sixth hour, he named the animals. In the seventh hour, *Chavah* was created for him. In the eighth hour, two children were born. In the ninth hour, he was commanded not to eat from the Tree of Knowledge. In the tenth hour, they transgressed. In the eleventh hour, *Adam* was judged. In the twelfth hour, he was expelled from paradise: “*VeAdam biykar bal yalin*”—“*Adam* was a being of grandeur yet he did not even spend the night (in Gan Eden).” (*Tehillim* 49:13) Why should we know this? What lesson does it teach us?

Many *Rishonim* (*Ramban*, *Rikanati*, *Rabbeinu Bechaye*, and others) teach that six thousand years have been allocated to our

world and they correspond to the six days of creation. *Tehillim* (90:4) states that a thousand years are akin to a day in the eyes of Hashem. Each day of creation predicts what will occur in the thousand years that correspond to it. *Shu"t Torah Lishmah* (*siman* 503) teaches that the hours of the days of creation were not sixty-minute units. These hours were very grand and very long. These great initial moments foreshadowed what would happen in the thousands of years that followed. *Sefer Habahir* (quoted in *Rikanati* 8:2) teaches that the meaning of the verse (*Bereishis* 2:3), “*Asher bara Elokim la'asos*”—“that Hashem created to make,” is that the six days of creation keep generating. They impact the events that will later occur.

Ramban teaches that redemption and the arrival of *Mashiach* will occur in the sixth thousand corresponding to the creation of *Adam Harishon*. *Gra* in his commentary to *Sifra Detzniusa* explains that the hours of the sixth day correspond to the events of the sixth millennium. *Gra* points out that if we deserve him, *Mashiach* may arrive at any moment. If we are not deserving, there is an established time when *Mashiach* will come. Knowing what happened during each hour of the sixth day is useful for the great Kabbalists and *Tzadikim*. They can derive from these hours when is the set time for the arrival of *Mashiach*. *Gra* teaches that those who understand this secret must keep it hidden and may not reveal it to others (*Me'oros Daf Hayomi*).

Sanhedrin 39**Is It Permissible to Force a Teacher
to Accept Rabbinic Clothing?**

A dynamic Torah teacher was appointed to serve as an instructor in a *yeshivah* in Jerusalem. The teacher was an extremely humble man. He was a great Torah scholar. Most prominent rabbis in Jerusalem wear a rabbinic cloak. The students appreciated their teacher and asked him to wear a long rabbinic coat. He did not feel comfortable wearing such a garment. He insisted on wearing a simple short suit jacket. What did the students do? They waited for the teacher to remove his jacket and only don his shirt while delivering the *shiur*. They then took away the jacket and replaced it with a long rabbinic coat. When it came time to pray, the teacher looked for his jacket but could not find it. A student came forward and told the teacher that they had purchased a long coat for him and that was the only garment available for him to wear. The teacher wore the long rabbinic garb as he rightly deserved. The students came to *Rav Yitzchok* Zilberstein with a question. Had they transgressed? Perhaps they had committed the sin of *gezel* when they took the teacher's garment. On the other hand, perhaps it was not theft. They had replaced the jacket with a more expensive and honorable item, a rabbinic cloak. Is it theft to remove one item and replace it with a more precious item?

Our *Gemara* seems to shed light on this question. It relates a conversation between a heretic and *Rabban Gamliel*. A heretic came to *Rabban Gamliel* and said, “Your God is a thief. The verse states that *Hashem* made *Adam* fall asleep and He removed one of his rib bones.” The daughter of *Rabban Gamliel* told her father that she would respond to the heresy. She said, “I need a judge.” The heretic asked, “Why?” She answered, “Thieves violated us last night. They took a pitcher of silver from us and replaced it with a pitcher of gold.” The heretic said, “Then you do not need any judge. You suffered no harm. I wish I would have thieves like that ‘attacking’ me daily.” She then said, “The same is true with *Adam*. *Hashem* took from him a rib but replaced it with a loving and devoted wife.” It emerges from this account that it is not considered theft to take an inferior item and replace it with a far superior item.

Gemara Bava Metzia seems to contradict this lesson. In *Bava Metzia* (61b) the *Gemara* explains the verse “*Lo signovu*”—“You shall not steal.” It teaches that you may not steal even if you are taking with the intent to repay double. *Rashi* explains that the thief wants to help the victim. He wants him to receive double. He knows the victim would not accept a gift from him. He steals, awaits conviction by witnesses, and then gladly pays double. The *Torah* prohibits this as theft. *Bava Metzia* seems to teach that an item cannot be taken from a friend, without permission, and replaced with a better item.

Rav Zilberstein suggests that there is a difference between the two cases. I cannot take an item for myself, even when I intend to ultimately give the victim more. In *Bava Metzia* it was theft with the intent to pay double. Theft denotes a thief taking something for himself without the victim’s permission. Even if the thief’s ultimate motivations are to help the victim, it is not permissible. Our *Gemara* is dealing with exchange, not theft. *Hashem* did not take the rib of

Adam for Himself. He took the rib and created Eve out of it, solely to benefit Adam. When I take someone's inferior item and put a better item in its place, solely for his benefit without seeking to gain anything, it is permitted.

In our case, the *yeshivah* students were not taking the jacket to use it themselves for any limited period of time. They took the short jacket solely to benefit their teacher by getting him to wear the long rabbinic coat. Perhaps what they did was permitted. Perhaps this was an action similar to *Hashem* taking the rib of Adam without his knowledge in order to grant him the benefit of a wife and family (*Chashukei Chemed*).

Immersion in Fire?

R*av* Yitzchok Zilberstein wondered about the following tragic scenario. A gentile in medieval Christian Europe saw the folly of Christianity and sought to convert to Judaism. He studied extensively. He passed his exams with the court. He underwent circumcision. He had not yet immersed in the *mikvah*. The Christian authorities heard about him and arrested him. They demanded that he recant; he refused. They built a great fire and burned him to death. Would the Jewish community be allowed to bury him in a Jewish cemetery? Only Jews may be buried in a Jewish cemetery. Conversion requires circumcision, acceptance of *mitzvos*, and immersion in a *mikvah*. He had never immersed in water. Was he a Jew?

Semak Mitzurich (*mitzvah* 156) was asked a similar question regarding a Jew who had abandoned Judaism and converted to Catholicism. He regretted his perfidy and sought to return to

Judaism. The church authorities caught him and burned him in a public scorching. Should the community have buried him in the Jewish cemetery? The custom is that a person who leaves our faith and then returns is only accepted back following immersion in the *mikvah*. This man never immersed. The enemies killed him before he was able to go and *tovel*. Was it permissible to bury his remains in the Jewish cemetery?

Semak ruled that they should bury him in the Jewish cemetery. His source was our *Gemara*. In our *Gemara*, a heretic converses with *Rabbi Avahu*. The heretic said, “Your God is a *Kohein* as in the verse, ‘And they shall take for Me *terumah*.’ How then did He become pure after burying *Moshe Rabbeinu*? No waters could encompass Him (see *Yeshayahu* 40:12).” *Rabbi Avahu* answered that *Hashem* became pure by immersing in fire as stated in the verse (*Yeshayahu* 66:15), “Behold *Hashem* will come in fire.” The main and primary immersion is immersion in fire, as the verse teaches (*Bamidbar* 31:23), “And whatever you cannot put through fire shall be put through water.” From our *Gemara* we learn that immersion in fire is an even greater immersion than immersion in water. *Semak* ruled that the Jewish *ba'al teshuvah* should be buried in the Jewish cemetery for the flames had the status of an immersion.

Our Sages have taught that when our father *Avraham Avinu* emerged from the furnace in Ur Kasdim, the angels declared “*Magein Avraham*”—“Shield of Abraham.” Commentators explain that after going through the fires, *Avraham* became a Jew. The flames he endured were the immersion of conversion.

In light of these sources, in our scenario, the man was a full-fledged convert. The fires rendered him a Jew. He deserved to be buried in a Jewish cemetery (*Chashukei Chemed*).

Sanhedrin 40**Why Do We Make It Hard to Convict?**

Our *Mishnah* teaches about how a court judges cases of capital punishment. First, the court cross-examines the witnesses. They are separated from each other. Each is challenged with seven investigative questions: Which seven-year cycle was it within the *yovel* years? Which year was it in the cycle? Which month in the year? What day of the month? Which day of the week? Which hour of the day? Which place? These questions render the testimony a matter that can be turned into false testimony; they make it an *eidus she'atah yachol lehazimah*. Other witnesses may come and testify, "On that day, you were with us in another place." Thereupon the witnesses will receive the penalty they sought to impose on the subject of their testimony.

After the seven investigative questions, the witnesses are also asked if they recognize the victim. According to *Tzofnas Paaneiach* (*Mahadura Tinyana al HaRambam daf 14b*), this is a question regarding the murderer. Witnesses can only put a person to death if they know his name. Even if they witness the murder and they bring the man into court and say, "This man killed," they are required to know his name. In our *Mishnah*, they are being asked for his name. If they do not know him to the degree of identifying his name, they cannot put him to death.

The witnesses are then asked if they warned the sinner before he sinned. If the sinner committed the crime of idol worship, the witnesses are asked, “Which idol did he worship? How did he worship? Did he offer an offering or did he bow to the icon?” Witnesses are also questioned about side matters, “Was the day cloudy? What was the sinner wearing? What tree did the crime occur under?” The more questions that are asked, the better. Perhaps the witnesses will contradict one another and they will be ejected from the court.

These standards seem to make it difficult to ever get a conviction. *Maharal* (*Be’eir Hagolah, be’eir hasheini*) discusses this problem. Why would the Torah set up a judicial process in which many guilty individuals will be acquitted?

Maharal explains that the *Mishnah* is only referring to times of peace and strong societal standards. When the community is basically righteous, we should be most careful not to convict the innocent man. We need to treasure life. We need to avoid possible spilling of innocent blood. Only when we are completely certain that the man deserves death do we put him to death. We ask many questions so that we are fully confident that the guilty man deserves his punishment. In times of weak societal standards, we would act differently. If the court sees that killers are killing with impunity for they believe that they will never be put to death, the court will not be harsh on the witnesses. *Gemara Yevamos* (90b) teaches that the court is entitled to fine, beat, and put to death without the normal evidentiary standards or rules of the court if the times call for such actions. It is only when the generation is righteous that it is difficult to convict.

You may ask, even in good times, why make it so hard to convict? Guilty killers may get away with their crimes. If a man killed in private, with no witnesses or warning, who would cause him to get punished?

Would he get away with his crime? *Maharal* answers that *Hashem*, who knows all, will punish the man who kills in private where no witnesses are present. *Hashem* will also punish the guilty killer who escaped judgment because witnesses contradicted one another. It is not our responsibility to punish the guilty. *Hashem* is capable of doing that. Our law wants us to internalize the value of human life. It wants us to only put to death when we are fully convinced that it is warranted (*Daf al Hadaf*).

Can Witnesses Testify Through Skype?

Our chapter teaches about the laws of testimony and judicial deliberation. Witnesses had seen *Reuvein* borrow from *Shimon*. They were in another country at the time of the trial. Could the court arrange for a Skype session and receive their testimony through a screen in the *beis din*? The litigants would be present and would hear the words of the witnesses. The witnesses would be seen and cross-examined. Would such testimony be accepted in a court of Jewish law?

Rav Chaim Berlin in *Shu"t Even Shoham* (*siman* 64) is open to accepting testimony through a phonograph. He reasons that if witnesses are unable to attend court, they may record their testimony. The phonograph machine can then be brought to the court. Their recording will be played in the presence of the litigants. He rules that testimony must be oral and may not be written; however, since it is their voice being heard, perhaps this is considered testimony from their mouths.

Rav Shlomo Zalman Auerbach in *Shu"t Minchas Shlomo* (*cheilek* 1 *siman* 9) disagrees with *Rav Chaim* Berlin. A witness attends

court and has a weak voice. The judges ask him to speak through a microphone in order to hear him. If he provides testimony through a microphone is it acceptable? *Rav Shlomo Zalman* thinks it is likely unacceptable. A microphone takes sound waves, translates them into electrical signals, and then replays the signals in a louder volume. Hearing through a microphone is not akin to hearing the voice of the witness. The Torah said we are to hear testimony from their mouths. Testimony that is written is not accepted. It is a decree of the verse that the court must hear the voices of the witnesses. Perhaps, through a microphone, they are not hearing the voices of the witnesses. *Rav Shlomo Zalman*, who has difficulty with testimony through a microphone, would certainly not accept testimony played off a recording.

Rav Shlomo Zalman quotes *Chazon Ish* on this issue. *Chazon Ish* told *Rav Shlomo Zalman* that he believes you may fulfill your obligation of prayer or *shofar* by hearing prayers or *shofar* blasts through a microphone. A microphone and telephone are controlled by the speaker. You hear his intonations. You hear him immediately. This is considered hearing him directly. According to this understanding, when the *Mishnah* rejects *kol havarah* for a *shofar*, it refers to an echo which emerges after the *shofar* is blown. However, a telephone and microphone are considered the voice of the speaker for the sound is heard instantly.

Rav Zilberstein argues that perhaps testimony may be accepted through Skype. *Rav Chaim Berlin* was open to accepting a phonograph recording. *Chazon Ish* accepts words through a telephone or microphone. *Rabbeinu Tam* accepts testimony that is written. *Rashi* rules that the verse requires oral testimony rather than written testimony, but *Shu"t Chasam Sofer* (*Even Ha'ezzer cheilek 2 siman 5*) explains the reasoning for the law. It is easier to determine credibility

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when one sees the speaker's face, hears his intonations, and watches the twitches and movements he makes. With Skype one will see the witness's face while he speaks. Perhaps his testimony is acceptable (*Chashukei Chemed*).

Sanhedrin 41**Is a Warning in Our Times Meaningful?**

A man was dining at a *treif* restaurant and eating pork while some of his observant friends came by. Two of them started a conversation with him. “Don’t you believe that redemption is near? Soon *Mashiach* will come. We are not allowed to eat pork. When *Mashiach* comes we will again have *musmuchin* in our courts. You might get beaten for the sin of eating *treif*.” He responded, “I already paid for the food. I believe redemption is near. But I do not want my money to go to waste. I will finish this plate. When *Mashiach* will come, I will be hit.” Was this a meaningful warning? When *Mashiach* arrives will this unfortunate sinner be liable to lashes?

Our *Gemara* teaches that the verse declared that, based on the testimony of the witnesses, *yumas hameis*—the dead man will die. This demonstrates that the penalty of death will only be meted out to a man who is already dead. The witnesses warn the sinner of the dire potential outcome of his actions and he must declare, “I know I will receive this punishment, yet I am performing the act regardless.” Then he is liable to punishment. What about our scenario? Is belief in the imminent redemption strong enough for us to take his words seriously? Did he truly accept the warning? Was he sincere when

he said, “When *Mashiach* will come, I will be hit?” *Rav* Zilberstein suggests that the answer to these questions is a dispute among recent authorities.

Rav Elchanan Wasserman (Koveitz Shiurim Kessubos entry 90) teaches that a real warning is impossible in our days. *Sanhedrin* 41 clarifies that a real warning entails a declared acceptance of the consequences. The sinner must state, “I know I will be hit. I intend to get hit. I am performing this act knowing the court will physically punish me.” No one today believes he will get hit by a court. Without a wholehearted acceptance of consequences, it is not *hasra'ah*.

Rav Zilberstein thinks *Gemara Gittin* (48a), discussing *kinyan peiros kekinyan haguf*, highlights this point of view.

If I have a limited right to the produce of the field in that, for example, I purchased the right to all the fruits for three years, is that considered that I have a share in the body of the field or is it not considered a true ownership at all in any part of the essence of the field? The *Gemara* states that if a right to fruits is not a right to any of the essence, one who purchases a field when there is a law of *yovel* would be unable to make the *bikurim* declaration on fruits from a field he procured. During the era of *yovel*, all purchased fields would return to their original owner in the fiftieth year. Purchasers only had a *kinyan peiros*. They could not declare gratitude to Hashem for land given to them. They did not own any part of the essence of the land. The *Gemara* then adds that during the first era of Jewish settlement in the land, before they had experienced a *yovel*, a purchaser of land would bring *bikkurim* from the produce of his acquisition and make the declaration. Prior to *yovel*, no one truly believed it would happen. At that time, procurements were believed to be permanent. *Rav* Zilberstein argues, if the holy Jewish pioneers who first entered Israel and knew *yovel* was imminent were not considered true believers

in its arrival, then certainly we, even if we declare that we believe *Mashiach* is coming soon, are not truly considered people who are certain of the arrival of redemption. A declaration in our day, “I know *Mashiach* is coming, and I know I will be hit,” is insincere and not binding.

Rav Shach disagreed with *Rav Elchanan* and *Rav Zilberstein*. In his glosses to *Shut Rabbi Akiva Eiger* he wrote that if a man was warned in our days about a prohibition, and accepted the warning, when *Mashiach* arrives and our courts are again staffed with *musmachim*, the sinner will be hit. In the scenario of our essay, according to *Rav Elchanan* there would be no grounds for lashes, while according to *Rav Shach*, when *Mashiach* will arrive, the sinner will get hit by the *beis din* (*Chashukei Chemed*).

Sanhedrin 42**Why Do We Stand When We Recite
Birkas Halevanah?**

Our *Gemara* teaches about the blessing we are to recite each month thanking Hashem for renewing and increasing the light of the moon. The *Tanna* from the *yeshivah* of *Rabbi Yishmael* taught that it would be sufficient for the Jews if they would only merit to greet their Father in Heaven once a month, with the recital of *Birkas Halevanah*. This means, if the only *mitzvah* the Jews would perform in a month would be the recitation of *Birkas Halevanah* and they would perform no other *mitzvos* that month, it would still be adequate for them to be considered more deserving than the nations of the world. *Abaye* added, “Therefore it must be recited while standing.” Why is the fact that *Birkas Halevanah* is recited once a month a reason why it is to be recited while standing?

The *Gaon* of *Tshebin* explained that there are different types of blessings and we need to assess how to classify the blessing on the new moon. Consider a blessing on a commandment, and a blessing on pleasure—*Birkas Hamitzvah* and *Birkas Hanehenin*. What is the nature of the blessing on the renewing moon? Is it a *Birkas Hanehenin*? Are we expressing gratitude to *Hashem* for blessing us with the

pleasure of the moon's increasing luster? Or is it a *Birkas Hamitzvah*? Perhaps we are thanking *Hashem* for the *mitzvah* of sanctifying the month or the Rabbinic *mitzvah* of blessing the moon. Blessings for pleasure do not need to be recited while standing. *Birkos Hamitzvah* need to be recited while standing.

Now we can understand our *Gemara*. In our liturgy, we recite a blessing each day thanking *Hashem* for the lights of the Heavenly bodies, *Yotzeir Hame'oros*. This is a blessing of gratitude due to the pleasure we derive from the sun, moon, and stars. If *Birkas Halevanah* is a blessing about pleasure, it should be recited each night. Each night we benefit from the moon. The *Tanna* of *Rabbi Yishmael* taught that the blessing of *Birkas Halevanah* is only recited once a month. *Abaye* derived from this that it is a blessing on the *mitzvah*. As a blessing on a *mitzvah*, it must be recited while standing (*Daf al Hadaf*).

What Is So Special About Birkas Halevanah?

The *Tanna* in *Rabbi Yishmael's yeshivah* taught that when we recite *Birkas Halevanah* it is as if we are greeting *Hashem*. What is so special about this blessing? Why is it akin to greeting the Almighty? How is it more significant than any other *mitzvah*?

Chamra Vechaye quotes *Rav Yehonasan* to explain this lesson. *Hashem* created nature and the world. Unfortunately, it is no longer clear to all that He is the source of nature. The one natural item that reminds all of the creation from nothing is the moon. The moon gradually becomes smaller and smaller over the month. Eventually, it disappears entirely. Then it reappears and begins to become larger and larger. The moon is the only remaining symbol signifying how

Hashem created the world from nothing. When you see empty space filled with a bit of light, then a bit more, it reminds you of the fact that *Hashem* created the world from void and darkness. The monthly recital of *Birkas Halevanah* is a monthly recharge of faith in *Hashem* as the creator. Faith in *Hashem* may lead to all the other *mitzvos*. Hence, the lesson of our *Gemara*; if the Jews would only perform this *mitzvah* it would be sufficient, for it would lead them to perform all the others (*Daf al Hadaf*).

Sanhedrin 43

Can You Celebrate a Siyum When You Did Not Learn the Entire Tractate Due to the Censor?

S*anhedrin* 43 was censored. The *Gemara* discusses how a sinner would be stoned to death. It mentions that a proclamation would be declared, as he was being led to his death, announcing, “So-and-so is being stoned for the following sin, performed on the following day, at the following time, and so-and-so were the witnesses. If anyone has an argument with which to acquit him let him come and inform us.” The original text of the *Gemara* then added that the proclamation would be announced as the sinner was being led to his death. It would not be announced forty days before. The *Gemara* then asked about a *baraisa*. In a *baraisa* it was taught that when *Yeshu* the Nazarene was sentenced to death for the crimes of magic, inciting Jews to idolatry, and compelling Jews to worship idols, there was a declaration forty days prior to the sentence calling on people to come and advocate for merit. The *Gemara* resolves the contradiction by teaching that *Yeshu* was close to the government. As a result, the Sages made the announcement forty days before to attempt to find someone who could acquit him. The *Gemara* then continues to teach about the

five students of *Yeshu*. The censor took this entire passage out of the *Gemara*.

Completing a tractate has Halachic ramifications. During the nine days between *Rosh Chodesh Av* and the Ninth of *Av*, if someone makes a *siyum*, all are allowed to eat meat during that meal. On *Erev Pesach* firstborn are supposed to fast. If there is a *siyum*, there is a reason to celebrate. Firstborn may eat from the meal celebrating the *siyum* on Passover eve.

Rav Aryeh Tzvi Frommer, author of *Eretz Tzvi* and *Rosh Yeshivah* of *Yeshivas Chachmei Lublin* founded by *Rav Meir* Shapiro, was asked about a student making a *siyum* on Tractate *Sanhedrin*. The student did not have access to the passage on our *daf*. He had not truly studied the entire tractate. Would he be allowed to make a *siyum* on the tractate when he had not really completed the entire tractate?

Rav Frommer ruled (*Shu"t Eretz Tzvi cheilek 2 siman 74*) that the *siyum* could be celebrated. *Gemara Shabbos* (118b) teaches that *Abaye* would make a holiday whenever a member of his *yeshivah* completed a tractate. *Abaye* lived before the Talmud was inscribed in its final form. In the days of *Abaye* there were no tractates of *Gemara*. *Abaye* was celebrating the fact that a student completed a tractate of *Mishnah*. Apparently, even completing a tractate of *Mishnah* is grounds for a *siyum*. We do not celebrate the completion of a tractate of *Mishnah* for we know that the student is not fully content. He feels a sense of missing out and is aware that there are many discussions in the *Gemara* on the tractate and would like to learn those lessons. In a tractate of *Gemara* in which sections are missing because of the censor, the student did not complete the entire tractate of Talmud; however, he completed the entire tractate of *Mishnah*. He does not feel any sense of missing out. He knows that he did not study all of the Talmud but he also recognizes that most Jews do not get to study

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all of the Talmud on this tractate for the passages have been removed by the censor. Since he has completed a full tractate of *Mishnah* and he feels joyful about his achievement, he may make a *siyum* with all its *Halachic* ramifications (*Me'oros Daf Hayomi*).

Sanhedrin 44**Why Did Entry to Israel Create Liability for Hidden Sins?**

When *Yehoshua* first entered Israel, he led the Jews in battle against Jericho. *Hashem* aided and facilitated. Miraculously, the Jews triumphed. *Yehoshua* declared a vow prohibiting anyone from seizing any of the loot. *Achan* sinned; he took from the loot and violated the oath. *Hashem* punished the entire nation because of *Achan's* actions. The *Gemara* discusses why the entire nation suffered from the actions of one man. It offers two possibilities. One—*Achan's* sin was performed in private, but once the Jews entered Israel, we became liable to suffer misfortune because of the private sins of our compatriots. Two—even in Israel only public sins could create liability for others, but *Achan's* wife and children were aware of his sin; therefore it was a public sin. According to this view, once we entered Israel, we became responsible for each other and the public sins of one could lead to misfortune for all.

The Klausenberger *Rebbe*, *Rav Yekusiel Halberstam* (*Shu"t Divrei Yatziv cheilek 7 siman 111*), tried to explain the rationale for why entry into Israel should create liability for hidden sin. If someone sinned in private, I cannot be made aware of it. Why should I bear any liability for another's behavior?

The *Rebbe* suggested that I am obligated to pray that no Jew sin. Prayer is exceptionally powerful. Prayer for others is powerful. *Hashem* wants each Jew to pray for all other Jews. *Gemara Makkos* explains that the *Kohein Gadol* was liable for mistaken murders because of prayer. He should have prayed. Had he done so, perhaps the acts of murder would never have transpired. So it is with sins of others; had we prayed they would not have sinned.

Shelah Hakadosh (Parashas Vayeitzei) teaches that outside of Israel *Hashem* is not seeking the prayers of righteous Jews. There is an iron curtain separating us from *Hashem* outside of the Holy Land. Outside of Israel we were not responsible for the hidden sins of other Jews. We did not have the ability to halt their actions with our prayers. We were not responsible for their failings. Once we entered Israel, we had the power to pray effectively. Then, we became responsible for sins of fellow Jews for had we prayed more suitably they would not have committed such crimes.

Yerushalmi Sotah (7:2) teaches that once the Temple was destroyed, the Jews were no longer held responsible for the hidden sins of their compatriots. *Divrei Yatziv* explains this lesson in light of his understanding. Once the Temple was destroyed, the gates of prayer closed (see *Eiruvim* 65a). Jews were then not held responsible for the hidden sins of others (*Daf al Hadaf*).

Can We Address Angels When We Pray?

Some *Selichos* prayers seem to make requests of angels. At the end of *Selichos* we say, “*Machnisei rachamim hachnisu rachameinu lifnei Ba’al Harachamim*”—“Angels of mercy please bring our pleadings before

the Master of Mercy.” *Maharal* (*Nessivos Olam Nessiv Ha'avodah perek 12*) strongly opposes recital of this text. We are to pray to *Hashem* and are not to appeal to angels or heavenly beings. *Maharal* suggests it is incorrect to say, “*Machnisei rachamim hachnisu rachameinu.*” *Maharal* proposes saying, “*Machnisei rachamim yachnisu rachameinu lifnei Ba'al Harachamim,*” meaning, “Angels of mercy will bring our pleadings before the Master of Mercy.” Such a version is an appeal to God that He have his angels bring in our pleas and is not a request to angels. *Chasam Sofer* (*Shu"t Chasam Sofer Orach Chaim siman 166*) agrees with *Maharal*: “We have no involvement with angels. We are only to appeal to *Hashem* our Lord who hears our pleas.”

Other authorities defended the practice of reciting *Machnisei Rachamim* because of our *Gemara*. *Rav Yehudah Asad* was considered by many the premier *posek* in Hungary following the passing of the *Chasam Sofer*. He writes (*Shu"t Yehudah Ya'aleh cheilek 1 Orach Chaim siman 21*) that the prayer of *Machnisei Rachamim* was composed by righteous sages. It was recited for generations. Those sages were not committing a gross error. Our *Gemara* teaches a lesson from *Rav Yochanan*: “*Rav Yochanan amar le'olam yevakeish adam rachamim sheyehu hakol me'amtzin es kocho.*” *Rashi* explains, “A person should always ask the ministering angels to help him in asking for mercy and that they not advocate against him in heaven.” *Rav Yochanan* was teaching that one should always ask the angels to be supportive of the prayer request. This is the meaning of the *Machnisei Rachamim* prayer.

Rashash has a novel approach to this question. He points out that in our *Gemara*, *Rav Yochanan* encourages all to ask the angels to be accommodating and not be obstructive. This would be a source in support of our practice to recite *Machnisei Rachamim*. We need to ask the angels for help so that they not impede the request by

trying to prosecute us for our sins. This is only a legitimate fear when an individual prays. *Gemara Sotah* (33a) and *Beis Yosef* (*Orach Chaim siman* 101) teach that *Hashem* does not reject the pleas of the community, “*Hein Keil kabir lo yimas betfilas rabim*”—“Behold mighty Lord will not reject the prayers of the many.” Since the prayers of the community will always be accepted before *Hashem*, there is no reason to fear that angels may impede these prayers from ascending. The community therefore should not recite *Machnisei Rachamim*. According to *Rashash*, when an individual is saying *Selichos* by himself without a *minyán* he should recite *Machnisei Rachamim* (*Me’oros Daf Hayomi*).

Sanhedrin 45

Must I Love Another Jew As Much As I Love Myself?

Our *Gemara* teaches that love of a Jew extends to the manner in which the sinner is put to death. A fall from a height of ten handbreadths can kill. The sinner who is to be stoned is thrown while standing up from a building two stories high. The reason he is thrown from such a height is to try and hasten the death. It is an act of kindness for the convicted to die quickly and relatively painlessly. The mandate to love our neighbor obligates the court to try and design a compassionate death sentence. This is also the reason why the male sinner is undressed and then thrown off the building. When he is undressed, he is likely to die faster than if he were clothed.

Tosfos find the words of our *Gemara* difficult. How did the Sages know that the verse mandating loving fellow Jews dealt with Jews going to death? This verse seems to discuss Jews who are alive. It seems to say that I must love my neighbor as much as I love myself. Why did the Sages interpret the verse as dealing with a neighbor who is convicted and going to death?

Tosfos answer that the verse demands that I love a neighbor as much as I love myself, “*Ve’ahavta le’reiacha kamocho.*” Is this so?

Gemara Bava Metzia teaches that if two Jews find themselves in a dry desert and one has a container of water with enough liquid for only one person, he should keep the water for himself because “*Chayecha kodmin*,” “Your life comes first.” If my life comes first, in what way am I to love my neighbor as myself? I actually love myself more. *Tosfos* suggest that this question was the source for our *Gemara*. Our *Gemara* applies the verse of “*Ve’ahavta le’reiacha kamocha*” to a convicted Jew going to death. Just as each of us would want to leave this world quickly and painlessly, the convict should experience a quick and painless death. In this regard all can be equal.

Rav Yerucham Fishel Perlow explains that *Tosfos* certainly agree that I must love other Jews, even those who are healthy and alive. *Tosfos* are teaching that the verse “*Ve’ahavta le’reiacha kamocha*” primarily refers to the love for a Jew going to his death. It is a negative obligation. What I would not want done to me, I should not do to him. From the obligation to the dying man, we learn that there is a similar obligation to living men. In terms of positive love, I am to love myself more. The *mitzvah* of “*Ve’ahavta le’reiacha kamocha*” is a negative command. Exactly what I do not want done to me, I shall not do to others (*Mesivta*).

Does a Terrorist’s Tractor Need to Be Buried?

Our *Gemara* teaches that the stone used to stone the idolater to death, the tree on which the body of the *niskal* is hanged, the sword a killer is killed with, and the scarf in which a criminal is choked need to be buried with him. An Arab terrorist used his bulldozer to flip over a car and then drive over it and kill several Jewish citizens

of Israel. *Rav* Zilberstein wondered if there is an obligation to bury the bulldozer just as our *Gemara* teaches that the stone which kills a sinner must be buried.

Shu"t She'eilas Ya'avetz (cheilek 2 siman 158) was asked about a knife that had been used to kill a person. Could it be used to slaughter animals? *Ya'avetz* ruled that the knife could not be used for slaughter. He even proposed that animals slaughtered with such a blade might be considered prohibited. One who slaughters with this blade is likened to a person who uses a knife of idolatry for slaughter. The slaughter would not render the meat of the animal permissible. Perhaps, according to *Ya'avetz*, there is a decree of the verse that items which killed are prohibited and may not be used any longer. If so, perhaps the bulldozer the Arab terrorist drove should become prohibited and would require burial. *Rav* Zilberstein raised this question before *Rav Nissim Karelitz Shlit"a*. *Rav* Karelitz ruled that there is a difference between our *Gemara* and the Arab's bulldozer. Our *Gemara* discusses gallows, swords, stones, or scarves used for killing. These items are executioners. *Ya'avetz* also discusses a knife, an item that may be defined as a killer. A bulldozer is not a weapon. Its primary purpose is to move earth and help build. The Arab misused his vehicle, but the vehicle should not be defined as a tool of killing. Tools of carnage become prohibited and must be buried once they are used. A bulldozer is a transportation vehicle. It was misused, but it is still not defined as a killer. Since it is not a killer, we may continue to use it even after it was regrettably part of a terrorist attack (*Chashukei Chemed*).

Sanhedrin 46

**He Asked Not to Be Buried Right Away
Because He Wanted to Be Buried in Israel:
Should We Listen to Him?**

During Communist rule, it was very difficult to leave the USSR. A certain Jew desperately wanted to move to Israel. He took the risk of official displeasure and applied for an exit visa. The authorities refused the request. He told his relatives that he insisted on making it to the Land of Israel and ordered them not to bury him if he died; instead he wanted them to place him in a coffin and to spray perfume so as not to smell up the area. “Bring my remains with you to Israel. Bury me in the land of our fathers. I do not want to be buried outside of Israel even for a moment.” The unfortunate day arrived and the man passed away. Should the children heed his request? Is it permissible to delay burial for the sake of eventual burial in the Land of Israel?

Rav Yitzchok Zilberstein suggests that there is an argument among our major commentators on this issue.

Our *Gemara* teaches that there is a Torah obligation to bury immediately. “*Rav Yochanan* taught in the name of *Rabban Shimon bar Yochai*, what is the source that one who leaves the deceased body overnight without burial violates a Torah prohibition? The verse

states, *'ki kavor tikberenu*, for you shall surely bury him'; from here we learn that one who leaves a dead body out overnight has violated a prohibition." The *Tur* (*Yoreh Dei'ah* 362) codifies this law: "Anyone who places a dead body in a coffin and leaves it, without lowering it into the ground, violates the Torah prohibition against *halanas hameis*."

When our leader *Yosef*, the son of *Ya'akov*, died the Torah states that the Jews placed him in a coffin in Egypt. According to one opinion in Tractate *Sotah*, *Yosef* was placed in a coffin and the coffin was lowered into the Nile River. When *Moshe* was leading the Jews out of Egypt, he stood at the banks of the Nile and called out to *Yosef* to rise; the coffin rose. Why was *Yosef* placed in a coffin and left in the water? Why wasn't he buried?

Midrash Seichel Tov (*Bereishis* 50) answers that the Jews feared the Egyptians would transform *Yosef's* remains into an idol. The Jews feared that his burial spot would be converted into a shrine for idolatry. He was therefore placed in a lead coffin and sunk into the Nile; hence, no one would be privy to his whereabouts and no one would alter the location into a place of idolatry. *Aruch Hashulchan* (362:3) offers another answer. *Yosef* had asked to be buried in Israel. Since he was going to be buried in the Holy Land, he did not want to be buried temporarily in Egypt. Just as it is permissible to carry remains to a grave in another location, it was acceptable to place *Yosef* in a coffin and then wait, for he was on his way to burial in the Land of Israel.

Rav Zilberstein suggests that according to *Aruch Hashulchan*, in our case, the family would have been told to abide by the wishes of their patriarch. Since he was on his way to Israel, there was no prohibition in not burying immediately. According to *Midrash Seichel Tov*, they should have buried him temporarily in the USSR. *Yosef* was

placed in a coffin and in the Nile for fear of idolatry. Since *Midrash Seichel Tov* did not give the answer *Aruch Hashulchan* provided, it seems that it is ruling that it is not permissible to delay burial and merely place in a coffin, even when there is a plan for eventual burial (*Chashukei Chemed*).

Is It Permissible to Bury Above Ground in a Multi-Story Building?

Our *Gemara* teaches about the obligation to bury the dead. Some cemeteries in Israel are running out of space. They have begun to build multi-story burial buildings. Is it admissible to bury in those crypts?

A woman had a beloved daughter who passed away in her lifetime and was buried. The woman would often visit the grave and pray and weep at the spot. She wrote in her will that when she dies, she would like to be buried atop her daughter. Should her wish be fulfilled once she died?

Rav Yitzchok Zilberstein distinguishes between three types of burial atop burial.

In the times of the *Mishnah*, our people would bury in caves. The burial caves were in the mountains. Bodies would be placed into shelves that were bored into the walls of the caves. The walls of the caves were the handiwork of God. Burial in the shelves was in essence burial into the dirt of the mountain. Some shelves were higher than others. It is certainly permissible to be buried in a cave wall atop another crypt in the wall. The wall was made by *Hashem*. This is considered burial in the earth.

During our many years of exile, there were locations where the gentile authorities gave very little land to the Jews for use as a cemetery. *Tur* (*Yoreh Dei'ah siman 362*) writes, "We do not place two coffins one atop the other. If he placed one atop the other, there is an obligation to remove the top one. We do not treat the dead with disrespect. This is only true when there aren't six *tefachim* of dirt between them. If there are six *tefachim* of dirt between them, it is permissible to place coffin atop coffin." *Bach* writes, "Here in the holy Jewish community of Cracow, there is only one Jewish cemetery. We are not able to get more space for burial. The cemetery was already full. The people poured dirt down atop the old graves and buried newly deceased individuals in it. They are not careful. There are not six *tefachim* of dirt between each burial. This is not right. Even when we do not have enough space and we must bury one atop the other, we need to make sure each one has enough dirt. There need to be six *tefachim* of dirt between coffin and coffin." *Shu"t Beis Yitzchak* (*Yoreh Dei'ah cheilek 2 siman 160*) discusses burial in a multi-story building. Initially, he permitted such burial. However, in a second article he amended what he had originally stated. He indicates that in our *sugya Ran* teaches that the reason burial must be in the ground is that man came from the earth and he must return to the earth. Man must return to the dust the original man was taken from. A burial in a building is not a return to the earth.

Rav Elyashiv (*Koveitz Teshuvos cheilek 2 siman 44*) rules that in Israel it is improper to bury in multi-story buildings or one atop the other. The customs of how to treat the dead are stricter than normal customs (*Shu"t Duda'ei Hasadeh siman 30*). It is the long-standing Jewish tradition to bury in the earth side by side. We should not deviate from this custom. Our *Gemara* proposes that burial atones because, in burial, man's body is lowered into the earth. If a person

would be buried in a multi-story building, his body would not be lowered down and perhaps not gain atonement. In Cracow and in other areas in exile they occasionally buried atop other graves for the authorities offered them no other option. There is plenty of land in Israel. Appeals should be made. More land should be set aside for burial and our customs should be maintained. The wishes of the mother in our scenario should not be fulfilled. We have the space for graves in the earth. She should be buried in the earth and not atop her daughter (*Chashukei Chemed*).

Sanhedrin 47**Is There a Basis to Limit Eulogies?**

Our *Gemara* seems to teach that there is a *mitzvah* to eulogize. The *Gemara* tries to define this obligation. Is it to honor the deceased or to honor the living? *Aruch Hashulchan* is surprised that many communities seem to neglect this obligation. When an individual passes away, in many places they do not eulogize. In their last wills and testaments, some righteous people demand that no eulogies be recited. How can communities ignore a *sugya*? How can the righteous ask that others not fulfill a virtuous practice?

The work *Hakuntres Hayechieli* provides several arguments for the practice to limit or eliminate eulogies. First, there is a fear that the one speaking may overstate and relay falsehoods as praise for the deceased. The Almighty is averse to falsehood. *Hashem* may punish the speaker for his words. *Gemara Shabbos* (149b) teaches that a person who causes a person to be punished is thrown out of the presence of *Hashem*. The deceased indirectly caused the speaker to be punished and because of this, he may be denied entry to *Hashem's* presence. Therefore, the righteous oppose eulogies. Without anyone speaking about them, a speaker will not be penalized because of them. They can then enter the presence of the Almighty. Second, whatever

is done publicly may generate an evil eye. The forces of evil cause misfortune to whatever they connect with. A person is thus better off having his good deeds concealed through few or no eulogies. Third, our *Gemara* teaches that a person who is not eulogized appropriately merits to receive atonement. *Tzadikim* ask for no eulogies. They deserve the praise; not receiving the praise will expunge their sins. Finally, the righteous worry that those speaking about them may speak critically of the community. They may say, “Our sins brought this tragedy. We committed crimes. *Hashem* took away the *tzadik* as a punishment.” The angels of prosecution attend the funeral. When they hear such words, they will take them up to heaven and try to deliver punishment upon the Jews. They will claim that the Jews admitted to guilt. Perhaps the prosecution will be effective and Jews will suffer. Indirectly, the eulogies of the righteous caused the sorrow. The righteous do not want to be a cause, even in the most indirect way, for Jewish pain and suffering. To try and prevent misfortunes, eulogies are reduced or eliminated.

In the introduction to the book *Alfei Menasheh Al HaTorah*, the son of the author writes that his father, *Rav Menasheh* Eichenstein of Vertzky, passed away on a Friday afternoon. *Rav Menasheh* would inform the members of his family that the *tzadikim* who were descendants of the *Rebbe* of Ropshitz held the practice of no eulogies. *Rav Menasheh* approved of this custom. He requested that when his time came, no eulogies should be recited. *Hashem* fulfilled his request. He passed away on Friday afternoon and was buried immediately. *Halachah* does not allow for eulogies after midday on Fridays (*Mesivta*).

Sanhedrin 48**Can Money Ever Be Stored in a Tefillin Bag?**

A son of a wealthy man asked his father for money to travel outside of Israel. The father told his son he would give him the money on a condition: “You need to put on *tefillin* each morning. Promise me you will continue to fulfill the *mitzvah* of putting on *tefillin* each day. If you put on *tefillin* each morning I will fund the trip.” The son agreed. The father gave the son a small amount of money and promised that if the child kept his word and put on *tefillin* he would send the remainder of the money to the son.

The son left on his trip and soon ran out of funds. He called his father and stated, “I am out of funds. I need more money. Can you please send me the rest of the money?”

The father asked, “Are you still putting on *tefillin* every day?”

The son answered in the affirmative.

“Good,” was the response.

“When will I receive the money?”

The father answered, “I will figure out a way to get it to you.”

No money came.

A week later the son was virtually starving.

He called his father and appealed for funds.

“Are you still putting on *tefillin* every day?”

The son answered, “Yes. I put them on every day. I am keeping my word.”

“Good,” said the father, “I will find a way to get more funds to you.”

The son soon became desperate. He had no funds and could not afford to stay away. He worked a bit, earned some money and returned to Israel. Upon his return, he was filled with anger.

“Why did you not send me the money?” he raged.

His father took the son’s *tefillin* bag and opened it. Inside, next to the *tefillin*, were dozens of bills of cash.

“You lied to me,” he responded to his son. “I put all the money you would need in the *tefillin* bag. If you had kept your word and put *tefillin* on daily you would have found the money. You told me you were putting on *tefillin*. Clearly, you were not. Had you done so, you would still have the funds to continue with the trip.” Was the father’s behavior permissible?

Our *Gemara* teaches that a scarf used to wrap *tefillin* and store them cannot be used to bundle coins. It is a desecration of holiness for *tashmishei kedushah* to be used for coins or other secular items. Perhaps the father was mistaken to place money in the *tefillin* bag. The *tefillin* bag must be used for *tefillin* and may not be used to hold or transport other items.

Rav Yitzchok Zilberstein quotes *Rav Shlomo Zalman Auerbach* (*Halichos Shlomo* 4:34) who deals with putting a mirror in a *tefillin* bag. A *tefillin* bag should not be used for a secular item. Can a person store his mirror, that he uses to adjust his *tefillin* on his head, in it? *Rav Shlomo Zalman* permits storing a mirror in the *tefillin* bag. The mirror is used to help put *tefillin* on correctly. It is considered an item

needed for a *mitzvah*. The *tefillin* bag is to be used for the *mitzvah* of *tefillin*; any item required for the *mitzvah* can be laid there with the *tefillin*. If an individual has black ink with which he periodically repaints his *tefillin*, he may store the ink container in his *tefillin* bag as well. Perhaps this argument can be extended to our case. The father was putting the money in the bag in order to get his son to put on *tefillin* daily. Since the cash was helping the *mitzvah* materialize, perhaps it may be placed in the bag.

Rav Zilberstein also offered another argument to justify the actions of the father. Our *Gemara* discusses *tefillin* boxes wrapped in a scarf. In our day, our *tefillin* boxes are encased in plastic covers. The covers surround the entirety of the *tefillin*. Perhaps our *tefillin* bag is not considered *tashmish kedushah*. Our bags do not service the *tefillin*. Nowadays, the bag is *tashmish detashmish kedushah*. The bags service the covers which service the *tefillin*. Perhaps it is therefore permitted to use our *tefillin* bags to store other things in them as well. *Rav* Zilberstein concludes that the father was likely allowed to put the money in the bag (*Chashukei Chemed*).

Sanhedrin 49**Is the Victim of Pursuit Obligated to Give Money to Save the Life of the Pursuer?**

Our *Gemara* teaches about *Yoav*, King *David's* general. *David* ordered his son *Shlomo* to put *Yoav* to death. When *Shlomo* assumed the throne, he sent *Benayahu* to arrest *Yoav*. *Yoav* was brought to him. *Shlomo* challenged *Yoav* for having killed *Avner*: “Why did you kill *Avner*?”

Yoav sought to defend himself. He argued that he killed *Avner* because he was entitled to as the *go'eil hadam*²: “*Avner* killed my brother *Amasa*. I was to avenge his loss. I had to kill *Avner*.” *Shlomo* challenged *Yoav*: “But *Amasa* was pursuing *Avner*. It is not considered murder to kill the pursuer. *Avner* was right in killing *Amasa* who pursued him. You had no right to kill *Avner*.” *Yoav* responded, “There is no right to kill a pursuer when his pursuit can be stopped through other means. If the pursuit can be stopped with injury, the pursuer should be maimed. *Avner* was an expert swordsman. He was able to

2. If a man kills another Jew by mistake, the close relatives of the victim are allowed to kill the killer. They are called the avengers of the blood, *go'alei hadam*. If the inadvertent killer escapes to a city of refuge the *go'eil hadam* cannot harm the killer while he is in the sanctuary.

slide his blade precisely at the fifth rib. He could have maimed *Amasa*. His killing *Amasa* was therefore not justified. I, as *Amasa's* relative, was right to kill him.” *Shlomo* accepted *Yoav's* argument regarding *Avner*. A principle emerges. Pursuit should be halted by injuring the pursuer before it is stopped by killing the pursuer. There is no right to kill the pursuer if maiming him could prevent the aggression and danger.

Reuvein bursts into *Shimon's* home, brandishing a gun. “Give me one thousand dollars cash and your wife’s jewelry,” he demands. “If you do not pay me, I will fire my weapon,” he adds. Is *Shimon* allowed to kill *Reuvein* with his own gun? Perhaps, since paying the extortionist would alleviate the threat, *Shimon* is obligated to pay and not to kill. If *Shimon* is capable of maiming, he is obligated to wound the aggressor and may not kill him. So too, perhaps in this case, since there is a way to stop the aggression that does not entail killing, *Shimon* has no right to kill *Reuvein*.

Rav Shlomo Zalman Auerbach and *Rav Shmuel Rozovsky* both argue that *Shimon* is allowed to kill *Reuvein* and eliminate the threat. There is a concept of *ba bamachteres*. A person who attacks for money is willing to kill; he is a pursuer, and as a pursuer he may be killed. Our *Gemara* is teaching that when attacking the pursuer, we are obligated to use the non-lethal attack, if it would suffice to eliminate the threat. This does not obligate the victim to relinquish money or to give in to extortionist threats. A victim does not need to sacrifice money because an aggressor is assertively demanding it. In our case, *Reuvein* is a pursuer. *Shimon* is entitled to eliminate the threat. If he can do so by maiming *Reuvein*, he should wound him. If he is not a skilled marksman and can only eliminate the threat by killing the aggressor, he is entitled to kill. *Halachah* does not demand of a victim to give money to save the life of the pursuer (*Me'oros Daf Hayomi*).

If I know I am Innocent, Yet I Am Wrongfully Convicted, Should I Pay the Judgment?

The *Mishnah* teaches that the courts have been empowered to impose four death penalties. The language of the *Mishnah* seems to imply that the sentences are in the hands of the courts. What is the law when the court followed the correct procedures but the ruling was erroneous? Consider the following: A man was accused by two witnesses of killing his friend. The court examined the case and convicted him. He knows he is innocent and is certain that the witnesses testified falsely. If he is able to flee, should he abscond? Should he try and save his life when the court has convicted him? Perhaps there is a *mitzvah* of *arba misos beis din*. The court followed correct procedure. Is he obligated by Torah law to fulfill rulings of the court when Torah procedure was accurately followed?

Shu"t Minchas Elazar (cheilek 1 siman 18) raises this query. He also wonders about a monetary case. Imagine the following: Due to testimony of two witnesses, I was convicted and ordered to pay one hundred dollars. I know that the witnesses were deceitful and I can avoid the punishment by leaving town. Am I allowed to escape and avoid paying what I know I do not truly owe?

Pis'chei Teshuvah (Yoreh Dei'ah siman 2:5) discusses a ritual slaughterer who was removed from his position because of testimony that he had provided people with *treif* food. The *shochet* knows that he was falsely accused. Can he still slaughter for himself and his family? *Pis'chei Teshuvah* believes that the slaughterer is allowed to continue to slaughter for himself. He knows he was falsely convicted and wrongly removed.

Rav Elyashiv ruled that in the scenarios of the *Minchas Elazar*

the man should not go to *beis din* and receive the punishment. The obligation on the sinner to submit to court is based on the mandate, “And you shall eradicate the evil from your midst.” This man is not evil and knows he did not kill. He should not go and allow an unjust act of killing the innocent transpire. The same should hold true in the case of financial obligation. *Rav Zilberstein* argues that since I know that I am innocent and do not owe the money I should flee and avoid paying. If I were to pay the money, it would only increase the sin of the false witnesses. By running away I am supporting them, for now their sin has been mitigated. If a person knows he is innocent, he is allowed to flee from the court that has wrongfully convicted him (*Chashukei Chemed*).

Sanhedrin 50**Is Leaving the Faith Grounds for
Breaking an Engagement?**

Jews used to agree on an engagement with a vow. The two families would negotiate and once they came to agreement, would deposit money in escrow and vow to proceed with the wedding. If one side reneged, the money that family placed in escrow would be awarded to the other family.

A *shiduch* was finalized. The money was placed in escrow. Shortly thereafter, the father of the bride heard that the father of the groom had recently converted to Catholicism. The father of the bride sought to withdraw from the deal. He argued that he had never agreed to allow his daughter to marry into such a disgraceful family setting. Had he known that the father of the groom would betray our faith, he would never have agreed to the match. It was all a misguided agreement, *mekach ta'us*, and he wanted his money returned. A local *rav* was consulted who felt that they should proceed with the match. The father of the groom was never considered a righteous Jew; even at the time of the engagement, it was known that he frequented non-kosher restaurants and had a gentile girlfriend. Now, he had undergone baptism. The father of the bride had agreed to a match

with the family and had vowed to proceed with the wedding. The vow was not annulled just because the father of the groom had amplified his sin.

Noda Biyehudah (Mahadura Kama Yoreh Dei'ah siman 69) disagrees with the local *rav*. He allows the father of the bride to withdraw from the match and be reimbursed. His source is our *Gemara* which discusses the different penalties the court may impose on sinners. The *Gemara* teaches that stoning, according to the Sages, is the worst punishment. We know stoning is most severe for it is the penalty for the vilest sin, worshiping idols and thereby assaulting the foundation of our religion—faith in Hashem. The father of the groom had sinned before with non-kosher food and illicit acts. Those sins were mere prohibitions; they do not carry severe penalties. They were not attacks on the foundation of our religion. Now that there were crimes against the foundation of the faith, the father of the bride was correct in declaring that he never would have agreed to such a match and it was a *mekach ta'us*. The deal was undone and the money was returned to the father of the bride (*Mesivta*).

Sanhedrin 51**Is It Best to Have a Kohein
Perform a Mitzvah?**

In his book *Mattan Secharan Shel Mitzvos (chakirah 8)*, *Pri Megadim* wonders about *mitzvos*. *Kohanim* have more obligations than the rest of us. They have many more *mitzvos* to perform. Their added obligations endow them with greater holiness and sanctity. Does this sanctity spill over? If a *Kohein* makes *Kiddush* on Friday night, is it a holier *Kiddush* than the *Kiddush* made by a non-*Kohein*? Does the fact that he has some extra commands make his fulfillment of the commands more special?

Our *Gemara* may shed light on this question. Our *Gemara* mentions that there was a thought that a *Kohein* who violates Shabbos would be punished more severely than a non-*Kohein* who violates Shabbos. The reason for this is that Hashem has added many *mitzvos* to the *Kohein*. Since the *Kohein* has more *mitzvah* obligations he has greater holiness. His sins are weightier; therefore, his good deeds are also more exceptional than the good deeds performed by those who are not *Kohanim*. Perhaps this logic extends to special times. A sin, such as eating *treif*, performed on Shabbos is worse than a sin performed during the week. Shabbos is a time of added holiness;

the holiness spreads. Every *mitzvah* act performed on Shabbos is amplified because of the holiness of the day.

Ahavas Yonasan (end of *Haftarah* to *Emor*) teaches that according to *Rambam* (*Hilchos Melachim* 8:1) during war, soldiers may eat non-kosher just as the Torah permits the soldier to marry a captured bride. But soldiers who are *Kohanim* may not eat *treif* during war and may not marry a captured bride. During the great war of *Gog* and *Magog*, Jews will eat non-kosher. The *Kohanim* will not eat the *treif*. The added sanctity of the *Kohein* expresses itself in *mitzvos* beyond the priestly obligations. According to these sources, it is always best to have a *Kohein* perform a *mitzvah*. He is the holiest member of the nation; his *mitzvos* are unparalleled (*Mesivta*).

Sanhedrin 52**Is It Permissible to Call a Father Rasha When He Has a Son Who Has Left the Faith?**

A man had a son who left our faith and community. The young man became an apostate and an informer who caused Jewish property to be distributed to others. A neighbor became agitated and called him, “*Rasha* son of *rasha*, cursed is your father who raised you.” The father was deeply offended. He summoned the man who had called him a *rasha* to a *din Torah*: “I may have a son who is wicked. I have other children who are righteous. You had no right to call me a *rasha*.” Was the father correct?

In our *Gemara* there is a discussion about a daughter of a *Kohein* who is disloyal to her husband. The Torah is strict with her. She is to die by burning because she desecrated the reputation of her father. She has brought disrepute to the priests. The *baraisa* teaches, “*Rabbi Meir* taught: What is the meaning of the words in the verse ‘She desecrates her father?’ It means that if in the past he was treated as a holy one, he is now treated as secular. If he was treated with honor, now he is disgraced. They say, “Cursed is the man who gave birth to such a daughter. Cursed is the man who raised her. Cursed is the one who produced her.” *Rav Ashi* said, “Who do we follow when we call the wicked ‘*Rasha* son of *rasha*,’ even when he is a wicked person

whose father is righteous? We are following this *Tanna* (Rabbi Meir).” *Rav Moshe* Feinstein quotes our *Gemara* in regards to a question about reciting *Kaddish*. It is customary that a son recites *Kaddish* for his father, to provide the deceased soul with merit, for eleven months. The reason for this practice is that the wicked are judged in *Gehenom* for twelve months and those who are not wicked are only judged for eleven months. It is not appropriate for the son to imply that the father was wicked. He therefore only says *Kaddish* for eleven months. A man died and his son did not want to recite *Kaddish*; he therefore hired someone to recite it on his behalf. This man questioned whether he should recite it for eleven months or for twelve months.

Rav Moshe (*Igros Moshe Yoreh Dei'ah cheilek 4 siman 74*) rules that the hired man should recite *Kaddish* for twelve months. Our *Gemara* teaches that when a son is wicked, we are permitted to refer to the father as a *rasha*. It is not proper for the son to refuse to recite *Kaddish* and hire someone in his stead. Such a son is wicked; his father is therefore called *rasha*. The hired man should recite *Kaddish* for him for twelve months. In light of this source, perhaps in our case the father is not entitled to anything. His son was wicked; others can therefore blame and disgrace him.

Rav Yitzchok Zilberstein deals with this question. His conclusion is that it is incorrect to refer to the father as wicked. *Sefer Chassidim* (*siman 1103*) teaches that the lesson of our *Gemara* only applies when a father could have rebuked the child and chose not to do so. If the father is partially to blame for the sins of the son, he deserves to be disgraced. However, in our case, there was nothing the father could have done. He raised all his boys similarly. Some became righteous and one became sinful. The father should not be shamed because of the flaws of his son (*Chashukei Chemed*).

Can I Fulfill Mishlo'ach Manos with a Gentile Taxi Driver?

Rav Zilberstein discusses fulfilling the obligation of sending gifts to a friend on *Purim* with a gentile taxi driver. A man wanted to send a gift basket to his friend. It was getting late on *Purim* and he did not have the time to walk it over so he called a cab company. The cab that arrived was driven by an Arab. The man was now hesitant. Could he send the gift basket with this driver? Could he fulfill his obligation with the actions of a gentile?

Generally, we assume that a gentile cannot serve as the *shaliach*, the emissary, of a Jew. *Shu"t Harashba* (*cheilek 1 siman 357*) suggests that when the obligation is for the result and not the act, a gentile may perform the act. Our *Gemara* teaches that the court would put some criminals to death by pouring hot lead down the throat of the criminal. According to *Rashba*, the court may command a gentile to heat the lead and administer it to the criminal. The *mitzvah* is to cause the criminal's death by pouring hot lead. A gentile may perform the act. We can argue that in sending gifts on *Purim* the *mitzvah* is for the recipient to receive the gift. The act of bringing it to him can therefore be performed by a gentile. *Rav* Zilberstein adds another argument to permit sending the gift in the cab.

The cab driver will be compensated for the trip and delivery. The cab driver is therefore the employee of the man who ordered the trip. *Nessivos Hamishpat* (*Choshen Mishpat 188:8*) rules that even when a gentile cannot serve as an emissary, if he is an employee, he may represent his boss. The cab driver, as an employee, can therefore represent the man who hired him and his actions will be credited to the man who ordered the trip (*Chashukei Chemed*).

Sanhedrin 53**Can We Ascribe Reasons to Rabbinic Directives?**

Our *Gemara* explains why Rabbinic prohibitions are called *issurei mitzvah*. There is a *mitzvah* to adhere to the words of the Sages. Since there is a *mitzvah* to listen to the words of the Sages, it is considered a violation of a *mitzvah* to ignore and violate their prohibitions. How strong is this obligation? If we think the Sages are wrong, do we need to obey them?

Rashi (*Devarim* 17:11) quotes the *Sifrei*, “Even if they tell you that the right is left and the left is right, you must listen to them.” According to *Rashi*, it seems that even when you are certain they are mistaken, you must listen to the Sages. Some ask about this from a statement in the Jerusalem Talmud (*Horayos* 1:1). In the *Yerushalmi* we are taught that you do not need to adhere to a Sage who informs you that the right is left. You only need to obey him when he tells you to follow the right which is, in fact, right. This passage seems to imply that if you are confident that the sage is incorrect, you do not need to abide by his directive.

Rinas Yitzchak resolves the dispute between the sources by proposing that it depends on your level of scholarship. If you are

a great sage who has license to issue rulings and you feel that the other Sages are mistaken in their ruling, you need not follow them. You should approach them and inform them of your reasoning. They will certainly listen carefully and examine your position. If you are scholarly, but have not yet reached the level of issuing rulings, then whatever the Sages say you must follow. Even if it appears incorrect to you, you must accept their rulings.

Shu"t Minchas Yitzchok (cheilek 3 siman 4) discusses a synagogue which sought to move their *bimah* to the front of the synagogue instead of having it placed in the middle of the *shul*. They argued that the *shul* was small. Perhaps a *bimah* should be placed in the middle so that all can hear. Since their *shul* was small, they felt that they were able to hear everything even if the *bimah* was in the front. *Minchas Yitzchak* rejected their proposal. Our *Gemara* stated that there is a *mitzvah* to listen to the words of our Sages. When teaching about the synagogue in Alexandria, in tractate *Sukkah* our Sages state that the *bimah* was in the middle. The Sages did not offer a motive. We cannot ascribe a reason to their directive. We should listen to their words. They stated that the *bimah* should be in the middle of the *shul*. In our synagogues, even the small ones, the *bimah* should be placed in the middle rather than the platform in the front of the *shul* (*Daf al Hadaf, Daf Yomi Digest*).

Sanhedrin 54**Can an Owner of a Courtyard Remove a Mobile Home Because of Misbehavior That Had Happened in the Structure?**

R*euvein* owned a large courtyard. *Shimon* wanted to start a *kollel*, a study center. *Shimon* came to *Reuvein* and asked him if he could place a mobile home in the courtyard, which he would then populate with a group of scholars who would learn in the *kollel* in the mornings and afternoons. *Shimon* agreed to gift space in the courtyard for a year. After six months a terrible event occurred. At midnight, when the scholars were away, wicked people used the mobile home as a place for prostitution.

Reuvein discovered what happened and demanded that the mobile home be removed. *Shimon* protested, “I did not do anything wrong. Wicked people took advantage. I have now hired a security company. Please do not dislodge my *kollel*. The misbehavior will not continue.” *Reuvein* was unswayed, “When people will walk by, they will point to my yard and comment that, in this domain, illicit activity took place. It will cause me shame and disgrace. The structure has to go.” The dispute came before *Rav Zilberstein*. Who was right?

Rav Zilberstein derived from our *Gemara* that *Reuvein* is right

and may remove the mobile home. Our *Gemara* teaches about a man or a woman who have marital relations with an animal. The animal and the individual deserve death by stoning. The *Mishnah* asks why the animal should be stoned; the person sinned, but animals do not have freedom of choice. The *Mishnah* suggests that one reason the animal is to be stoned is shame. If the animal is permitted to live, when it walks in the market, people would point at it and say, “This is the animal that caused so-and-so to sin and be stoned.” The animal would create added shame to the criminal. The animal is killed so that the wrongdoer is punished but not shamed further. In our case, *Reuvein* is merely presenting *Shimon* with a gift. His claim that the mobile home creates shame for him is reasonable and true. He is not obligated to continue with his offering. He is allowed to insist on discontinuing the gift because the structure brings shame onto him (*Chashukei Chemed*).

Can an Embassy Enable Purification of Mamzeirim?

Our *Gemara* discusses the verse, “*Lo yihyeh kadeish mibnei Yisrael.*” This verse is a mandate to maintain Jewish sanctity. A Jewish man may not make himself morally vulgar. An ordinary Jew may not have marital relations with a gentile slave because such relations would be a violation of the mandate “*Lo yihyeh kadeish mibnei Yisrael.*” *Rishonim* to *Kiddushin* (69a) teach that this prohibition does not apply to a *mamzeir*. A *mamzeir* has deficient sanctity. His creation came about from a terrible sin committed by his parents. He is permitted to have marital relations with a *shifchah kena'anis*.

There was a young man in a *yeshivah* who seemed to be an outstanding potential groom. He was hard working, devout, and displayed wonderful character traits. People suggested matches to him, yet he refused them all. He never even agreed to date. The teachers in the *yeshivah* thought his behavior strange. They began to investigate the student's background and discovered that he was a *mamzeir*. He was not entertaining marriage, for most available women were prohibited to him. A *mamzeir* is allowed to marry a convert. He did not want to marry a convert, for then his children would be *mamzeirim*. He did not want to create others who would have to deal with the challenges he faced. The head of the *yeshivah* was consulted and he offered a solution. He proposed looking for a gentile woman who was interested in conversion to Judaism. He suggested that this young man approach the woman and explain his predicament. Hopefully, she would agree to accept money from him and become his *shifchah kena'anis*. A *mamzeir* is allowed to have relations with a *shifchah kena'anis*. Allow them to "marry," thus affirming that the children born to them will be *avadim kena'anim*. Once they grow up, the *mamzeir* father can free them and his wife. They will all become full-fledged Jews and the chain of bastards will be broken. The *mamzeirus* will have been purified. Before acting on this proposal, the rabbi brought it to *Rav Yisrael Ya'akov Fisher*, the chief judge in Jerusalem.

Rav Fisher approved of the proposal (*Shu"t Even Yisrael cheilek 9 siman 95*), yet he alluded to two problems with it. One—they have to be certain that the student is a *mamzeir*. If he is merely suspected of being a *mamzeir*, he needs to be strict with the prohibition of "*Lo yihyeh kadeish mibnei Yisrael*." If he is possibly an ordinary Jew, he is not to enter into relations with a *shifchah kena'anis*. Second—there are international treaties prohibiting *avdus*. The law of the land is law.

If you live in a country that is a signatory to an international treaty prohibiting *avdus*, one may not purchase an *eved* or *shifchah*. Any such purchase becomes null and void in the eyes of *halachah* because it is illegal according to the law of the land. *Rav* Fisher suggested a solution. He told them to enter an embassy of a country that is not a signatory to such a treaty and have the *mamzeir* perform the *kinyan* on his wife/*shifchah* there. An embassy does not belong to the host country. In the embassy, the law follows the laws of the ambassador's country. If there is a country that still allows *avdus*, the *yeshivah* student should travel to its embassy, compensate the potential convert in order to acquire her as a *shifchah*/wife, and following the birth of the children, all will be freed and *mamzeirus* will be interrupted (*Mevaseir Torani*).

*Sanhedrin 55***Are the Sins of Minors Sins?**

Our *Gemara* discusses the law obligating the death penalty to a woman and animal that engage in bestiality. There are two possible reasons why the animal is put to death. One—the animal caused a sin and therefore it may cause another to sin. Second—if the animal lives, upon seeing it people would say, “This animal caused the death of this person.” There would be additional and excess shame. The animal has to be put to death. The *Gemara* states that these reasons apply to a child as well. If an animal and a child had relations, the animal is to be put to death. The actions of a child are considered a sin. The child is not punished but his actions are sins. Therefore, the animal he had relations with is an animal that caused sin and may cause further sin. It is an animal that will lead to comments and shaming.

It is Yom Kippur and a young twelve-year-old is attempting to fast and pray. He is tired as the day is coming to an end and wants to sit down. His father tells him, “We are about to recite the confessional prayer and this prayer is to be said standing. Please push yourself and stand for the prayer.” The child is wise and tells his father, “I am a minor and am not held responsible for sin. Why do I need to stand? I would like to sit.” Who is right?

Rav Zilberstein argues that our *Gemara* proves that the father is right. The sins of children are considered sins. A child is merely exempt from punishment; his sins, however, are as weighty as the sins of an adult. He requires atonement for his actions and atonement necessitates the confessional prayer, which is to be recited standing. The child should push himself and stand during the confessional prayer of Yom Kippur (*Chashukei Chemed*).

Sanhedrin 56**Is There a Short Way to Dedicate
Terumos and Ma'asros?**

Separating *terumah* and *ma'aser* is complex. Firstly, you need to separate *terumah* followed by *ma'aser rishon*. Ten percent of the *ma'aser rishon* is to be turned into *terumas ma'aser*. *Ma'aser sheini* is to be separated. The holiness of the *ma'aser sheini* is to be transmitted onto a coin. Due to the complexity of the procedure, there is an established text that is recited. When a person does not have a *siddur* and does not remember the text, the Rabbis instruct him not to compose his own text. He is told to wait until he gains access to the standard text. *Chazon Ish* (*Demai* 15:6) suggests an alternative option. According to *Chazon Ish*, a person can say, "I am separating *terumos* and *ma'asros* according to the text written in the *siddur*." Such a statement is sufficient. The source for this novel ruling is our *Gemara*.

Our *Mishnah* teaches about the testimony regarding cursing *Hashem's* name. We do not want the exact offensive words repeated. Throughout the trial, everyone uses code. The judges and witnesses refer to the words said as "The man said *Yossi* should hit *Yossi*." If the court reaches a conclusion to convict, they still cannot put someone to death without hearing from witnesses the literal words of the sinner.

Everyone is cleared out of the room and the elder of the witnesses is asked what exactly was said. He repeats the curses he heard. All stand and tear their garments. The tears can never be repaired. The other witness merely says, "I heard the same." *Halachah* views the witness as having said all that the first witness said. A principle emerges whereby saying, "I agree with what he said" means you have said the same. Saying, "I am separating *terumah* as it is written in the book" is considered having said all that is in the book. *Chazon Ish* also suggested that a law in *Shulchan Aruch* proves that such a statement is sufficient.

Shulchan Aruch (*Even Hæzer* 38:1) teaches that conditions have to be phrased as *Moshe* phrased his condition with the sons of *Gad* and *Reuvein*. If a person wants to be brief, he may say, "My condition should be applied like the condition *Moshe* made with the sons of *Gad* and *Reuvein*." Merely citing the correct way and attesting that I want the same is adequate. The same should be held true with giving *terumah*. If I say, "I am giving *terumah* as per the text that is in my home," it is adequate. *Chazon Ish* writes that a person should not separate *terumah* often in this manner. It will cause him to forget the correct and proper manner in which to dedicate *terumah*.

Rav Moshe Sternbuch (*Teshuvos Vehanhagos* 1:667) argues that the abbreviated declaration would only work for a person who actually knows how to separate *terumah* and understands the meaning of the words in the standard text but has just forgotten the exact text. Someone who does not know the meaning of the words, may not give *terumah* in this way. If a witness says, "I too heard like him," but he does not know what the first one said, it would certainly not be considered testimony. So too, if someone does not know the meaning of what is in the *siddur*, he cannot say, "I am separating *terumah* based on what is in the *siddur* book" (*Me'oros Daf Hayomi*).

Sanhedrin 57**Why Is There No Blessing on Giving Charity?**

Generally, we are to recite a blessing before we perform a *mitzvah*. However, we do not recite a blessing before we distribute charity. Why is this so?

Our *Gemara* teaches about the obligations of gentiles. It explains that the verse about *Avraham* which states that he commanded his sons and his household to perform justice and charity means that he commanded his sons to carry out justice and his household, the women, to perform charity. *Yad Ramah* and *Ran* derive from this that gentiles are obligated to perform acts of charity. They are also obligated to distribute money to the poor. Now we understand why there is no blessing on the *mitzvah* of charity. Charity is a universal obligation. The *Rokei'ach* (*siman* 366) teaches that any obligation incumbent on all of humanity does not receive a *Birkas Hamitzvah*. The language of a blessing on a *mitzvah* thanks Hashem, “*Asher kidshanu bemitzvosav vetzivanu*”— “Who has sanctified us with His commandments and ordered us.” If the obligation is on all people, then it is not something with which He has sanctified only us. It is not something commanded only to us. A blessing is not in order.

Rambam (*Hilchos Melachim* 10:10) rules that if a gentile wishes

to donate charity, we can accept the funds from him and we should distribute the money to poor non-Jews. *Kesef Mishneh* finds this ruling difficult. In Tractate *Bava Basra* (10b) there is a story about *Ifra Hormiz*, the mother of the Persian ruler, *Shvor Malka*. *Ifra* sent four hundred dinars of charity to *Rava*. He accepted the funds and gave them to poor non-Jews. The *Gemara* states that the only reason he accepted the funds was to maintain favorable relations with the rulers. If the risk of negative ramifications from refusing would not have existed, he would have rejected the funds. Only when the merits of the nations dry out will we leave exile. Accepting charity from the nations increases their merits and prolongs exile. If he could, *Rava* would have refused *Ifra's* donation. How then can *Rambam* rule that we should accept charity from non-Jews and give it to non-Jews? The *Gemara* stated that the only reason *Rava* accepted charity from non-Jews and gave it to non-Jews was political sensitivity.

Pri Ha'adamah answers in the name of the *Shnos Chaim* (end of *Parashas Masei*). There is a difference between a government that donates and an individual who gives. We should not accept charity from the ruler. If the ruler bestows, it increases his merit and exile is lengthened. An individual gentile who donates is different. Gentiles also have an obligation to give charity. Sodom was destroyed because its residents did not support the poor and the weak. *Rambam* therefore rules to accept charity from an individual. Taking from an individual does not prolong exile. *Rava's* story is only teaching not to take charity from rulers unless it is necessary (*Chashukei Chemed*).

Sanhedrin 58**Can I Answer “Amein” to the Blessings of a Violent Man Who Is Serving as Chazzan?**

Our *Gemara* teaches about the love *Hashem* has for His nation. *Hashem* harshly rejects violence perpetrated against Jews. A man who strikes a Jew is akin to a person who strikes the face of the Almighty. Anyone who raises a hand in threat to a Jew deserves to be called a *rasha*. *Rav Huna* taught that a person who regularly hits Jews deserves to have his arm cut off. *Rav Elazar* taught that one who raises his hand against Jews deserves to die and get buried. *Rama* (*Choshen Mishpat* 420:1) records that some say there is a *cheirem kadmonim* and social isolation on any Jew who strikes fellow Jews. A violent Jew is automatically in *cheirem*. To be counted to a *minyana* he must have the ban removed. He must promise to put a halt to his violence and utilize the courts if he has grievances.

Shu”t Chasam Sofer (*Choshen Mishpat* 182) was asked about a deplorable individual who had assaulted a fellow Jew and left him bleeding and on the verge of death. Unfortunately, the community did not disassociate from the man. Those who feared Heaven were few. The man had many allies in the *shul*. The violent man was in the twelve months of mourning for the loss of his father. Each day

he would serve as *chazzan* in the *shul*. The pious letter writer asked the *Chasam Sofer* how he should behave. Should he respond to the blessings of the violent man? Perhaps the man was in a state of excommunication because of the *cheirem kadmonim*. Maybe the man did not even count as one of the ten of the *minyán*. Should the pious in the community refuse to respond with an “*Amein*” to blessings and *Kaddish* the violent man recited?

Chasam Sofer answers that the letter of the law agrees with the individual asking him the question. The violent man deserves excommunication. But his blessings are not meaningless. We may not respond to a blessing made by a Samaritan for the Samaritans are not believers in *Hashem*. They appeal to statues resting atop Mount Gerizim. This man believes in *Hashem*; his prayer is a meaningful appeal. Our earlier Sages placed social isolation on him in order to pressure him to stop his violence and return to the righteous path. They wanted him to atone and return to *Hashem*. There were few virtuous individuals in this community. Unfortunately, the destructive man was welcomed. If pious individuals would ignore his blessings it would not encourage him to return. He would be ambivalent and would not regret his actions. The pious sages therefore should respond “*Amein*” to his blessings and recital of *Kaddish*. *Chasam Sofer* concludes that if we would try and treat all those who violate *charamim kadmonim* as excommunicated, unfortunately there would be scant interaction. Our generation is not as pious as it should be (*Mesivta*).

Is Joyous Learning Less of a Mitzvah Than Learning Out of Obligation?

We should perform *mitzvos lishmah*—for the sake of Hashem. A *mitzvah* you do not want to perform yet you persevere and do it for the sake of the Almighty is very meaningful. What about learning Torah? Sometimes, you learn a fascinating topic. You may have solid questions and substantial responses. You may enjoy the experience. Does the pleasure of Torah learning detract from the *mitzvah*? Is it a greater *mitzvah* to push yourself to learn when you are not feeling pleasure and enjoyment? Is learning out of obligation a greater display of *Torah lishmah* than enjoyable *pilpul*?

In his introduction to his work *Eglei Tal*, the author of *Avnei Nezer* argues that pleasure and delight are integral to Torah learning. The finest Torah learning is learning with love, when you connect to your studies and deeply internalize the lessons. We connect to that which we enjoy. Learning what you appreciate is a higher form of Torah for its own sake than learning what you force upon yourself. Our *Gemara* is one of the sources for this lesson.

Our *Gemara* teaches about the obligations of the Noahides. It teaches about which intimate acts are prohibited to the gentiles. The verse states, “*Al kein ya'azov ish es aviv ve'es imo vedavak be'ishto vehayu levasar echad*”—“Therefore a man will leave his father and his mother and he will cleave to his wife and they will become one flesh.” *Rashi* explains that the verse is prohibiting the gentile from cleaving with prohibited relations. Cleaving is only possible through enjoyment. Intimate acts that do not create pleasure are not included in the word *vedavak*. Hashem wants us to cleave to and attach to Torah. From our *Gemara* we learn that cleaving follows pleasure.

DAF DELIGHTS

Enjoy your learning. Ask good questions and enjoy delightful responses for pleasurable learning is the greatest form of Torah study. When you relish what you learn you may attach to the Torah and unite with it as one (*Mesivta*).

Sanhedrin 59**Do Arabs Need Bris Milah?**

Our *Gemara* teaches that *Avraham* and *Yitzchok* were obligated in *bris milah*. *Bnei Yishmael* were not obligated to perform *bris milah*. *Avraham's* six sons from *Keturah* were obligated to circumcise. According to *Rashi*, only the six sons of *Keturah* had an obligation for *bris*. Their children were not obligated to receive circumcisions. *Rambam* disagrees; according to him, our *Gemara* is teaching that all descendants of *Keturah* and *Avraham* were obligated to perform *bris milah*. *Rambam* writes further (*Hilchos Melachim* 10:8) that the descendants of *Keturah* have intermarried and intermingled with the sons of *Yishmael*. An Arab today is obligated in *milah*. Perhaps he is a grandchild of *Keturah*. Circumcision is a Biblical obligation. We are unsure if the Arab before us is a descendant of *Ishmael* or *Keturah*. When in doubt about a Biblical obligation we must be strict; therefore, all Arabs are obligated to receive a *bris*.

Sha'agas Aryeh (*siman* 49) finds this ruling difficult. *Sancheiriv*, king of Assyria, had all the nations mesh with each other. Since the times of *Sancheiriv* no individual is sure of his nationality. *Gemara Berachos* (28a) teaches that a convert from Ammon, in our day, is permitted to marry into *kehal Hashem*. We are not sure that he is an

Ammonite. He may be from another nation that got intermingled with the Ammonites. If this is so, why would an Arab be obligated in circumcision? Perhaps he is not truly an Arab; he could be from any nation. The majority of individuals are not from *Keturah*. Why would we assume that he might be from *Keturah*? Shouldn't the majority determine that he is not obligated in receiving a *bris*?

Noda Biyehudah (*Shu"t Mahadurah Tinyana Even Ha'ezzer siman 42*) disagrees with the basic assumption of *Sha'agas Aryeh*. According to *Noda Biyehudah*, all gentiles are obligated in circumcision. Each person must act as if he is from *Keturah*. *Sancheiriv* mixed everyone up. Any non-Jew might be from *Keturah*. In regards to the argument about following the majority, *Noda Biyehudah* makes an astonishing claim. According to *Noda Biyehudah*, only Jews are to follow majorities. Gentiles are to take minority possibilities into consideration. *Gemara Berachos* followed the majority with the Ammonite convert. Once he converts, he is a Jew. Jews have a concept of *rov*. Once we follow *rov*, the "Ammonite" is likely not from the prohibited nationality. Gentiles do not have *rov*. According to *Noda Biyehudah*, not only Arabs, but all gentiles, must have a *bris*. *Minchas Chinuch* finds this difficult. *Rambam* only obligated Arabs in circumcision. No early source states that in our day all people should receive a *bris*.

Shu"t Sho'eil Umeishiv (*cheilek 4 siman 103*) argues that only Arabs today are obligated in *bris*. When *Sancheiriv* assimilated the nations, the descendants of *Keturah* and *Yishmael* were not lost in the masses. The seed of *Keturah* were circumcised because they were obligated in *bris* and the children of *Yishmael* used to perform circumcision because of custom. *Yishmael* himself was circumcised and his children continued the practice. The other nations never mingled with those who were circumcised. Since *Yishmael* and *Keturah* merged, there is a doubt among the Arabs that they may

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be from *Keturah* and therefore require a *bris*. Other gentiles are not obligated in *bris* for they certainly are not from the seed of *Avraham* and *Keturah* (*Me'oros Daf Hayomi*).

Sanhedrin 60**If He Began to Write the Letters of Hashem's Name in A Torah Scroll Can He Erase Them?**

The name of *Hashem* must be treated with respect and reverence. We are never allowed to erase the name of Hashem. Our *Gemara* discusses the prohibition against cursing the name of *Hashem*. *Rav Acha* taught that one is only guilty if he curses the name of four letters. Which name of *Hashem* is being referred to in our *Gemara*?

Rambam (Hilchos Avodas Kochavim 2:7) teaches that the *Gemara* is referring to every four-letter name of *Hashem*. There are two names of Hashem made up of four letters, *Havayah* and *Adnus*. According to *Rambam*, each of them is categorized as *Sheim Hameforash*. If a man were to specify curses to either of these names of *Hashem*, he would be guilty of a capital crime. *Rabbeinu Chananel* (quoted in *Tosfos Shevuos 35a*) rules that if a person wrote the letters *alef* and *dalet* from the name of *Adnus*, they can never be erased. Just as *yud* and *heh* from *Havayah* cannot be erased (*Rama Yoreh Dei'ah 276:10*), *alef* and *dalet* are two letters from *Sheim Hameforash* and can never be erased.

What is the law if a scribe is writing a Torah scroll and he mistakenly thinks he should write the name of *Hashem* of *Adnus*

and he writes *alef* and *dalet* and *nun* and then realizes his mistake; can he erase the letters? According to *Rabbeinu Chananel*, he most certainly may not erase them. *Rabbeinu Chananel* does not allow for the erasing of two letters that were written from the *Adnus* name and he would undoubtedly forbid erasing three letters from the name. *Bnei Yonah* (Siman 276:10) proposes that even those who disagree with *Rabbeinu Chananel* may have only disagreed when the scribe only wrote two letters. However, when he has written three letters out of the four-letter name, it appears to be from the name of Hashem and perhaps all would agree that the letters cannot be erased. This is a question which deserves further study (*Chashukei Chemed*).

Sanhedrin 61**Is Islam the Ancient Idolatry of Merkulis?**

Our *Gemara* discusses the idolatry called *Merkulis*. Their god was represented by three stones, two side by side and one atop them. The service of *Merkulis* entailed throwing stones at the idol of three stones. Even though throwing a stone at something is typically an affront, since this is the way of service for *Merkulis*, it is prohibited. There is no prohibition of performing other disgracing actions to the *Merkulis* idol.

Our current law distinguishes between gentiles who worship idols and other gentiles (*Shulchan Aruch Yoreh Dei'ah* 123:1). We may not drink the wine of a non-Jew who does not worship idols but we may derive benefit from it. If such a gentile touches our wine, we may not drink it but we may still derive benefit from it. A non-Jew who worships idols is treated more severely. We may not derive any benefit from wine of his or wine of ours that he touches. *Tur* (*Yoreh Dei'ah* 124) rules that Arabs are non-Jews who do not worship idols; we may not drink their wine but we may benefit from it.

Taharas Hamayim (*Ma'areches Hayud* os 27) wonders about this law. The Ishmaelite religion includes an obligation to travel to Mecca and throw stones at a large stone. This seems to be the idolatry of

Merkulis. Why are we allowed to benefit from their wine? Shouldn't the law mandate that we may not derive any benefit from their wine because they are idolaters?

Taharas Hamayim argues that the Arabs are idolaters, yet we may benefit from their wine. The reason for the prohibition against wine touched by a gentile idolater is that we fear he may offer wine as a libation to his god. Wine poured in service to an idol is Biblically prohibited. With Arabs there is no such fear for the Arabs do not pour wine to idols. In fact, the Arabs completely avoid wine as they do not drink any wine nor do they use wine in any of their rituals. Since there is no fear that they might offer wine to an idol, the wine they touched is permitted for enjoyment. Nevertheless, we may not fraternize too closely with the Arabs because of a fear that if we are too sociable, we may end up intermarrying. We may not drink the wine they touch, but benefit may be derived from it.

Rambam (Shu"t HaRambam 448) rules that Arabs are not idolaters. He writes that in the past there were three idolatries in the areas of Arabia: *Kemosh*, *Ba'al Pe'or*, and *Merkulis*. The followers of Mohamed accepted the true understanding of one God. They are monotheists but did incorporate practices from the pagan world. They gave these practices new meaning. The throwing of stones in Mecca originated with the throwing of stones at *Merkulis*. The Arabs do not intend to practice idolatry when they throw these stones. Their motivation is to stone the devil. Since they no longer have idolatrous beliefs, even though some of their practices came from pagan groups, they are not idolaters. As such, there is no room to think that we may not derive benefit from their wine (*Mesivta*).

Sanhedrin 62

Does a Man Who Unwittingly Ate a Worm in His Fruit Need to Repent?

A man had a basket of fruit; some of the fruit was known to harbor insects. He checked the fruits and took one that seemed clean and ate it. Afterwards, someone informed him, “I saw a worm in that fruit you ate.” He realized he had not checked as carefully as he could have. Does he need to repent? Does he need atonement?

Our *Gemara* teaches that, in most instances, a *mis'aseik*, one who performs an act mindlessly, is exempt from punishment. If I did not realize what I was doing, and aimlessly waved my arm on the Sabbath and thereby turned on a light, I do not need to bring a sacrifice. There are some mindlessly performed sins that require atonement. Forbidden relations and ingesting prohibited fats require atonement, even when they were done without any intent. If a person mindlessly engages in forbidden marital relations or eats forbidden fats, he is not exempt because he received pleasure. What about our case? Is there any pleasure in eating a worm? Does he require atonement?

Asvan DeOraisa (*kelal 24*) explains the reason for the rule of our *Gemara*. Most prohibitions are against deeds. *Hashem* prohibits certain actions. If the action was mindless and without any thought,

the act is not credited to me and I am therefore exempt. However, in the cases of marital relations and forbidden fats, *Hashem* prohibited the pleasure. If one derived the forbidden pleasure there is a need for atonement. *Shach* (*Yoreh Dei'ah siman 84:30*) distinguishes between a fly and a worm. He says that a fly has no enjoyable taste but there is a favorable taste to a worm. *Rav Zilberstein* suggests that perhaps one who mindlessly consumes a fly would be exempt but one who mindlessly consumes a worm must atone for he derived pleasure.

Shu"t Shivas Tziyon (siman 28) deals with this issue. He points out that the man wanted to eat fruit; he did not want to eat the worm. He finds the worm revolting. Maybe we cannot convict him for his mindless ingestion of the worm since he did not enjoy the ingestion. *Shu"t Shivas Tziyon* thinks that he is considered *mis'aseik* in relation to the worm and is fully exempt and does not even require atonement (*Chashukei Chemed*).

Sanhedrin 63**Is It Permissible to Mention the Names
of the Founders of Other Faiths?**

Our *Gemara* teaches that there is a prohibition against mentioning the name of a foreign god. The names of idolatrous faiths “may not be heard on our lips.” We are not allowed to cause those names to be uttered. I may not say to a friend, “Meet me next to the following idolatry.” We are only allowed to mention the names of idolatries that are mentioned in the *Tanach* and we are allowed to utter the names of idolatries for the sake of Torah study (*Beis Yosef, Yoreh Dei’ah siman 147*).

The Catholics claim that the founder of their faith helps God run the world. According to many authorities, this belief is idolatrous. We cannot utter the name of the founder of their faith. They refer to him with two names, “J” and “C.” *Hagahos Maimoniyos (Hilchos Avodas Kochavim 5:3)* distinguishes between a proper name and a name denoting authority and rulership. We may not mention the idolatrous name which implies authority. We are allowed to identify a name of an individual which does not connote any special power. According to this, we may say the name Jesus. They mistakenly think he is a deity. His name is not intrinsically denoting heresy. His given name

is merely the moniker by which he was called. We may not utter the second name his followers have given him. That name implies a status of redeemer and lord. We may not mention the names of false gods.

What about Islam? Is Islam idolatrous? *Rambam* (*Shu"t HaRambam siman* 448) rules that Islam is monotheistic. They adopted some pagan practices, such as throwing stones in Mecca and bowing down. But Mohamed encouraged his followers to believe in one God and to accept the exclusivity of God. The Muslims do not have idolatrous intent when they perform the rituals of idolatry. *Rambam* writes that Islam is not *avodah zarah*. Therefore Mohamed is not the source of a pagan faith and his name may be mentioned. *Ran* (*Sanhedrin* 61b) disagrees. He is of the opinion that while the Muslims are not worshipping a person when they bow, their bowing was derived from idolatrous practices, and they prostrate themselves as if they were bowing to a lord; therefore, they are considered idolaters. Perhaps, according to *Ran*, we may not mention the name of the originator of Islam for according to *Ran* the Muslims are treated like people who worship idols (*Me'oros Daf Hayomi*).

Is There a Mitzvah to Mock Idols?

Rav Nachman taught, “Mockery is forbidden, except for mockery of idolatry.” What is the meaning of this lesson; are we permitted to mock idols or are we obligated to mock idols? *Shulchan Aruch* (*Choshen Mishpat* 8:1) rules that any judge who attains his position through bribery should not be accepted. You may not stand before him in trial. It is a *mitzvah* to disrespect and mock him. *Sema* (8:5) explains that our *Gemara* is the source of the *Shulchan Aruch*’s ruling. In *Shemos* (20:19) the Torah dubs such judges, “*elohei kesef*

ve'elohei zahav”—“authorities (because) of gold and silver.” *Rav Ashi* (*Sanhedrin* 7b) interprets the verse to refer to authorities who earned their position via silver and gold. These judges are comparable to pagan idols that are also referred to as *elohei kesef ve'elohei zahav*. Just as there is a *mitzvah* to mock idols, there is a *mitzvah* to disrespect judges who are similar to idols.

Minchas Elazar finds this troubling. He feels that in our *Gemara* *Rav Nachman* stated that mockery of idols is permitted. How did *Sema* derive from it that there is an obligation to mock idols and undeserving judges?

Minchas Elazar's answer is based on a lesson from *Rema MiPanu*. *Rema MiPanu* taught that there is no realm of the merely permissible. There are only obligations and prohibitions. If an act is righteous and helps us get close to *Hashem* and fulfill our mission, it is obligated. If the act does not bring us closer to *Hashem*, it is prohibited. There are no permissible yet voluntary options. Each behavior is either a prohibited sin or a *mitzvah* obligation. In our *Gemara*, we are taught that prophets like *Hoshei'a* and *Yeshayahu* mocked idols and portrayed the idols as struggling with excrement. The prophets would only do what is a *mitzvah*. Since the prophets mocked idols, we learn that there is an obligation and *mitzvah* to disdain and mock idols and false gods.

Orchos Tzadikim extends the obligatory mockery. He teaches that you should mock any transgressing individual. No one appreciates being ridiculed. When you laugh at sins and sinners, it will discourage sinful behavior. People will not want to be the victims of derisive laughter. The mocking encourages righteous behavior. *Minchas Elazar* argues that mocking sinful rabbis is not a sin of negative speech. It is a positive act for it inspires people to avoid sin. According to *Minchas Elazar*, there is a *mitzvah* to mock idols, sinners, and sins (*Mesivta*).

Sanhedrin 64**Is It Correct to Make an Effigy of Haman?**

Our *Gemara* speaks of the *Molech* ritual. A father who hands his son, daughter, or grandchild to priests of *Molech*, who then pass the descendant through the fires, deserves death by stoning. The *Gemara* tries to determine the exact role of fires in the *Molech* ritual. *Abaye* taught that the *Molech* ritual is a row of cinder blocks on which the child walks with fires alongside his right and left. *Rava* taught that the ritual is akin to jumping over fire on *Purim*. What is the significance of this ritual?

Aruch (Erech Shevar) explains that there is a widespread custom for children to create effigies of *Haman* before *Purim*. The effigies are then hung on the roofs for four or five days. On *Purim* a great bonfire is made and the effigy is thrown into the flames. A ring is suspended over the fires which the children use to jump over the flames. The *Molech* ritual is jumping over flames in ditches and is similar to this *Purim* practice.

This custom echoes the way in which we listen to the reading of the *Megillah*. *Rama (Orach Chaim 690:17)* teaches that there is a custom whereby children draw a shape of *Haman* on wood or stone. Occasionally the children merely write the name of *Haman* on the

pieces of wood and stone. The children then knock the pieces against each other to erase the shape or letters they inscribed on the wood or stone. This is a fulfillment of the verses (*Devarim* 25:19), “Erase every vestige of *Amalek*,” and (*Mishlei* 10:7), “The name of the wicked shall rot.” From this custom another custom developed of knocking one item against another and creating noise each time the name of *Haman* is read aloud in the *Megillah*. *Rama* writes that we should not break the custom of noise making during *Megillah* reading. No custom should be annulled or mocked. Jewish customs are based on solid foundations.

Perach Shoshan (page 356) records a custom of the Jews of Djerba. On the Fast of Esther, the youth and their rabbi would go out to the fields and carry a sack and sickles. They would cut dry weeds and place them in the sack. On the night of Purim, they would use the weeds to create a large bonfire. They would burn an effigy of *Haman* in the fire. When the fire would catch and the flames rise, they would beat with wooden planks and declare, “*Haman* is burning!” From our *Gemara* and these sources we learn that there is an ancient and righteous custom of making *Haman* effigies and then burning them on *Purim* (*Mesivta*).

A Man Killed Another Jew, Was Convicted by the Court, and Became Insane: Will the Court Still Kill Him?

Eimek Halachah (*cheilek* 1 *siman* 32) struggles to define the meaning of death for the murderer. If a man was lucid and sane when he killed in the presence of witnesses but he later became deranged, would the

court put him to death? Perhaps death by the court is only in order to create atonement for the sinner. Perhaps an insane individual is not able to garner atonement; thereupon the court should not put him to death.

Our *Gemara* teaches that there is a death penalty for the father who hands over his son to priests of *Molech* who then pass him through the flames. The *Gemara* teaches that if a father has many children and he hands all of them to *Molech*, he does not receive death. *Maharsha* explains that death by the court is an atonement. *Hashem* obligated death to serve as a *kapparah* for certain severe sins. The sin of giving all of one's children to *Molech* is so severe that death cannot create atonement for it. In light of this *Maharsha* on our *Gemara*, perhaps since an insane individual cannot receive atonement he is also not put to death.

Tzofnas Pa'anei'ach resolves this dilemma by distinguishing between sins. Sins such as adultery generate death to create atonement. If a man committed adultery and following his conviction went mad, he should not be put to death since he is not a candidate for atonement. However, murder is different. *Hashem* wants the murderer to die because of the mandate, "*Uviarta hara mikirbecha*"—"And you shall eradicate the evil from your midst." This mandate is not merely a means for atonement. According to *Tzofnas Pa'anei'ach*, in our case the murderer who is currently insane is still to be killed. Killers need to be killed, even when killing them will not generate atonement. There is a mandate to eradicate evil from our midst. The being who took the life of another needs to die, for it is evil, and evil must be abolished (*Chashukei Chemed*).

Sanhedrin 65

The Custom Not to Draw Water from a Well on Friday Evening Between Sunset and the Emergence of Stars

Turnus Rufus, the Roman governor of Israel, asked *Rabbi Akiva* about *Shabbos*, “Why should the seventh day be honored? Why is it different than any other day?” *Rabbi Akiva* answered, “Why should you be honored? Why are you different than any other human being?” *Turnus Rufus* answered, “I deserve honor for the Emperor has chosen to honor me.” *Rabbi Akiva* then told him, “The King of all kings has chosen to honor the Sabbath day; this is why it is different than other days and it deserves reverence.” *Turnus Rufus* then asked, “How do you know *Hashem* wants you to rest on *Shabbos*? Maybe another day is the time to rest?” *Rabbi Akiva* answered, “The River Sambatyon rests on the *Sabbath*, the *Ba’al Ov* does not succeed in getting souls to speak on the seventh day, and your father’s grave has smoke rising from it throughout the week, but on the Sabbath there is no smoke emerging from it.” *Rabbi Akiva* was proving to *Turnus Rufus* that the seventh day is distinct via physical phenomena. His final argument was from *Gehenom*. The father of *Turnus Rufus* was in the netherworld. Throughout the week he was punished with

burning but on *Shabbos* his soul was spared suffering for on that day the Almighty spares the wicked who are in *Gehenom*. *Turnus Rufus* was made aware of this fact from the smoke atop his father's grave. Smoke was evident there all week yet no smoke rose on *Shabbos*. *Turnus Rufus's* father did not keep *Shabbos* in his lifetime. Does the lesson in our *Gemara* prove that all the wicked receive a respite on *Shabbos*, even those who did not observe *Shabbos*?

Hagahos Maharsham quotes the *Midrash Hane'elam* who teaches that even a person who did not keep *Shabbos* in his lifetime receives a lull from suffering in *Gehenom* on *Shabbos*. *Hagahos Maharsham* does not feel that our *Gemara* is necessarily in accordance with the view of the *Midrash Hane'elam*. Our *Gemara* discusses the father of *Turnus Rufus*, who was not Jewish. He was not obligated to observe *Shabbos* in his lifetime and he received a reprieve on *Shabbos*. Perhaps Jews who are obligated to keep *Shabbos* and violate it during their lives do not get a respite in the next world on *Shabbos*.

Afikei Yam (*cheilek 2 Peninei Yam os 14*) suggests that we should all regularly accept *Shabbos* early and leave it late. If we practice adding onto *Shabbos* when it enters and leaves, in the next world we will merit to receive a longer break from *Gehenom* at the end of each week. *Ramban* teaches that all the travails of *Iyov* do not equal one hour of *Gehenom*. It is truly worthwhile to save oneself from more suffering in that realm.

Rabbeinu Bechaye (*Kad Hakemach Erech Shabbos*) writes that all Jews have the custom not to rush the prayers at the end of *Shabbos*. We wait until the night is very dark and then we recite the final prayers slowly in order to keep the wicked out of *Gehenom* a bit longer. When the souls leave *Gehenom* on Friday evening, they are thirsty. They go to the wells to drink and bathe. We have a custom not to draw water on Friday evening from sunset until the emergence of stars for it is

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like stealing from the water of the souls of the wicked. This custom strengthens our faith that the souls of the wicked are released at that time. Strong belief in the reality of *Gehenom* strengthens observance of *mitzvos* (*Mesivta*).

Sanhedrin 66**Can a Family Adopt a Custom Because of Bad Experiences?**

Our *Gemara* teaches about the prohibition against superstition. A Jew is not allowed to engage in *nichush*. If the taxman is out and collecting taxes, I cannot tell him, “Please do not start your tax collection with me because that will bring bad luck to my day.” If someone lent money to me and is coming to collect the debt I cannot say, “Please do not call on me on Saturday night for if my week begins with paying a debt it will be a bad week.” As Jews we should trust *Hashem*. We should not fear bad signs and omens. *Shu”t Sha’ar Shlomoh (siman 47)* deals with families who will not perform certain jobs because patriarchs in the family died while executing those tasks and the family then accepted to never engage in those professions again. There are families that will not plant trees. There are families that will not blow out candles on *Motzai Shabbos*. These customs all emerged because of negative experiences members of the family had when they planted trees or extinguished flames. The families eventually accepted upon themselves not to perform these actions again. Is this permitted? Why is this not forbidden based on the prohibition against *nichush*?

He answers based on the lesson of the *Talmud Yerushalmi* (*Shabbos* 6:9): “*Reb Leizer* son of *Ya’akov* taught, ‘*Lo te’onenu velo tenachashu*’—‘Do not engage in omens or superstition.’ However, you may consider a *siman*. If something happens three times you are allowed to fear it. Our father *Ya’akov* feared sending Benjamin down to Egypt. He had lost three relatives because of trips. *Rachel* died while journeying, *Yosef* went missing during a trip and *Shimon* disappeared while he was away in Egypt. Since he had suffered misfortune three times in regard to travel, he was worried about sending Benjamin on a trip.” From the *Yerushalmi* we learn that if misfortune strikes three times you are allowed to fear those practices and avoid them. It is not considered superstition to avoid matters that repeatedly ended in tragedy. We find this in the law of a woman whose husbands die. *Halachah* states that if a woman marries and her husband dies, remarries and the second husband dies, and then remarries and the third husband dies, she may not marry again. We fear that the next husband may also die while married to her. This is not considered superstition. Once something happens to a person three times it is permissible to worry that it may happen a fourth time. *Shu”t Sha’ar Shlomoh* suggests that families who will not plant, accept certain jobs, or extinguish candles on Saturday nights because of what happened to patriarchs while performing these acts must have had at least three negative experiences. Once misfortune was established in their families with these acts, they were allowed to worry that the acts may bring further misfortune and they were permitted to institute customs to avoid these actions.

Some have the practice not to eat the tail of a fish on *Rosh Hashanah*. Others will not purchase brooms in the month of *Nissan*. They believe that *Nissan* is a time of redemption. It is not a time to purchase an item dedicated to dust. *Shu”t Sha’ar Shlomoh* teaches that

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all of these practices are permitted. They are not superstitions. They are acts performed to try and serve as a favorable omen. They are symbolic acts. They are prayers that we not be a tail over the year, or that our time of redemption not be sullied. *Nichush* does not prohibit symbolic prayer. *Nichush* prohibits a claim that a day became unlucky and therefore we are to avoid ordinary things (*Mesivta*).

Sanhedrin 67

Why Should A Teacher of Faith Never Despair?

Our *Gemara* discusses the sin of the inciter. A man who incites others to worship idols is to be stoned to death. Normally, witnesses warn the sinner. Only after the sinner hears the warning, accepts it, and proceeds with his sin, is the sinner liable for punishment by the court. The inciter is different. The Torah commands us to have no compassion for the inciter. He may be killed without a warning. We would even hide witnesses behind a fence and have them secretly hear the man inform someone else of the benefits of idolatry and encourage him to worship it. We may even entrap the inciter into repeating his words of incitement. Our *Gemara* teaches that the targets of the incitement can haul the inciter into court, testify against him as to how he sought to convince them to worship idols, and help put him to death.

Rambam (Hilchos Avodah Zarah 5:1) writes: “One who incites a Jew, male or female, to worship idols is stoned to death even if the target and the inciter did not actually worship idols. The instruction to a Jew that he should worship idols is grounds for death. This applies to a prophet who incites and a simple person who incites.

This applies to one who seeks to convince an individual and one who tries to convince a group.” *Kesef Mishneh* teaches that the *Rambam* derived his law from our *Gemara*. Our *Gemara* taught that the targets of incitement may testify against the inciter and get him killed. If prohibited incitement entails actual worship of idols, the targets of incitement would not be kosher witnesses. A Jew who worships idols cannot credibly convey testimony. From our law it emerges that even though the incitement never resulted in action, mere encouragement of idolatry is an egregious sin that justifies death. People who were incited and did not worship the idols, may serve as witnesses to convict the inciter.

Divrei David (authored by Rav David Kronglass of Ner Yisrael, Baltimore) extracts an encouraging lesson from this law. The power of the good is always stronger than the power of the forces of misfortune and sin. *Hashem* punishes a sin for four generations when it is consistently repeated within a family, yet He rewards a *mitzvah* for two thousand generations. Our *Mishnah* teaches that encouraging idolatry, in and of itself, is an abhorrent sin. Therefore, encouraging *mitzvah* observance, in and of itself, is a most powerful *mitzvah*. If you merit to try and interact with our Jewish brethren who are not yet believers in *Hashem* and do not yet fulfill His commands, you may perform a great *mitzvah* by trying to encourage them to believe in *Hashem* and to worship Him. Even if your students do not actually serve *Hashem*, you will receive a great merit. Trying to encourage people to believe and observe is a great *mitzvah*. It is the reverse of incitement. If incitement to betray *Hashem* is a terrible sin, in and of itself, encouraging belief and observance is a most powerful merit, in and of itself (*Daf al Hadaf*).

Can a Jew Perform Magic Tricks?

A Jew who recently became observant faced a problem. Before he started keeping the laws of our holy Torah, he was an entertainer who would perform magic tricks. Now he had become observant and heard that Jews may not perform magic tricks. The question came to *Rav* Zilberstein. Was this man allowed to continue and entertain Jews with magic tricks?

Abaye taught in our *Gemara* that the laws of magic are comparable to the laws of *Shabbos*. Some violations of *Shabbos* carry a death penalty. Other acts are merely prohibited but there is no penalty for their performance, *patur aval asur*. Finally, some acts are permitted fully. If he performs an act with black magic forces, it is a capital crime. One who “grabs the eyes” violates a prohibition but there is no penalty. One who studies Torah secrets and, through the study, creates an item, has not performed any sin whatsoever.

Abaye prohibits “grabbing the eyes.” What is the meaning of “grabbing the eyes”?

Rambam (*Sefer Hamitzvos mitzvas lo ta'aseh* 32) defines this term and teaches that there is a Biblical prohibition against all sorts of magic tricks that people perform through quick movements of their hands such as throwing a ring to the sky and then removing it out of the mouth of a friend. All magic tricks are prohibited and are also forms of deceiving individuals, *geneivas da'as*.

Shulchan Aruch (*Yoreh Dei'ah siman* 179:15) writes that sleight of hand which fools the eyes is prohibited. *Shach* (entry 17) writes in the name of the *Bach* that even “grabbing the eyes” without using black magic, but using quickness of motion, is prohibited. *Chochmas Adam* (*kelal* 75) complains bitterly about Jewish entertainers who

perform magic tricks at weddings. He rules that they are violating a Biblical prohibition and that those who ask them to perform the tricks violate “Do not place a stumbling block before the blind.”

Shu”t Haradbaz is lenient and suggests that the definition of “grabbing the eyes” is to invoke the demons and cause them to fool a person. *Rambam* prohibits sleight of hand because *Rambam* did not believe that there were demons or black magic. In truth, there is a realm of impure forces. The Biblical prohibition against “grabbing the eyes” is a prohibition against manipulating demons to create a false illusion. It is a capital crime to manipulate the dark forces to actually change reality. Quickness of hands and fooling people is not prohibited as magic. Sleight of hand can only be prohibited if an individual is fooling people; then the acts would be *geneivas da’as*.

Rav Elyashiv rules that if the entertainer discloses how he performs the trick, it is not “grabbing the eyes.” They are not being fooled. They understand how the magician performed the trick. It is fully permitted even according to *Rambam*. *Rav Moshe Feinstein* (*Igros Moshe Yoreh Dei’ah cheilek 4 siman 13*) also rules that sleight of hand is acceptable. The Torah never prohibits speed. If the entertainer announces that nothing other-worldly is occurring and that, through natural means, he is accomplishing his feats, it is probably not prohibited. Perhaps the *Shach* only prohibits sleight of hand that is presented as occult magic. *Rav Moshe* then concludes that this is theoretical. He believes magic tricks are permissible. However, he would not encourage anyone to rely on his feelings. It does seem that *Shach* prohibits magic tricks.

In light of the words of *Rav Elyashiv* and *Rav Feinstein*, there are ways for our recently observant Jew to continue to perform and entertain with tricks, but it would be more advantageous to find other ways in which to entertain or earn a livelihood (*Chashukei Chemed*).

Sanhedrin 68**Is Cosmetic Surgery Permitted?**

Our *Gemara* relates a story about *Rabbi Eliezer ben Hurkanus*. He had been excommunicated by the Sages. His students did not come to learn from him. He took ill and neared death. The students came to visit their ailing teacher. He rebuked them for not having come until then. He informed them that he had much Torah to teach and they had lost out by not coming to learn it. *Rabbi Eliezer ben Hurkanus* passed away. *Rabbi Akiva* was despondent during the funeral. He hit himself in frustration and sadness until his blood flowed to the ground. He called out in pain, “I have a lot of coins to change and there is no moneychanger anymore.” He meant that he had many *halachic* questions and doubts, but now he did not have a Torah master available to resolve them. *Tosfos* (s.v. *hayah makeh bivsar*) finds this story problematic. There is a Torah prohibition against excessive mourning. *Hashem* commanded us not to scratch our flesh and cause ourselves to bleed in mourning for the loss of a soul. How then did *Rabbi Akiva* hit himself and make himself bleed at the funeral of *Rabbi Eliezer*?

Tosfos answer that the Torah prohibits scratching oneself in mourning for the loss of a person. *Rabbi Akiva* was not hitting

himself because of the loss of a person, rather he was upset about loss of knowledge. Without *Rabbi Eliezer* he would not learn as much Torah. He was bemoaning the tragedy of not having as much Torah available. A student may hurt himself to express his pain in being denied Torah knowledge.

Rav Moshe Feinstein (Igros Moshe Choshen Mishpat cheilek 2 siman 66) deals with the question of cosmetic surgery. A Jew may not wound another person nor may one inflict a wound onto oneself. Is a Jew allowed to hire a doctor which will cause wounding in order to merely look better? Is cosmetic surgery allowed? Perhaps only surgery for a medical necessity should be permissible.

Aruch Laneir (Yevamos 13b) asks on our *Gemara*, how could *Rabbi Akiva* wound himself? *Rabbi Akiva* is of the opinion that a person is not allowed to injure himself. *Rav Moshe* answers that our *Tosfos* are teaching that the prohibition of wounding is limited. *Chavalah* prohibits wounding in a fight. I may not fight with someone else and cause him to bleed. I may not fight with myself and make myself bleed but I am allowed to make myself bleed for a constructive purpose. *Rabbi Akiva* was allowed to make himself bleed to feel better about the loss of Torah learning opportunities. So too, *Rav Moshe* allows a person to undergo cosmetic surgery. The surgery fills a need that is important to the individual. He wants to look better. From our *Gemara* and *Tosfos* we learn that there is no prohibition when someone makes himself bleed for a constructive purpose (*Daf al Hadaf*).

If His Birthday Is Between Pesach and Shavuos, Can He Continue to Count the Omer with a Blessing When He Becomes Bar Mitzvah?

We have a *mitzvah* to count each night of seven weeks from *Pesach* to *Shavuos*. This *mitzvah* is called *Sefiras HaOmer*. The *Torah* mandates counting seven complete weeks, *Temimos*. What is the law when a boy becomes an adult during the weeks of *Sefirah*? Can he continue to count with a blessing? His counting before he became *bar mitzvah* was presumably only a Rabbinic obligation. Now that he is *bar mitzvah*, he has a Biblical obligation. Rabbinic acts cannot fulfill Biblical obligations. Perhaps he should not be allowed to make a blessing on his count for he cannot complete seven weeks of Biblical counting.

Shu"t Eretz Tzvi (cheilek 2 siman 36) proves from our *Gemara* that the young man may continue to count with a blessing once he becomes *bar mitzvah*; he had been counting from the beginning of the count as a minor.

Our *Gemara* proposes that a minor, who is not yet thirteen, should have the possibility of becoming a rebellious teen. Normally, minors are not punished for sin. The *ben sorer umoreh* is not killed because of the severity of his sin. The *ben sorer umoreh* is killed because of what he will become. If as a thirteen-year-old he steals and eats meat and drinks wine, he may become addicted to these pleasures and when he does not have the funds to maintain his habit, he will become an armed robber and murder and pillage. Better he dies innocent than have to die guilty. The *Gemara* proposes that even a child exhibiting this behavior should receive this treatment. Only because of a lesson from the language of a verse is the minor exempted from the possibility

of becoming a *ben sorer umoreh*. This is striking. *Gemara Sanhedrin* (63a) teaches that there is a need for a prohibition to punish the *ben sorer umoreh*. The verse warning the *ben sorer umoreh* is “*Lo tochlu al hadam.*” Minors do not have obligations of prohibitions and positive *mitzvos*. Why was there a thought that a minor could become a *ben sorer umoreh*? Apparently, since the punishment is because of what he will become, the prohibition applies to him even as a minor. Our *Gemara* is teaching that prohibitions based on what will be apply to a minor. If prohibitions based on what will be apply to a minor so do positive commands. A boy whose birthday is during the *Sefirah* knows at *Pesach* that he will shortly become fully obligated in the Biblical *mitzvah* of counting *Omer*. Since the minor will become an adult during the period of the *Omer*, the obligation is on him while he is still a minor. When he counted as a minor, he was fulfilling a Biblical obligation. Now that he became *bar mitzvah*, he can continue his count. His count until now was Biblical. He may proceed with it (*Daf al Hadaf*; see also *Sanhedrin* 55, “Are the Sins of Minors Sins?”).

Sanhedrin 69**The Need for the Chanukah Miracle**

Chanukah celebrates the miracle of the pure oil burning miraculously for eight days and nights. When the Greeks defiled our Temple, they made almost all the oil in the Temple compound impure. The Maccabees defeated the Greeks and entered the Temple looking to light the *Menorah* but all the oil was impure. They found a single jar, with one night's worth of oil, still secured with the seal of the *Kohein Gadol*. It miraculously burned for eight days and eight nights and thus gave time for the warriors to become pure and prepare new oil. Why was there a need for this miracle? *Halachah* allows for the use of impure items in the Temple when most of the nation is impure, *tumah hutrah betzibur*. The Hasmoneans could have used the impure oils.

A great principle emerges: *Tumah hutrah betzibur* once the *Mikdash* was established, but we cannot begin a holy process with any degree of imperfection and impurity. The foundation of a building must be perfect. A crack in the foundation results in massive complications in the walls and roof. The Greeks had stopped all service in the Temple. The Hasmoneans were starting the service anew. There was a need for a solid foundation. They had to use pure oil. A source for this concept is our *Gemara*.

Our *Gemara* teaches about the rebellious teen. It teaches that he can only become a *ben sorer umoreh* in the first three months of adulthood. From when he has two pubic hairs and becomes an adult, until more hairs grow and they surround his organ, or until three months pass, he can become a *ben sorer umoreh*. A fifteen-year-old who steals from his parents, buys meat and expensive wine cheaply, and consumes them ravenously in the company of ten low-lives is not a *ben sorer umoreh*. Why is the period when he can become a *ben sorer umoreh* so limited? Why can't an older teen be treated similarly? *Sheim MiShmuel (Parashas Ki Teitzei)* explains that *ben sorer umoreh* is a lesson about the importance of foundations. The three months following *bar mitzvah* are the foundation for life. They set the tone for all that will follow. The foundation must be strong. On a strong foundation, a healthy life can be built and developed. If the foundation is solid, there is no room to fear anything else.

In the Torah, *Hashem* teaches that the firstborn is to inherit a double portion and then we are taught about the *ben sorer umoreh*. What is the connection between the added privileges of the firstborn and the rebellious teen? *Sheim MiShmuel* provides an answer. The Torah first informs us about the added privileges of the firstborn to teach about the importance of the foundation. The firstborn establishes the foundation for his family. He sets the tone for the family. His siblings will follow his example. Since he is the foundation, he receives an added portion. Appreciating the importance of starting off in the right way explains why the misdeeds of the *ben sorer umoreh* are treated so harshly. His misdeeds are cracks in the foundation of the edifice of his life. They will result in disaster. Always try to start your life and day in the best possible way. The beginning sets the tone for all that will follow (*Daf al Hadaf*).

Sanhedrin 70**Is a Meal on Rosh Chodesh Considered
Se'udas Mitzvah?**

Our *Gemara* discusses the rebellious son, *ben sorer umoreh*. It teaches that his rebellion expresses itself in stealing and using the funds to eat massive quantities of meat and drink large amounts of good wine. But if the food he ate was *mitzvah* food, he does not become a *ben sorer umoreh*. If he ate the meat at a meal to comfort the mourner, he would not become a *ben sorer umoreh*. If he ate the meat of a sacrifice, he would not become a *ben sorer umoreh*. If he ate the meat at a meal due to *ibbur chodesh*, adding a day to the month, he would not become a *ben sorer umoreh*. Our *Gemara* seems to indicate that there was a practice to make a meal, with the status of *seudas mitzvah*, in honor of adding a day to the month and having a complete thirty-day month. Perhaps, this is the source for the ruling of *Shulchan Aruch*.

Shulchan Aruch (*Orach Chaim siman 419*) rules that it is a *mitzvah* to add to the meal on *Rosh Chodesh*. *Taz* explains this law with the *Pesikta*. Normally, our livelihood is set on *Rosh Hashanah*. We cannot spend wildly; we have to live within our means. If we spend more than usual on one meal, we may end up at the end of

the year without adequate funds for our needs. There are exceptions to this rule. One can spend wildly on Torah education. *Hashem* promises He will repay whatever you spent to educate your children with Torah. You can also spend generously for *Shabbos* and *Yom Tov* meals. *Hashem* will cover the added expense. *Pesikta* applies this rule to *Rosh Chodesh*. One may add and spend to have a more lavish meal than usual on *Rosh Chodesh*. *Rosh Chodesh* is comparable to a holiday. You can spend more than usual on it and be confident that *Hashem* will reimburse you for your costs. You are honoring Him by preparing a more extravagant meal on *Rosh Chodesh*.

Mishnah Berurah (2) rules that it is sufficient to increase the meal you have during the day of *Rosh Chodesh* and you are not required to further increase the night meal. He teaches that pious individuals eat one item of food more than they usually do on *Rosh Chodesh* to bestow honor onto the day.

Kaf HaChaim (4) rules that a poor person should, at least, purchase a special fruit for *Rosh Chodesh*. He also rules that women are equally obligated in *Se'udas Rosh Chodesh*. In addition, he rules that the meal should be eaten honorably, on a table with a nice tablecloth, similar to a *Shabbos se'udah*. From these sources it seems that a *Rosh Chodesh* meal would be considered *Se'udas Mitzvah*. If a person made a vow to only eat at *mitzvah* meals, he would be allowed to partake in a meal on *Rosh Chodesh* in honor of the day (*Kollel Iyun Hadaf*).

Sanhedrin 71**Why Do We Say “Mimkomo Hu Yifen”
During Kedushah of Mussaf?**

Our *daf* teaches about the rebellious teen. It teaches that if one, or both, of his parents forgive him, he is not punished for his misdeeds. *Chasam Sofer* teaches that this is the reason for the text of the *Kedushah* prayers that we recite on *Shabbos* and *Yom Tov*.

There is a difference between the text of *Kedushah* recited during *Shacharis* and the text recited during *Mussaf*. In the *Kedushah* prayers during *Shacharis* of *Shabbos* we say, “*Mimkomcha Malkeinu tofia vetimloch aleinu*”—“From Your place, our King, may You appear and rule over us.” In the *Mussaf Kedushah* prayers we say, “*Mimkomo Hu yifen berachamim*”—“From His place He will turn in mercy.” Why is there a change of text from the morning to the afternoon?

Chasam Sofer explains based on a lesson from *Tosfos*.

Tosfos (*Avodah Zarah* 3b s.v. *sheniyos*) teach that Hashem sits on His throne of judgment in the first few hours of the morning, and after the first three hours, Hashem appears as an aged sage busily learning Torah.

Chasam Sofer explains that in the morning, during the *Shacharis* prayers, Hashem is sitting on His throne of judgment and He is

judging. When He is the judge, we are the slaves. We have sinned against Him. Our *Gemara* teaches that a parent may forgive a rebellious child. A master may therefore also forgive a rebellious slave. We appeal to *Hashem* to forgive us, either as a father or as a master. We therefore ask Him directly to appear to us in mercy and forgive us. After the first three hours of the day, *Hashem* appears as a Torah scholar. *Mussaf* is recited after the first three hours of the morning. When *Mussaf* is recited, *Hashem* appears as a sage. If He is the master of Torah, He is the *Sanhedrin*. We who sin are then likened to a *zakein mamrei*, a rebel sage who refuses to accept the rulings of the high court. The high court is forbidden to forgive its honor. They cannot allow the sage to escape punishment for his disobedience. *Gemara Sanhedrin* (14b) teaches though that *zakein mamrei* is only applied when the sage rejects the ruling of the *Sanhedrin* while they are sitting in their room in the Temple. If he rejects their words while they are in a village, he does not have the status of *zakein mamrei*. Since at the time of *Mussaf* the Almighty is the ultimate Torah sage, He cannot forgive those who are rebellious sages, if He were to appear to us directly from His place. We therefore ask Him, “*Mimkomo Hu yifen berachamim*”—“From His place He will turn in mercy.” We are requesting that He turn away and move away from His place. Once He is not there, we will not be punished for our misdeeds. On *Yom Kippur*, the Almighty appears all day as a loving grandfatherly Torah sage. This is why during all the prayers of *Yom Kippur* we say “*Mimkomo Hu yifen berachamim*.”

Rav Zilberstein rules that if a person forgot, and during the *Mussaf Kedushah* said, “*Mimkomcha Malkeinu tofia*” instead of, “*Mimkomo Hu yifen berachamim*,” so long as the *chazzan* has not yet uttered the next line, he should go back and correct his text. According to *Chasam Sofer*, *Mussaf* is a time for “*Mimkomo Hu yifen*.” We are

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appealing that He move. During *Mussaf*, if He stays in His place, He may not be able to forgive us. It is not the time to say, “*Mimkomcha Malkeinu tofia*” (*Chashukei Chemed*).

*Sanhedrin 72***Must We Violate Shabbos to Save the Life of a Person Who Put Himself in Danger?**

Judah is a bullfighter who is not Torah observant and wrestles bulls on *Shabbos*. Many pay to come and watch him perform. He hires Jacob who is a sharpshooter. Jacob is also a Jew who does not yet observe Torah law. Jacob is supposed to stand guard with a sniper rifle. If he sees that the bull is endangering Judah's life, he is supposed to shoot the bull dead. The fight begins and Jacob thinks about repentance and decides he wants to keep *Shabbos*. Is Jacob allowed to leave the arena? Perhaps Jacob needs to stay to save Judah. This scenario presents several questions. Do I need to violate *Shabbos* to save the life of a person who puts himself in danger? On the other hand, is Judah considered a person who put himself in danger? Since Judah arranged for a sharpshooter to protect him, perhaps he is not considered a person who endangers himself.

There is a dispute among the authorities about a man who attempts suicide. *Minchas Chinuch* and *Rav Perlow* suggest that that there is no obligation to save a man who is trying to harm himself. He is at fault. You do not need to try and stop him from himself. *Maharil Diskin* (*Kuntres Acharon siman 5 entry 34*) disagrees. *Maharil*

Diskin rules that we must try and save a person who is trying to harm himself and we are even obligated to violate *Shabbos* to stop a man from committing suicide. *Rav Elyashiv* also rules this way. One of the sources of the obligation to save a life is the mandate to return lost objects. If I must return my friend's property and save it from loss, I certainly must look out for the life and health of my friend and save his life from harm. If a man throws away his own property, I do not need to save it for him. If a man throws away his life, there would be no obligation from the verse of "*Vehashevosa lo*" to save him. But there is a second verse which obligates desecrating *Shabbos* to save a life. There is a *mitzvah* of "*Vechai bahem*." "*Vechai bahem*" is a *mitzvah* to live from *mitzvos*. We may desecrate *Shabbos* and other commands to save human life so that we live through the *mitzvos*. This *mitzvah* can apply to someone who is not yet leading a full life. *Ramban* (*Toras Ha'adam Sha'ar Hamichush Inyan Hasakanah*, quoted in *Biur Halachah* 330 s.v. *o safeik*) rules that a woman may eat on *Yom Kippur* to save the life of a fetus that is less than forty days old. There is probably no obligation of "Do not stand by when your brother's blood is shed" regarding a fetus less than forty days old. Yet an early fetus has life. "*Vechai bahem*" suspends laws in order to save all lives. Therefore, we should desecrate *Shabbos* to save the life of even one who attempts suicide on *Shabbos*, for the desecration is a fulfillment of the mandate of "*Vechai bahem*."

Our *Gemara* discusses the person who tunnels into the home of another. Such a burglar is usually considered a pursuer. He realizes that people fight for their money and intends to kill if he will face resistance. The homeowner is allowed to kill the intruder, for a victim may kill those pursuing him and seeking to kill him. If the intruder is the father of the homeowner, the homeowner is forbidden to kill him. The father certainly does not want to kill his son and therefore the

father is not considered a pursuer. Our *Gemara* teaches from a verse that even on *Shabbos* the son cannot kill the intruding father. The *Gemara* finds this difficult. If a son cannot kill the intruding father during the week, isn't it obvious that he cannot kill him on *Shabbos*? The *Gemara* answers that the verse is teaching that the son must save the life of the father if the tunnel falls on him on *Shabbos*. *Kli Chemdah* derives from this *Gemara* that we may desecrate *Shabbos* to save the life of a person who puts himself into an unfavorable predicament. The father dug the tunnel on *Shabbos*, desecrated the *Shabbos*, and put himself in danger. Nevertheless, the *Gemara* teaches that we are to save him; the son should desecrate *Shabbos* to save him. We must save the life of all on *Shabbos*, even the person who is responsible for the danger and *Shabbos* desecration.

In our scenario, *Rav* Zilberstein rules that Jacob may not leave. *Kli Chedmah*, *Maharil Diskin*, and *Rav* Elyashiv all rule that we are obligated to desecrate *Shabbos* to save the life of a man who endangers himself. Furthermore, in our case, Judah did not put himself into a situation of danger. By hiring Jacob as a sharpshooter, he was saving himself from danger.

Gemara Sanhedrin (77b) discusses cases of murder. *Rava* taught that if a man shot an arrow at his friend and he had medicines in his hand to heal the wound and he intended to use them, he did not perform an act of murder. In our case, Judah arranged, before the danger progressed, for Jacob to stand with a rifle and protect him. He was therefore not placing himself in danger. Jacob was then certainly obligated to save him. *Torah* law wants Jacob to save a life. Even though it is *Shabbos* and Jacob wishes to now observe *Shabbos* fully, Jacob should not leave the stadium. He will serve God by staying and protecting a Jewish life and fulfilling the mandate of “*Vechai bahem*” (*Chashukei Chemed*).

Sanhedrin 73**May an Older Student Waste Time in the Yeshivah Just Talking with His Younger Friend Who Needs Support?**

A question came to Rav Zilberstein: A young man had trouble concentrating and was easily distracted. It was hard for him to focus and study for long periods of time. He used to gravitate to the weak boys in the *yeshivah*. During study sessions he would walk outside and talk with his friends, other uninspired students. His father was concerned, worried that his son would get into trouble, and be expelled from the *yeshivah*. The father hired an older *yeshivah* student to tutor the boy. The young boy took a liking to the older guide. He admired him and wanted to be around him. The student still had a hard time concentrating. He struggled to keep learning during the lengthy study sessions. He asked his father if his tutor could just converse with him. His father asked the tutor to simply entertain his son and talk with him in the study hall about secular matters. The older student objected, stating, “I need to learn Torah. I do not want to commit the sin of neglecting Torah study, *bittul Torah*. I will learn with the boy. However, if he wants to talk about matters other than Torah, I cannot indulge his wishes.” The father brought the problem

to Rav Zilberstein. Who was correct? Should the tutor speak about secular matters to try and maintain a bond with his charge and help him remain in *yeshivah*?

Rav Zilberstein ruled that the tutor should spend hours a day talking with the young man about secular matters to try and deepen the bond they share and to help him stay in *yeshivah*.

Our *Gemara* teaches about the obligation to help save the lives of fellow Jews. *Hashem* has commanded, “*Lo ta’amod al dam rei’echa*”—“Do not stand by when the blood of your brother is being shed.” If you see your friend drowning in the river, or an animal dragging him, you are obligated to go and save him. This applies to spiritual drowning as well. If a *yeshivah* student is drowning religiously due to corrupt friends, you are obligated to step in and try to save him. The tutor was fortunate that the younger student admired him. He is obligated to try and further that relationship to save his young friend from negative influences and spiritual collapse. *Sefer Hachinuch* (*mitzvah* 239) teaches that there is a *mitzvah* to rebuke a fellow Jew who is not following the correct path. *Minchas Chinuch* adds that one who does not rebuke his friend violates the mandate of “*Lo ta’amod al dam rei’echa*”—“Do not stand by when the blood of your brother is being shed.” Spiritual loss is no different than loss of physical life. Our Torah demands that we seek to save our friends from financial loss, “*Vehasheivosa lo*.” This applies to loss of physical health as well. It also applies to spiritual well-being. When you help another Jew remain on the path of observance of *mitzvos* and Torah study, you are fulfilling the *mitzvah* of “*Vehasheivosa lo*” and avoiding violating “*Lo ta’amod al dam rei’echa*.” In our scenario, the older tutor should not think that with chit chat and worldly discussions he is neglecting Torah study. He is fulfilling great religious mandates while conversing with his younger friend (*Chashukei Chemed*).

Sanhedrin 74**Is Idolatry Ever Permitted?**

There are three prohibitions for which a Jew must die before he violates them: idolatry, prohibited marital relations, and murder. The Torah commands, “Love *Hashem* with all your heart, soul, and possessions.” Idolatry is an insult to *Hashem* Himself. Since we must love *Hashem* with all our soul, we must be willing to sacrifice our soul to avoid idolatry. Simple logic mandates that a Jew die before he commits murder. A Jew needs to tell himself, “Who says my blood is redder than his blood? Perhaps he deserves to live more than I.” A Jew has no right to take the life of his friend to preserve himself. The Torah links the sin of prohibited marital relations to the sin of murder. Since prohibited marital relations are connected to murder, just as one must die rather than commit murder, a Jew must die rather than commit the sin of prohibited marital relations. Is this obligation to sanctify the name of *Hashem* and to sacrifice life absolute? Is there ever a situation in which Jewish law would allow the sin of idolatry?

Shu”t Maharam MiRutenberg (*siman* 938) teaches that while facing torture and considerable physical pain there is no mandate to suffer and not violate. A Jew is not obligated to suffer unlimited torments. *Gemara Kessubos* (33b) states that had *Nevuchadnetzer*

tortured *Chananyah*, *Mishael*, and *Azaryah* they would have bowed to the idol he had erected. How could they have bowed? Isn't idolatry a sin for which one must die rather than violate? *Maharam* deduced his principle from this text. *Halachah* requires a man to die to avoid idolatry, because death is fast and painless. If the man faces lengthy torture, he may perform idolatry to avoid the pain.

The *Chochmas Mano'ach* was once confronted with this harrowing question. Jews were kidnapped by gentiles and were tortured horribly so they would admit to sins of fellow Jews, who would then be "convicted" and killed by the authorities. The gentiles informed the Jews that they would be released if they would convert to the religion of the gentiles. The question came to the *Chochmas Mano'ach*; could these imprisoned Jews undergo baptism to save themselves from torture and their friends from death? The *Chochmas Mano'ach* relied on the ruling of *Maharam MiRutenberg*. Our *Gemara* mandates death to avoid idolatry, murder, and illicit relations. *Gemara Kessubos* teaches that excessive torture is worse than death. The Jews in the case at hand were facing extreme torture. They were allowed to leave the faith to stop the unlimited torment they faced. The *Chochmas Mano'ach* limits the scope of his leniency to cases of idolatry and illicit relations. A Jew may not kill another Jew to stop unlimited afflictions.

Rabbeinu Tam disagreed with the ruling of *Maharam MiRutenberg*. *Rabbeinu Tam* (*Kessubos* 33b s.v. *ilmalei*) rules that a Jew may not worship idols or perform illicit marital acts even to stop torture. The story of *Chananyah*, *Mishael*, and *Azaryah* was not a story of idolatry. The statue in that instance was merely a token of homage to the king and not an article of religious faith. Since they did not actually face idolatry, the *Gemara* taught that had *Chananyah*, *Mishael*, and *Azaryah* been tortured they would have bowed down. But under no circumstance can a Jew ever perform idol worship (*Me'oros Daf Hayomi*).

Sanhedrin 75**What Is the Punishment for the Disloyal Daughter of a Kohein Waiting for Yibum?**

Our *Mishnah* teaches about sins punished with burning. A man who has relations with a woman and her mother is punished with burning. A man who has intimate relations with his wife's grandmother is punished with burning. A daughter of a *Kohein* who is disloyal and sleeps with a man other than her husband is punished with burning. In the *Gemara*, there is a dispute as to whether the daughter of the *Kohein* who is fully married, *nesu'ah*, is the one who is liable for burning or if even the daughter of the *Kohein* who is partially married, *arusah*, is punished with burning for marital infidelity. What about a daughter of a *Kohein* who is linked to a man but not married to him? The *Torah* teaches that if a man dies with no children, his wife becomes bonded to his brothers with a connection called *zikah*. This bond is similar to marriage. It grants the widow the status of *shomeres yavam*, a woman waiting for her *yavam*. A *shomeres yavam* is not allowed to marry freely. She may marry her deceased husband's brother through *yibum*. Alternatively, she may perform the *chalitzah* ceremony on a brother of her deceased husband and she may then marry anyone. If a daughter of a *Kohein* is a *shomeres yavam* and she is intimate with a stranger, what is her punishment?

Rashi is of the opinion that a disloyal daughter of a *Kohein* waiting for *yibum* is punished with death by burning. *Rashi's* source is the behavior of *Yehudah*, the son of our father *Ya'akov*. The *Torah* relates the story of *Yehudah* and his daughter-in-law *Tamar*. Her first two husbands, *Yehudah's* sons, died without children. She then pretended to be a prostitute, at which time *Yehudah* impregnated her. *Yehudah* did not know he had impregnated his daughter-in-law. He thought that she had become pregnant through a stranger. *Yehudah* commanded that *Tamar* be taken out to be burned. What had *Tamar* done? Why did *Yehudah* think she deserved burning? *Tamar* was waiting for *yibum* with *Yehudah's* third son. She was not married at the time she became pregnant. Why was there a thought regarding a severe penalty? *Rashi* (*Bereishis* 38:24) suggests that *Tamar* was the daughter of *Shem*, the son of *Noach*, and *Shem* was a priest. *Tamar* was the daughter of a *Kohein*. Even when the daughter of a *Kohein* is merely waiting for her *yavam* there is a severe prohibition against her partaking in marital relations with someone from outside the family. *Yehudah* alleged she deserved death by burning because she was a disloyal daughter of a *Kohein* awaiting *yibum*.

Ramban and *Rav Yehudah Hachasid* disagree with *Rashi*. *Rav Yehudah Hachasid* argues that only a married daughter of a *Kohein* deserves burning for infidelity. According to *Rav Yehudah Hachasid*, *Tamar* was never slated for death. When *Yehudah* said, "Take her out to be burned," he meant to be branded. The intent was to mark her cheek as a scarlet letter. The thought was that her forbidden pregnancy should be publicized and shamed. She was going to have a scalding mark on her face to dissuade others from similar behavior. She was not slated for death. *Shu"t HaRosh* (*kelal* 18 *siman* 13) rules according to the suggestion of *Rav Yehudah Hachasid*. A woman had been disloyal to our faith and was impregnated by an Ishmaelite.

She then awarded most of her wealth to the Muslim man. When she gave birth, the Muslims took her child to raise him as a Muslim. *Rav Yehudah ben Vaker* ruled that her nose should be cut off so that she would be revolting to any individual who had relations with her. *Rosh* agreed with the ruling. He said it was necessary to maintain order and holiness in the community.

In conclusion, according to *Rashi*, a daughter of a *Kohein* waiting for *yibum* deserves death by burning for entering into marital relations with a stranger, *Ramban* thinks it is a mere prohibition like any *shomeres yavam* who is disloyal, and *Rav Yehudah Hachasid* rules that it is a prohibition deserving of a physical wound (*Mesivta*).

Sanhedrin 76

Should A Much Younger Woman Marry a Man Who Is Very Old?

Our *Gemara* teaches that there is a prohibition against setting up marital arrangements which will lead to infidelity. The *Gemara* states that a father may not marry off his young daughter to an old man nor can he marry off his young son to an old woman. The old man may not be interested in having more children since he has already lived a full life. His young bride is energetic and certainly interested in raising a family. He may not satisfy her which may cause her to look outside of her marriage for fulfillment. If a young boy marries a mature woman, the *Gemara* says they will be faced with similar challenges. A mature woman is usually satisfied with her life while her young husband is more active and curious. The match may not work out satisfactorily and will likely result in infidelity. The source for the prohibition is the Biblical commandment (*Vayikra* 19:29), “*Al techalel es bit’cha lehaznosah*”—“Do not desecrate your daughter to make her a prostitute.” According to *Rabbi Eliezer*, this prohibits marrying off a young daughter to an old man.

Hagahos Ya'avetz argues that this prohibition only applies to a man who, because of old age, cannot father children. If the husband

cannot sire children, his young bride will likely look elsewhere for fulfillment. However, if the older man is still energetic and able to father children, there is no prohibition for a much older man to marry a far younger bride. *Ya'avetz* permits a sixty-year-old man, and even an eighty-year-old man, who is spirited, strong, and able to sire children and run a household to marry a young bride.

Torah Temimah (*Devarim* 29 *ha'arah* 17) disagrees with *Ya'avetz* and contends that the *Gemara* is meant to be understood literally. It is wrong for a much older man to take a young wife for they are incompatible. A much older man has already lived his life fully. The young woman is thirsty for life and is hungry for experiences. Such a mismatch will result in infidelity. Therefore, even if the older gentleman is capable of running a household and father children, he may not marry a much younger bride.

What is the law if the young woman knows that the proposed husband is much older and she wants to marry him regardless? Is the match permissible? If she knows what she is undertaking perhaps she will not end up looking outside of the marriage for relationships.

Sefer Chassidim (*siman* 379) rules that if a young woman knows her proposed husband is much older and she wants to marry him, she is permitted to do so. *Sefer Chassidim* quotes a story in which a young woman declared that she wanted to marry an older man because she knew he was a righteous Jew and she wanted to become the spouse of a virtuous man. However, *Sefer Chassidim* points out that an older man is not allowed to dye his hair so that he will look younger in order to convince a younger woman to marry him. Only if the wife is aware of his age and declares that she wants to marry him anyway is he allowed to marry her. Dying hair to appear younger is also forbidden because of the prohibition against *geneivas da'as* (*Mesivta*).

Sanhedrin 77

Can an Employer Deduct Wages from His Non-Jewish Employee to Cover Rental Car Costs After the Employee Wrecked the Store's Car?

A grocer in Israel had a gentile employee who stacked shelves and made deliveries. A large order was called in to the store. The employer and his worker loaded the employer's car with the groceries. The employee drove the car to deliver the items. He was involved in a bad accident and wrecked the car. Insurance covered the cost of repairs. The employer had to rent a car for several weeks while his car was in the garage. He became distraught and wanted to deduct the rental costs from the employee's wages. If not for the actions of the employee he would never have had to rent a car. Was he allowed to compensate for the rental costs by withholding from the employee? The rental costs are defined as *gerama*, indirect damage. The employee did not directly cause the rental expense. Is a gentile responsible to pay for *gerama*, indirect damages? *Shu"t Achiezer (cheilek 3 siman 37)* derives from our *Gemara* that a gentile who damages through *gerama* must reimburse for the loss.

Our *Gemara* discusses an individual who keeps someone in

a state of danger. If *Reuvein* holds *Shimon* down under water and *Shimon* dies, *Reuvein* has committed murder and deserves to be executed by sword. A man took his friend's animal and held it down under the sun until it died. *Ravina* said the man was required to pay for the loss of the animal. *Rav Acha bar Rav* maintains that he was not liable to pay. *Ravina* stated that he had to pay based on logic. It is hard to convict a man of murder. If a man kills accidentally, he is not executed. Only deliberate murder is punished. On the other hand, it is relatively simple to impose a financial obligation. The damager must pay even for accidental damage. If it is murder to hold a man down under the water or under the sun to die, it is certainly an act of damaging that mandates a payment when someone holds down an animal and causes the animal to die. *Rav Acha* rules that there is a special verse teaching that holding down is an act of murder but not an act of damage. *Halachah* is in accordance with *Ravina*. If a man holds his friend's animal down under the sun and the animal dies, he must pay for the damage (*Shulchan Aruch Choshen Mishpat siman* 383:5). Jewish law apparently teaches that if something is a full act in regards to murder obligations, it is certainly a full act in regards to damage payment obligations.

Rambam (*Hilchos Melachim* 9:4) writes that gentiles are easily convicted for murder. If a gentile killed a fetus, he is killed and a gentile who placed his friend in a jail and the friend eventually died of starvation would get killed. A gentile who kills a pursuer he could have maimed is killed. A Jew would not be killed in these situations. *Rambam* obligates a gentile who kills indirectly (jailing the victim until he starved). Our *Gemara* taught that if a particular act is considered murderous, it is certainly considered an act of damage with full financial liability. Therefore, if a gentile indirectly causes damage, he is required to pay.

Rav Zilberstein accepts the novel suggestion of the *Achiezer*. He rules that if the employee deliberately or negligently wrecked the car, such as by driving through a red light, the employer would be entitled to deduct from his pay to cover the rental car costs. The rental costs are an indirect damage, *gerama*. Since indirect murder is an act of murder for a gentile, he also must pay for indirect damage (*Chashukei Chemed*).

Sanhedrin 78**A Young Man, with His Friends, Caused
a Factory Worker to Lose His Job: Is He
Morally Obligated to Pay for the Lost
Wages?**

A boy in *yeshivah* ordered an item from a factory. The item arrived but was defective. He wrote a scathing letter of protest to the factory and mailed it to the manufacturer along with the item. The company sent him a letter of apology and a box filled with items from the factory. The young man told his friends what had transpired; the boys decided to make a business out of such behavior. They would order items from the factory, break the items and make it appear that the items had arrived defective from the manufacturer. Subsequently, they would return their items with letters of protest. The company sent each of them letters of apology, replacement items, and boxes filled with goods manufactured by the factory. One day, one of the boys received a note from the factory requesting that he come and meet the owner of the company. The boy traveled down to Kiryat Gat to meet the proprietor. The owner called in an employee and in his presence informed the boy, “This employee checks every item we make to ensure that it is not defective. We have suddenly received many

letters of complaint regarding faulty products. You are one of those who have received shoddy merchandise. I am firing this employee. Please keep purchasing our goods; shortly, the items we manufacture will, once again, be of the highest quality.” The employee began to weep, “I have a wife and ten children at home. I have been employed at this job for a decade. I have performed my work diligently. I still do it carefully. Each item is checked. Our goods are outstanding. I do not know why suddenly we are receiving complaints and returns. For years and years there were no grievances. I am now out of a job and do not know how I will feed my family.” The young man was saddened and ashamed but did not inform the owner or the employee that he and his friends were involved in this deception.

Several years later, one of the boys remembered what he and his friends had done. He repented and sought to repair the damage he had caused. He approached *Rav* Zilberstein with a question, “I am ready to return the items that the company sent to me to compensate for the ‘defective’ products. Do I have to do more? Should I look for the employee who lost his job because of me and my friends and reimburse him for all the lost wages?”

In his response, *Rav* Zilberstein connects this scenario to our *Gemara* that teaches about murder. A murderer is typically an individual who strikes his friend with a blow that has the intrinsic capability to cause death. What is the law when ten men hit a man, one after the other, and the man dies? Are they all guilty? Is no one guilty? Is the last one guilty? The Sages are of the opinion that they are not murderers. A murderer is one who takes all the life out of another person. In this instance, each aggressor eliminated a bit of life. *Rabbi Yehudah ben Beseira* is of the opinion that the last one is the murderer. Any category of killing is murder. The final aggressor was the one who snuffed out the life from the victim. Our case

was similar. Multiple people performed acts of damage and in the aggregate caused the inspector to lose his job.

Shulchan Aruch (Choshen Mishpat siman 421:14) rules that if two people damage someone else financially, they should pay equally for the loss. Each should pay his share. When two damage, even if one could not have caused any impairment by himself and it was only damage because his friend acted in conjunction with him, each damager is to pay his share of the damage. In our case, all the boys jointly damaged. Their actions in aggregate caused the worker to lose his job. Each one is obligated to compensate for his share. However, we are dealing with a moral obligation and not an obligation enforceable in a court of Jewish law. The factory worker lost his job and wages because of the actions of the employer. The troublemaking boys were indirect causes of these damages. Their actions were merely a *gerama*. When a person causes financial loss through *gerama* he is exempt from compensating in the human court but by the laws of Heaven he is obliged to pay. *Ohr HaChaim (Shemos 21:29)* teaches that if ten people hit someone and he dies, even according to the Sages, they are all guilty in the laws of Heaven. In our case, all the boys indirectly caused the worker's termination. They share in a Heavenly obligation to apologize to him and compensate him.

Rav Zilberstein reasons that the student who is now regretful should pay his share of the losses that the employee suffered in order to gain atonement (*Chashukei Chemed*).

Sanhedrin 79**Can We Rely on Drawing Lots to Determine Who Gets Use of a Single Breathing Machine?**

Two men are brought to the emergency room in need of a breathing machine. Both are righteous Torah scholars. The hospital has only one machine. One will get use of the machine while the other will die. According to *halachah*, are the doctors permitted to draw lots to determine who is privy to the machine? If gentiles approach a group of Jews and demand, “Hand over one of you for us to kill or we will kill you all,” *Rama (Yoreh Dei’ah siman 157:1)* quotes two opinions about how the Jews must act. According to the first opinion, all the Jews must allow themselves to be killed and they cannot choose one to die unless the gentiles specified one victim and said, “Hand *Reuvein* over to us.” If the gentiles specified one man, the group may hand over that individual and save the rest. According to the second opinion, the group may only hand over the specified man if he was deserving of death anyway. This was the case of *Sheva ben Bichri*, a man who deserved death for rebelling against King David, and the people of the city whereby he sought shelter were allowed to deliver him to David’s army so as to spare the residents of the city from death. *Tiferes LeMoshe* (quoted in *Pis’chei Teshuvah* there) writes that

the group would be permitted to draw lots and relinquish the man whom the lottery determined should be handed over to the gentiles.

Indeed, this is what occurred in the book of *Yonah*. There was a storm and *Yonah's* ship was in danger of sinking. They drew lots to determine who was the cause of the storm. The lot fell on *Yonah* who declared that he should be thrown overboard. They did as he instructed and the storm broke; the ship was saved. From here, *Tiferes LeMoshe* derives that *halachah* accepts the verdict of lots to determine questions of life and death.

Chazon Ish disagrees with *Tiferes LeMoshe*. If lots are a suitable manner in which to determine inquiries of life and death, why did *Rama* rule that when the gentiles demand a single victim, the entire group should die? The *Rama* should have written that lots be drawn and the one chosen by the lottery should be handed over. *Chazon Ish* rules that *halachah* does not rely on a lottery to resolve questions of life and death. In the book of *Yonah*, the lottery merely determined who caused the storm. *Yonah* instructed them to throw him into the sea and they obeyed because he was a prophet. The lottery would not have been sufficient grounds to throw him overboard.

Mishkenos Haro'im demonstrates from our *Gemara* that a lottery is not relied upon to determine life and death. Our *Gemara* refers to a man who was about to receive a death penalty conviction. This individual was immersed in a larger group of convicts and the court and witnesses had forgotten what he looks like. A court is required to see the individual they are convicting. Since the court no longer recognizes him, it is impossible to convict. According to the Sages, the entire group will now be spared. *Rabbi Yehudah* is of the belief that they be jailed and allowed to starve to death. Why do we have such a law? If a lottery is effective, the *halachah* should mandate that lots be drawn. If, through a lottery, one name materializes repeatedly,

it is apparent who the guilty party is and we should be able to convict him. Apparently, we do not rely on a lottery to determine who is innocent and who deserves death.

Ultimately, *Rav* Zilberstein ruled that the case of the breathing machine differs from the scenarios of the *Chazon Ish* and the *Mishkenos Haro'im*. Our case is about an act of saving life. Can we use a lottery to determine whom to try and save? *Chazon Ish* and *Mishkenos Haro'im* discuss scenarios in which we are trying to determine whom to kill. A lottery will not determine whom to throw off a ship or which person should stand in front of a court. However, in order to save a life, perhaps a lottery may be used to determine whom we should try and save first. *Shach* (*Choshen Mishpat siman* 163:18) teaches that if a king institutes a decree, stating that two Jews will die, one is allowed to offer bribes to insure that his relatives are not on the doomed list. Even though you are aware that someone else will be chosen if you propose a bribe, your act is one of saving. You may perform an act of saving even though others will now possibly be selected by the king for misfortune. Perhaps you may also use a lottery to determine for whom to perform an act of saving first, even though by saving one you cannot simultaneously save the other (*Chashukei Chemed*).

Sanhedrin 80

Does a Fetus Need Its Own Chicken for Kaparos on Erev Yom Kippur?

On the eve of Yom Kippur, Ashkenazic Jews have a custom of *kaparos*. A man takes a male chicken while a woman takes a female chicken, and the individual declares that his or her sins should be expiated. The chicken should go to death and the person should merit life (*Rama Orach Chaim* 605:1). What is a pregnant woman to do? Does she take one chicken or two chickens as *kapparos*?

Rama rules that a pregnant woman takes two chickens, a male and a female. She takes the female for herself, and the male for the possibility that her fetus is a male. *Gra* asks, “A pregnant woman should have to use three chickens, a female for herself, a male for the possibility that the fetus is male, and a female for the possibility that the fetus is female. Why is the custom that she only uses two chickens?”

Gra provides an answer based on our *Gemara*. Our *Gemara* teaches that *ubar yerech imo*—a fetus is a limb of the mother. A pregnant woman is considered, in all areas of Jewish law, a single persona. In other words, the fetus is an extension of her. Using the female chicken for herself is sufficient for her female fetus organ. If

the fetus is male, she would require a male chicken for the male body part that is the fetus. If the fetus is female and since the fetus is a part of her, the female chicken is sufficient for her and her fetus.

Magein Avraham writes that the reason the mother does not need to use two female chickens is that even if she is pregnant with a girl, a single chicken may serve as an atonement for two separate individuals. *Gra* disagrees with the *Magein Avraham*. According to *Gra*, a gifted sacrifice, *korban nedavah*, may be offered by multiple people. A sacrifice for atonement, *korban kaparah*, such as a sin offering, may only be applied to one individual. *Kaparos* are likened to sacrifices of atonement, one chicken per person receiving atonement.

Toras Hayoledes derives another law from the *Gra's* comments. While reciting a *Mi Shebeirach* prayer for a pregnant woman should we add a prayer for the fetus? According to the *Gra*, we should refrain from doing so since the fetus is part of the mother. The prayer for the mother encompasses a plea for the fetus. Just as a single hen is a suitable *kaparah* for the entire pregnant woman, a single prayer is a fitting plea for the entire pregnant woman (*Mesivta*).

Sanhedrin 81**May a Tzedakah Administrator Take a Loan
from the Charity Fund?**

Our *Gemara* teaches about a phrase from a verse in *Yechezkeil* (18:6), “*Ve’el ishah niddah lo yikrav*”—“And to his wife while she is a *niddah* he will not come close.” It interprets the phrase to mean that a man is a *tzadik* and deserving of life if he does not derive benefit from the charity fund. *Me’iri* explains that some interpret this mandate to mean that a charity administrator, *gabbai tzedakah*, may not derive benefit by taking a loan from the charity he administers.

Shu”t Kessav Sofeir (cheilek Yoreh Dei’ah siman 110) has a discussion with his son-in-law, *Rav Ya’akov Leib Katz*, regarding loans from charity funds. The son-in-law saw that there were charity collectors who would collect funds for the poor of the Land of Israel. They would send their collections to the head *gabbai*. Once the head *gabbai* had a large sum in hand, he would forward the money to the Holy Land. When the head *gabbai* only had small amounts of money from donors, while waiting for more to arrive to justify a mission to Israel, he would lend the funds to reliable borrowers. When he was ready to direct the money to Israel, he would give the borrowers two weeks’ notice. They would return the funds, and he would send all

the money to Israel. The son-in-law of the *Kessav Sofeir* was troubled by this practice. Our *Gemara* teaches that we may not benefit from a charity fund. How then could the administrator lend the funds to people?

The *Kessav Sofeir* responded that the administrator was allowed to lend the charity funds. Before he had sufficient funds to send, the money was not going to be forwarded to Israel, and it was not going to be distributed locally. *Mordechai* is of the opinion that the reason no loans can be extended with charity funds is a practical concern. We are worried that perhaps poor individuals will come to the administrator seeking help and there will be no money available for them because the money will have all been lent out. Since the head *gabbai* of the Israeli charity knew it would take months to have adequate funds to send to Israel, and he knew no poor Israelis were coming to solicit funds for a while, he was permitted to lend the money to reliable borrowers while he waited for more funds to arrive. This logic only applies to a head *gabbai* of an Israeli charity. A collector for a local charity, who requires that money be available for needs of the poor that may arise at any moment, is not permitted to lend funds that were donated for the poor. At the end of his responsum, *Kessav Sofeir* suggests that since it seems to be a widespread practice of charity administrators to lend charity funds, perhaps there is a condition imposed by the court, *lev beis din masneh aleihen*. This allows for charitable donations to be lent to borrowers who will then return the funds for the administrators to distribute to the needy. Perhaps courts have imposed a condition on donations. Donors are aware that their donated funds may be lent out as per the decisions of the charity administrator while the charity administrator is waiting for the poor to solicit the funds (*Mesivta*).

Sanhedrin 82

May a Second Wife Burn Pictures of the First Wife of Her Husband?

A woman married her husband as his second wife. She noticed that he would lock himself in his room and emerge emotionally aroused. She went into the room and saw pictures of the first wife. It dawned upon her that her husband would look at the pictures and become emotional. This upset her terribly. When her husband was away, she went into the room, removed all the pictures of the first wife and burned them. Her husband returned and saw what she had done. He was quite agitated and argued that she had damaged his property. He announced that he no longer wanted to remain married to her. She went to the rabbi in her town to complain. Was she a damager? Was the husband entitled to be upset?

Rav Zilberstein ruled that from our *Gemara* we can learn that the wife acted correctly and she was not a damager. The husband was wrong for being troubled and should reconcile with his wife.

Our *Gemara* relates a story about the grandfather of *Rav Pereida*. The Judean King *Yehoyakim* was wicked. The prophet predicted that *Yehoyakim* would be mistreated after his death. He would receive a donkey's burial and another disgrace would be performed with his

remains as well. *Rav Pereida's* grandfather came across the skull of King *Yehoyakim*. He found a skull with the words, "This and another matter" engraved on its head. Initially he did not know where the skull had come from so he attempted to bury it; however, it kept emerging from the ground. He realized that it was the cursed skull of *Yehoyakim*. Deserving of donkey treatment, it kept rising out of the ground. The words engraved on it indicated that another disgrace was destined to happen to it. *Rav Pereida's* grandfather took the skull, wrapped it in silks, and placed it in a chest in his home. The rabbi's wife came home and saw the skull in the house. She told her neighbor about it who informed her that it was probably the skull of the rabbi's first wife and that the rabbi was preserving the skull to memorialize her. The wife proceeded to take the skull and burn it. *Rav Pereida's* grandfather returned home and discovered his wife's actions. He then understood that this was the fulfillment of the prophet's warning to the wicked king. Let us analyze this story. Why did she burn the skull? There is a *mitzvah* to bury human remains. *Rav Zilberstein* suggested that she burned the skull in order to prevent her husband from sin. A husband who looks at reminders of a first wife causes emotional pain to his second wife; it is a sin to cause another Jew pain. The rabbi's wife felt that in order to prevent her husband from committing this sin, she should burn the skull. It seems that she was permitted to do so. In light of the precedent from our *Gemara*, in our case, the woman was right in burning the pictures. The photographs were leading her husband to transgress by causing her pain. She was correct in burning them to make sure that this sin would not continue (*Chashukei Chemed*).

May an Israeli Soldier Bring His Machine Gun into the Beis Midrash?

Our *Gemara* teaches about the story of *Pinchas* killing *Zimri*. The Torah states that when *Pinchas* witnessed *Zimri's* egregious behavior, he took his spear and went out to confront *Zimri*. Why did he have to take his spear? Why did he not have his spear with him? The *Gemara* derives from this that a person may not bring a spear, or any weapon, into a house of study. *Pinchas* was in the house of study and was therefore not permitted to have a spear. Consequently, he had to take his spear to go and strike *Zimri*. What about Israeli soldiers? Are they allowed to enter synagogues and houses of study with their guns?

Shu"t Yeshu'as Moshe (cheilek 3 siman 31) teaches that our *Gemara* only deals with times of peace. In times of danger or war, all are allowed to carry weapons with them in all places, even houses of study and synagogues. When we face danger, it is important to deter our enemies by arming Jews. We cannot rely solely on prayer and pleading for mercy. We also need to engage in natural means of protection. When facing a chance of *piku'ach nefesh*, we are permitted to carry guns and weapons into *shuls* and *yeshivos*. In the face of danger, we cannot rely on a miracle; we must use force and weapons to protect Jewish lives.

Shulchan Aruch (Orach Chaim siman 151:6) rules that a Jew may not bring a long knife into a *shul*. Commentators explain that the source of this law is the *Orchos Chaim (Hilchos Beis Haknesses os 7)* who explains that a synagogue is a place of prayer. While prayer extends life, a knife can shorten life. It is inconsistent and inappropriate to bring that which may shorten life to a place dedicated to lengthening life.

Commentators find the words of the *Orchos Chaim* difficult. Our *Gemara* has verses from the Torah teaching that a knife cannot be brought into a house of study. Why did *Orchos Chaim* require a novel argument to prohibit a long knife in a *shul*? *She'eilas Chemdas Tzvi* (*cheilek 2 siman 22:4*) suggests that the law of our *Gemara* is limited to a place where *halachah* is finalized. The house of study is the place where laws are discussed and conclusions of law are reached. It is not appropriate to have weapons in the legislature. In the heat of an argument, some might resort to threats of physical force to coerce the other side to accept their legal reasoning. Law should not be created by the force of the sword. Law should be created by compelling truths. Therefore, in a house of study, weapons are forbidden. A synagogue is a place of prayer; it is not a place of legal discussion and conclusion. As such, the reasoning of the law in our *Gemara* does not apply to a place dedicated to prayer. *Orchos Chaim* sought to prohibit knives from places of prayer. He therefore advanced a new argument; an item that shortens life should not be brought to a place where prayers are recited and we attempt to lengthen life (*Mesivta*).

Sanhedrin 83**Can Our Kohanim Forgive Their Honor?**

Our *Gemara* discusses the law that a *Kohein* who performs service in the Holy Temple in Jerusalem while missing some of his garments deserves death from heaven. The reason provided by the *Gemara* for this law is that the sanctity of the *Kohein* is dependent on his uniform. If he does not have all his garments on, he is missing sanctity. Deprived of all his garments he is like a stranger, a non-*Kohein*. A stranger who performs acts of service in the *Mikdash* deserves death from heaven.

Mordechai (*Gittin perek 1 remez 461*) relates a story about a *Kohein* who once served *Rabbeinu Tam* and washed the hands of the Rabbi. A student was perturbed by the event. He asked *Rabbeinu Tam*, “Doesn’t the *Yerushalmi* (*Berachos 8:5*) teach that one who uses a *Kohein* has violated a form of *me’ilah*, stealing from the holy realm? Why did our teacher seemingly steal from the sacred?” *Rabbeinu Tam* answered that our *Kohanim* do not possess holiness. They are not wearing the holy garments of *kehunah*. We are permitted to use them. The student asked another question, “If the holiness of *Kohanim* is dependent on holy clothes and in our day, they do not have holy garments, should they not have any special status at all?”

Rabbeinu Tam did not respond to the question. *Rabbeinu Peter* gave an answer. The holiness that *Kohanim* currently have is weak; as a result, they can forgive it.

Shu"t Maharam Schik (*Orach Chaim siman 60*) quotes *Chasam Sofer's* explanation of *Rabbeinu Tam*. *Rabbeinu Tam* and *Rabbeinu Peter* agree with each other. When a Temple was in existence, *Kohanim* were special because they were the ones performing the Divine service. They were the individuals who could bring sacrifices to *Hashem*. They were *Hashem's* legion. *Hashem* wanted us to honor them. He wanted us to make sure they led blessings and that they read first from the Torah. The *Kohanim* were not able then to waive the honor due them. Honoring them was a way to honor *Hashem*. *Rabbeinu Tam* is teaching that our days are different. In our day, *Kohanim* do not have the special garments. They cannot perform service in the Temple. They are no longer *Hashem's* representatives. Nowadays they deserve honor, but it is their honor, and they may forgive the honor due them. *Rabbeinu Tam* used a *Kohein*, for that *Kohein* had forgiven the honor he was due.

In light of this explanation, if a city only has one *Kohein* and the people would like to offer the first *aliyah* to other individuals as well, they may ask the *Kohein* to forgive his honor. If he forgives his honor, the first *aliyah* may go to a non-*Kohein*. *Maharam Schik* adds that as an extra level of precaution, the *Kohein* should step out of the *shul* at the time of Torah reading. Since he is out of the room, coupled with the facts that he has forgiven his honor and he is not donning the holy garments, the community may offer the first *aliyah* to someone who is not a *Kohein* (*Mesivta*).

Sanhedrin 84**When Can a Son Who Is a Surgeon
Operate on His Father?**

A son may not hit his father and cause him to bleed. A son who wounds his father deserves death by choking. What about a child who is a doctor? If the child is causing his father to bleed as part of medical care, is the child committing a sin? Our *Gemara* teaches that just as a person who wounds an animal in an attempt to heal the animal need not pay for damages, a child who wounds his father in an attempt to heal his father is not committing a crime. But the *Gemara* then relates that *Rav* would not allow his son to remove a thorn that was under his skin. He feared that the child may mistakenly cause him to bleed. It would be a mistake on a matter of life and death. *Rambam* (*Hilchos Mamrim* 5:7) rules that a son may not remove a thorn from his father lest he cause his father to bleed excessively. However, *Rambam* limits the scope of this prohibition. He rules that it is only recommended that a son not try and heal his father. If there is no other doctor available, the child is allowed to cut his father in order to heal him. Even *Rav* agreed with the first portion of our *Gemara*. An act of healing is not a crime. *Rama* (*Yoreh De'iah siman* 241:3) also rules that if there is no other medical professional

available, the son may remove the thorn from his father. *Beis Yosef* disagrees. He rules that *Rav* was disagreeing with the earlier opinions. *Rav* was teaching that even acts of healing are prohibited. *Shulchan Aruch* rules against *Rambam* and *Rama*. *Shulchan Aruch* (*Yoreh De'iah siman* 241:3) rules that a son cannot remove a thorn from his father under any circumstances.

What is the definition of no other doctor available? When would *Rama* and *Rambam* allow a child to operate on a father?

Minchas Yitzchak (*cheilek* 1 *siman* 27:6) rules that *Rav* only rejected his son from removing a thorn which is not an act that requires expertise. It would be simple for *Rav* to find someone else. However, when the father needs an expert for a procedure, it is complicated to find someone else. In that case, the son may perform the procedure. Whenever it is not easy to find someone else, it is considered a situation in which there is no other doctor around. If the alternative is that the parent would have to go to a hospital and wait for care, the son, who is a doctor, is allowed to provide the care at home. The option of having to engage in a lengthy wait and experience discomfort is not a viable alternative. It is considered a case of no other doctor available and the son may perform the procedure. If a father requires a daily shot and if the son will not administer it the father may not receive the shot every day, it is also considered a scenario in which no other doctor is available and the son may execute it. *Shu"t Minchas Shlomo* (*cheilek* 1 *siman* 32) rules that if the son is willing to provide the treatment without charging while another medical professional would charge the father a fee, it is considered a situation of no other doctor available and the child is allowed to perform the procedure. *Shu"t Shevet Halevi* (*cheilek* 10 *siman* 159) rules that if the son is a proficient surgeon and the other doctors are not as capable, it is considered a situation of no other

doctor available and the son may perform the operation. *Shu"t Chelkas Ya'akov* (*Yoreh De'ah siman 131*) rules that if the father is facing a life-threatening condition or a possible life-threatening danger, the son should perform the procedure. There is no prohibition against hitting a father when facing *piku'ach nefesh* and the child is wounding in an attempt to preserve or save life.

Minchas Chinuch (*mitzvah 48:3*) argues that the prohibition of wounding a father only applies if it is against the father's will. If the father explicitly declares that he waives his rights and allows the child to wound him, there is no sin involved. According to *Minchas Chinuch*, a son who is a surgeon is always permitted to operate on his father when his father agrees to the procedure and forgives the son (*Mesivta*).

Is a Son Allowed to Hit a Doll Representing His Father as Part of Psychotherapy?

A man was suffering from psychological illness and visited a psychotherapist. The Freudian therapist diagnosed that he was suffering from childhood trauma. He had been mistreated by his father. He was psychologically scarred and could not partake in healthy relationships with his father and others because of his scars. The doctor informed him that he had to let go of his past by taking a male doll that would represent his father and strike it. While hitting it, he should imagine that he is releasing all the pain that his father had caused him. His trauma will be healed and he will be capable of having relationships with his parents and others. Is such therapy permitted?

Our *Gemara* teaches that a child may not hit his father. *Sefer Chareidim* (*mitzvah* 35) teaches that the *mitzvah* of honoring one's father and mother is primarily in the heart. The son is to feel that his father and mother are outstanding and honorable individuals. This is the primary obligation of honoring them. One who demeans his father or mother in his heart warrants a curse as it is written (*Devarim* 27:16), “*Arur makleh aviv o imo*”—“Cursed is the one who demeans his father or mother.” *Aruch Hashulchan* (*Yoreh Dei'ah siman* 240:8) also rules that the obligation of reverence for a father is an obligation of the heart. Since a son must revere his father and mother in his heart, he may not strike a doll which represents his father. Such an act is an act of disrespect. One cannot engage in healing through a terrible sin. About such therapies it was mentioned that some of the best doctors are destined for *Gehenom*. It is wrong for a child to feel a lack of respect towards his father or mother.

Is it permissible if the father is informed of the therapy and allows his son to strike the doll? *Minchas Chinuch* rules that a father may forgive his honor and respect. If the father waived his rights, according to *Minchas Chinuch*, the son would be permitted to perform the therapy with the doll (*Chashukei Chemed*).

Sanhedrin 85**Permitting a Holocaust Victim Who Hit to
Serve as Chazzan for Rosh Hashanah and
Yom Kippur in Kovno**

In August 1944, the Russian army liberated the city of Kovno from the wicked Germans. The Jews of Kovno had suffered terribly from the Germans. Tens of thousands were shot by Germans and Lithuanians. Thousands of others were forced into slave labor and worked and starved to death. A harsh question arose at the time before *Rav Efrayim Oshry*, a student of the *Rav* of Kovno, *Rav Shapira*. The survivors wanted to organize prayer services for *Rosh Hashanah* and *Yom Kippur* of 5705, yet it was difficult to find a suitable prayer leader. There was one individual with a melodic voice who was familiar with the traditional liturgy; however, he was unsure if he could serve as the prayer leader.

Halachah (Shulchan Aruch Orach Chaim 53:5) teaches that a person who took the life of another Jew may not serve as a prayer leader for the community. The individual in question had been involved in causing the loss of a life. During his time in slave labor, a fellow inmate found the reality unbearable and wanted to die. He had turned to his friend and begged that he strike him and cause him to

fall while they walked. He hoped that the blows would weaken him and cause his soul to depart. The friend had refused yet the bitter inmate kept asking for help in escaping his misery. Eventually, the friend decided that perhaps he should accede to the request. While they were walking to the slave labor location, he suddenly knocked the inmate down. The man fell and then rose. He did this to the man several times. By the time they arrived at their location, the man had been weakened. While working, he collapsed and died. The man now wondered if he was disqualified from ever serving as a prayer leader. *Be'eir Heitev* (*Orach Chaim* 53:8) teaches that a person who strikes his friend and the friend dies a short time later cannot serve as a *chazzan*. The proposed *chazzan* thought that perhaps he was disqualified from ever leading a *minyan* for had contributed to the death of a fellow Jew. The community desperately wanted him to lead them for there was no other potential prayer leader. *Rav Oshry* sought to find a way to allow him to serve as *chazzan*.

Rav Oshry (*Shu"t Mima'amakim cheilek 3 siman 7*) learned from our *Gemara* that the man may serve as prayer leader. Our *Gemara* teaches that if a Jew is sentenced to death by the court and while being led to his death someone strikes him, curses him, or kills him, the aggressor is not punished. The man was going to die regardless. During the war, all the Jews under Nazi control had been sentenced to death. By natural law they were all going to die. The man who had pushed his friend had hit a Jew who was going to die regardless. He did not hold the status of a man who hastened the death of another individual. If there is any liability to ascribe to the one who pushed, it would be to render him a man who killed accidentally. One who kills unintentionally may engage in repentance and again serve as prayer leader. *Rav Oshry* gave the man instructions on how to repent. The man atoned for his deeds. He served as prayer leader. Jewish soldiers

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from the Red Army, survivors of the horrors of Nazi occupation, and remnants of the Kovno Jewish community all joined together for High Holiday prayers led by the man who had pushed his friend and had now repented. His prayers were heartfelt and profound. Everyone who participated found themselves changed forever from this experience (*Hamevaseir Torani*).

Sanhedrin 86

**A Father Held on to His Son to Try and
Reduce His Alimony Obligations:
Did He Violate the Prohibition
Against Kidnapping?**

Our *Gemara* discusses one of the prohibitions of the Ten Commandments, *Lo Tignov*. *Lo Tignov* does not refer to a prohibition against stealing money. It refers to a capital crime similar to the others in the Ten Commandments, such as “Do not kill” and “Do not commit adultery,” which are capital crimes. It is a prohibition against stealing an individual, using him, and then selling him. A man who steals another person, uses him, and then sells him, deserves death by choking.

A couple divorced and they reached an agreement whereby the child would live with the mother, and the father would have the child once every two weeks. The courts imposed a large financial obligation onto the father which upset the father. He claimed he only agreed to the divorce settlement due to pressure from the courts. He alleged he could not afford it and demanded that the mother forgive some of the money due her; the mother refused. The father, during one of the son’s visits with him, informed the mother that he would

not return the boy until she reduced the financial burden imposed upon him. The mother eventually agreed. The father came to *Rav Zilberstein* with a question, “Did I violate the sin of kidnapping? Were my actions a form of stealing a person?”

The *Mishnah* discusses a man who steals his son. *Rabbi Yishmael*, the son of *Rabbi Yochanan ben Berokah*, rules that it is kidnapping and deserving of death but the Sages exempt the father from the crime of kidnapping. The *Gemara* explains their reasoning. The Torah describes kidnapping as “*Ki yimatzei*”—“When it will be found.” This excludes a child who is already found in the home of his father. Our case is different in that the son was not already found in the home of the father. He was in the home and custody of the mother. Perhaps in our case the father did violate the sin of stealing a person. The father never sold the son. Nevertheless, he may have committed a grave sin.

Minchas Chinuch (*mitzvah* 36) teaches that one who only steals a Jewish person, even though he does not sell him, violates the prohibition of *Lo Tignov*. *Minchas Chinuch* teaches that in each scenario where there is no death for kidnapping, such as if the kidnapper never used his victim, did not sell him, or sold the victim to the victim’s relatives, the kidnapper still violates the prohibition of *Lo Tignov* and loses his ability to serve as a credible witness. In light of the *Minchas Chinuch*, perhaps the father did commit the sin of *Lo Tignov* and he needs to repent (*Chashukei Chemed*).

Sanhedrin 87**Kiddush on Chameitz on Pesach?**

Our *Gemara* teaches about the rebellious sage, *zakein mamrei*. An ordained sage who argues with the supreme court and, despite their guidance, issues rulings against them on a matter that could lead to an obligation of *kareis*, receives the death penalty of choking. Our *Gemara* explained that a sage who argues with others about adding a month to a year is liable to become a *zakein mamrei*. This dispute could result in a *kareis* obligation. If he states that a month of *Adar* should be added and the other sages ruled to the contrary, those who abide by him will wind up eating *chameitz* on what is truly *Pesach*, a sin that carries with it a penalty of *kareis*. *Rav* Zilberstein points out that in recent history Jews were taught by their sages to eat *chameitz* on *Pesach*. This created unique *Halachic* challenges.

During the Holocaust, the Jews in the Bergen Belsen Concentration Camp in Nazi Germany were afflicted by the Nazis with minimal food and long hours of slave labor. It was impossible for the Jews in the camp to attempt to not consume *chameitz* on *Pesach* as they would starve to death. They brought their predicament to their rabbi, Rabbi Aharon Bernard Davids. Rabbi Davids ruled that they were all required to eat *chameitz* during Passover. Before they ate it, he recommended that they recite a prayer he composed:

Heavenly Father, it is manifest and known to You that we desire to carry out Your will in regard to the commandment of eating *matzah*, and strictly refraining from eating *chameitz* on the Festival of *Pesach*. But we are sick at heart at being prevented in this by reason of the oppression and mortal danger in which we find ourselves. We stand ready to perform Your commandments of which it is said, “You shall do them and live by them” (*Vayikra* 18:5), that is to say, you shall live by them and not die by them. And accordingly we heed Your warning, as it is written: “Take heed to thyself and keep thy soul alive” (*Devarim* 4:9). Therefore, we beseech You that You will keep us in life and establish us and redeem us speedily from our slavery so that we may in time come to perform Your statutes and carry out Your will with a perfect heart. *Amein*.

A question arose. If you do not have wine on Friday night you may recite *Kiddush* on the *challah* bread. Could the Jews in Bergen Belsen recite the Passover *Kiddush* on the bread they were going to eat at the *Seder*? Perhaps they were allowed to consume the bread to save their lives, but *chameitz* should not serve as the basis for the sanctification prayer for a holiday dedicated to *matzah*.

Rav Elyashiv rules that Jews facing danger to life by malnutrition may recite Passover *Kiddush* on the bread they eat at the *Seder*. The bread is fully permitted to them. It is a *mitzvah* for them to consume it and may recite sanctification prayers over it. *Mishnah Berurah* rules that when a sick individual is allowed to eat a forbidden food for his health, he is to recite a blessing on the food. He can join in the *mezuman* prayers after eating a meal of forbidden food that was permitted to him due to health concerns. Once Jewish law allows for the ingestion of a food, it becomes permitted food for that individual and all blessings may be recited over it (*Chashukei Chemed*).

Sanhedrin 88**Does a Child Farmer Who Grows Up Need to Separate Pei'ah from His Baked Goods?**

Our *Gemara* teaches about the rebellious sage. A *baraisa* taught that even a dispute about leaving the corner of the field for the poor, *pei'ah*, could result in a judgment against a sage. The example the *Gemara* gives for a dispute about *pei'ah* is the argument about an individual who neglected to separate a corner for the poor when his produce was still attached to the ground. He harvested his grains, ground them into flour, and turned the flour into dough. According to the Sages, he has transformed the grains. There is no longer an obligation to separate a piece as *pei'ah* from the dough for the poor. According to *Rabbi Yishmael*, he is still obligated to separate a piece for the poor as *pei'ah* from the dough. If a sage argued that there was a *pei'ah* obligation and the supreme court ruled that there was no *pei'ah* obligation and the sage continued to instruct people to ignore the supreme court, the sage could end up as a *zakein mamrei*.

Rambam (*Hilchos Matnos Aniyim* 1:1-2) agrees with the ruling of *Rabbi Yishmael*. If a farmer did not separate *pei'ah* when his produce was still attached to the ground and he turned the produce into dough or even baked it into a loaf he must still separate *pei'ah*.

While discussing the *mitzvah* of leaving a corner of the field for the poor, the Torah says the word “*ta’azov*”—“you shall leave it” twice. The extra word *ta’azov* teaches that even after the produce has been altered there is a *mitzvah* to separate *pei’ah* from it.

Minchas Chinuch (*mitzvah* 221:7) rules that if a child farmer owns a field and harvests it as a child without separating *pei’ah*, once he matures and becomes an adult, he is obligated to separate *pei’ah* from the bread he made out of the grain. As a child, he was not obligated in *mitzvos*. Now that he is an adult and obligated in *mitzvos*, he must separate *pei’ah* because of the extra *ta’azov*. What about an adult farmer who lives in a town where there are no poor people? When his produce was attached to the ground, he separated *pei’ah* but no poor people came to claim it so he took it for himself. If poor people come to town, is he required to separate *pei’ah* from the bread he made from the grain? *Minchas Chinuch* rules that this case is different from the case of a child farmer. When there are no poor people there is no obligation of gifts to the poor. When there was no initial obligation, the obligation does not then later restart abruptly. A child farmer is obligated. As a child, our judicial system does not force him to fulfill his obligations yet he is obligated. Once he becomes an adult, he has to fulfill the obligation and separate *pei’ah* even if the produce is now bread because of the extra *ta’azov*.

Minchas Chinuch rules that this is also true in regards to the *mitzvah* of sending away the mother bird when a person wants her eggs or chicks. If a child took the mother and the eggs together, once he matures and becomes an adult, he must send away the mother bird. When he was a minor the obligation took effect on him. A child does not have *da’as*. *Halachah* does not actually force him to fulfill his duties. Yet once he matures, he must fulfill the mandates.

Toras Ha’aretz (*cheilek* 1 *perek* 5 *siman* 72) agrees with *Minchas*

Chinuch. He brings a proof to *Minchas Chinuch* from the *Midrash* regarding converts. *Toras Kohanim* (*Kedoshim* 1 chapter 1) teaches that if a gentile harvests his field and then converts, he does not need to now separate the gifts to the poor. Why did the *Midrash* never mention such a law in regards to a child who matures? Apparently, a child who harvests his field and then matures and becomes an adult is obligated to give *pei'ah* and the gifts to the poor (*Mesivta*; see further *Sanhedrin* 55, "Are the Sins of Minors Sins?").

Sanhedrin 89**Can a Convicted Renegade Sage Starve Himself?**

Our *Gemara* teaches that all Jews are required to hear about the death of the renegade sage. The Torah instructs us that all of Israel is to hear and fear. If a sage rejected the authority of the supreme court, returned home, and kept instructing people to act against the final ruling of the court, he deserves death. His local court would not kill him. They would bring him to Jerusalem. The supreme court would convict him, and they would jail him until one of the three festivals, when all the Jews of the world gather in Jerusalem. They would then put him to death in Jerusalem during the festival so that all of Israel hear and fear. *Rav* Zilberstein raises a question. The sage knows he will not be killed immediately. He has to remain in jail until the festival. Can he repent and choose to refuse food so as to die of starvation as an atonement for his rebellion? There is a *mitzvah* to mete out punishment. Is this *mitzvah* an obligation exclusively on the court? Perhaps this obligation extends to the convicted man? Perhaps he may not cause himself to starve. He must play his role in enabling the court to administer onto him the punishment he deserves.

Shu"t Minchas Elazar (cheilek 1 siman 18) deals with a similar

issue. If a man was justly convicted and sentenced to death and he can escape, would *halachah* allow him to run away? Perhaps he is not allowed to flee and must permit the court to execute the punishment he deserves. Alternatively, perhaps the court has a *mitzvah* to put him to death but he does not have that obligation. Perhaps if he can run away, he should. *Minchas Elazar* concludes that the convict may not flee. His death by the court will be his atonement. If he escapes and attempts to repent, even if he afflicts himself, he will not gain atonement. Since his only path to atonement is by the court carrying out its ruling, he must stay and allow them to put him to death.

Chemdas Shlomo (*Gittin* 2b) disagrees. According to *Chemdas Shlomo*, the obligation of doling out a punishment applies only to the court. The convict is not obligated to come to the court and inform them that he was convicted and deserves a severe penalty. The convict may repent. His repentance will eliminate the sin. Only sincere repentance obliterates sin. The court cannot know for certain what is in a person's heart. The court will not know if his repentance was sincere. However, the convict is aware of what is in his heart. He should repent fully and he is then allowed to flee. He would not be required to surrender to the court since he knew that he had truly repented.

Our case seems to depend on these two opinions. According to *Minchas Elazar*, his repentance cannot be sufficient. The renegade sage therefore must get killed by the court in order to gain atonement. He is not permitted to starve himself as a penance. However, according to the *Chemdas Shlomo*, a sinner's heartfelt repentance is effective and therefore it is likely that he would be allowed to starve himself as a penance for his misdeed; he would not need to wait for the festival and the court to end his life.

According to the *Be'er Yitzchak*, the *mitzvah* of death by

strangulation is on the court; the individual has a different *mitzvah* obligation, “*Uviarta hara mikirbecha*”—“And you shall eradicate the evil from your midst.” We can suggest that when a renegade sage stops eating and allows himself to die, he is fulfilling the mandate of removing the evil from our midst and therefore he would be allowed to starve himself and would not need to wait for the court to execute its ruling (*Chashukei Chemed*).

Which Prophet Is Not Allowed to Withhold Prophecy?

Our *Gemara* teaches that a prophet who is given a message and keeps it to himself and does not deliver it deserves death from Hashem, *misah biydei Shamayim*. Does this apply to all prophets? *Gemara Megillah* (14b) asks how the Jewish leaders could go to the prophetess *Chuldah* and receive prophecy from her. In her times, the prophet *Yirmiyah* was alive. The *Gemara* proposes that the nation should have gone to the senior prophet *Yirmiyah*. How could *Chuldah* have delivered words of prophecy when *Yirmiyah* was alive? The *Gemara* answers that *Yirmiyah* was a relative of *Chuldah* and did not mind her prophesying. Alternatively, *Yirmiyahu* was not available for he had left to try and bring back the ten lost tribes. This discussion in *Megillah* seems absurd. Our *Gemara* teaches that it is a capital crime for a prophet to withhold prophecy. If *Hashem* delivered a prophecy to *Chuldah* she had to share it. What is the *Gemara* questioning when it asks about *Yirmiyah*? Would the need to honor a senior prophet permit someone to commit a capital crime?

Shu”t Doveiv Meisharim (*cheilek 1 siman 92 entry 3*) teaches that

only a male prophet is mandated not to withhold prophecy. A female prophetess is allowed to suppress *Hashem's* message. Our *Gemara* teaches that the law against suppressing prophecy is derived from the verse (*Devarim* 18:19), “*Vehayah ha'ish asher lo yishma el devarai asher yedabeir bishmi anochi edrosh mei'imo*,” which is understood to mean “The man who will not inform (others of My message) etc. I will demand (his life) from him.” *Tosfos* (*Bava Kama* 15a) teach that when the Torah phrases a law in male terminology it applies to men and women. Yet if the law is phrased as applying to a man, then it will only also apply to a woman if there is an explicit word adding a woman to the law. In our case, the Torah mentions *ish*, a man. There is no additional word to include a woman. *Chuldah*, a female prophetess, is not prohibited against suppressing prophecy. Based on this insight, *Doveiv Meisharim* resolves the question on *Gemara Megillah*. *Chuldah* was a female prophetess and she was permitted to withhold prophecy. *Yirmiyah* was alive and it would have been more respectful for her to insist that the Jewish elders approach him. It was for this reason that the *Gemara* had asked why she prophesied and it answered that women are more compassionate (*Mesivta*).

Sanhedrin 90**Do Gentiles Have a Portion in the World to Come?**

Sanhedrin (90a) begins a chapter dealing with eschatology. The first *Mishnah* begins with “All of Israel have a portion in the World to Come.” *Tiferes Yisrael* explains that this does not mean that gentiles do not have a portion in the World to Come. The *Mishnah* states that *Bilam*, the wicked gentile prophet and sorcerer, does not have a portion in the World to Come. If all gentiles do not have a portion in the World to Come, why specify *Bilam*? Apparently, most gentiles do receive a portion in the World to Come. It is only the wicked *Bilam* who will not merit a portion. What then is the difference between Israel and the nations in regards to the World to Come? *Tiferes Yisrael* explains that righteous Jews and righteous gentiles receive equal portions in the World to Come. Average Jews and gentiles will also merit portions in the World to Come. The difference between Israel and the nations in regards to the World to Come relates to the wicked. Wicked Jews will suffer in purgatory following their deaths. This suffering will cleanse them and rid them of their animalistic souls. Their Godly souls will be cleansed and they will receive portions in the World to Come. Wicked gentiles will meet a different

fate. After life in this world, their souls are destroyed. They will never, in any form, come back to life in the World to Come (*Mesivta*).

Should a Burial Society Bury a Kohein First?

Two men passed away, one a Levite and the second a *Kohein*. The families of both contacted the burial society. Should the burial society first bury the deceased priest?

Gemara Gittin (59b) teaches that from the word “*Vekidashto*” — “And you shall sanctify him,” we learn that we are obligated to allow the *Kohein* to go first in holy matters. He should be the first to read from the *Torah*, first to lead in blessings, and first to take a portion from the produce. What transpires upon his death? Does he still have the status of a priest? Should he be buried first?

The *Aderes* is of the opinion that a *Kohein* who dies and is brought back to life no longer has the status of *Kohein*. He is a new individual once he comes back to life and is no longer a priest. The *Gemara* in *Megillah* (7b) relates that *Rabbah* slaughtered *Rebbe Zeira*, a *Kohein*, on *Purim* day and then resurrected him. According to the *Aderes*, once *Rebbe Zeira* was brought back to life he was no longer a *Kohein*. *Rav Chaim* Berlin disagrees with *Aderes* and presents proof from our *Gemara*. Our *Gemara* relates that one of the sources that the dead will come back to life is a verse that states that *terumah* is to be given to *Aharon* the priest. We only had to give *terumah* once we entered Israel. *Aharon* never entered Israel. The verse must be referring to the future when *Aharon* will come back to life and then receive *terumah*. This *Gemara* clearly opposes the view of the *Aderes*. It demonstrates that when *Aharon* will come back to life he will remain a *Kohein*.

Aharon must not have lost his status of priesthood when he passed away. *Aderes* will likely have to suggest that *Aharon* will come back to life and will not be a *Kohein* initially, but will be reconsecrated in the future era. He will then be a priest and receive *terumah*.

According to the *Aderes*, there is certainly no reason to bury the *Kohein* first. Once a man dies, he is no longer a *Kohein*. Our question can only be examined from the point of view of *Rav Chaim Berlin* who holds that the status of priesthood remains despite death. Is there a *mitzvah* to first bury a deceased priest? *Shu"t Shevet Halevi (cheilek 1 siman 322)* rules that there is no obligation to first bury a priest.

Rav Shlomo Eiger is unsure about the rights of a child *Kohein* who is mourning his father. If he would like to lead the community in *Kaddish* and another mourner wants to lead as well, would the *Kohein* lead because he is seeking to honor his father the *Kohein* and honoring the *Kohein* should always be a priority? *Rav Eiger* concludes that we are only mandated to honor the *Kohein* while he lives. We have never found an obligation to honor him after death. The child *Kohein* has no right of precedence to recite *Kaddish*. In light of this ruling, in our case as well, there is no mandate to honor the priest post death, and therefore, there would be no requirement to bury the deceased *Kohein* first. It is only while he is alive that there is a positive *mitzvah* of *Vekidashto*, mandating that the *Kohein* be honored.

Shu"t Shevet Halevi (cheilek 5 siman 178:8) rules that there is no obligation to bury the deceased *Kohein* first. He argues that the law of giving the *Kohein* precedence applies to a charity distribution and other matters of life. We are to treasure the life of the *Kohein*. His added *mitzvos* deem his life more worthwhile and significant; therefore, in matters of life, his life takes precedence. In matters

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of honor in death, he is not necessarily honored first. *Shu"t Shevet Halevi* rules that in our case, being a *Kohein* is not sufficient reason for him to deserve to be buried first (*Chashukei Chemed*).

Sanhedrin 91**Can You Make Your Tefillin Straps Shiny with Oils from Non-Kosher Fish?**

Rashi on our *Gemara* explains that *chilazon* is a worm from the sea. *Chilazon* was the creature that produced the blue dye with which wool *tzitzis* strings would be made blue. Rashi's definition of the *chilazon* as a worm has halachic significance to the laws of *tefillin*.

In regards to *tefillin*, Hashem commanded (*Shemos* 13:9), “*Lema'an tihyeh Toras Hashem beficha*”—“So that the Torah of Hashem should be in your mouth.” Our Sages (*Shabbos* 108a) derive from the word “*beficha*”—“in your mouth” that each component of the *tefillin* must come from “*min hamuttar beficha*”—“from what is permitted in your mouth.” Each part of the *tefillin* must be derived from a kosher animal—something which can produce matters that may enter your mouth. *Tefillin* scrolls must be written on parchment that comes from a kosher animal. The boxes of the *tefillin* must originate from the skin of a kosher animal. The son of the *Noda Biyehudah* (*Tinyana Orach Chaim siman* 3) discusses the suitability of using oils from non-kosher fish to cause the straps of the *tefillin* to be shinier. The fish in question are not permitted to be eaten. However, perhaps coloring is not significant in the eyes of *halachah*.

Our *Rashi* teaches that *chilazon* was a worm; all worms are not kosher. *Chilazon* was used to color the priestly garments, the tapestries of the *Mishkan*, and the strings of the *tzitzis*. Why was it not rejected if it is not an item allowable to the mouth? Apparently, colors do not count in the eyes of *halachah*. Since the wool on which the blue dye was cast is permitted to the mouth, *halachah* allows for the use of coloring on the wool from all sources, even a non-kosher creature. Simply put, color is not the item.

At the end of his responsum, *Noda Biyehudah* adds another argument to permit using the oils. The fish oil is merely a shine; it adds to the beauty of the straps and boxes. It is not the source of the blackness. The basic black color originates from items that are kosher. He therefore allows a person to use oils from non-kosher sources to create an attractive sheen on his *tefillin* straps (*Mesivta*).

May a School Send a Child Home Because His Parents Are Not Paying Tuition?

A father signed a contract to pay tuition to *yeshivah* for his son but his payments stopped. The school required the funds and wanted to refuse to allow the child to attend classes in order to force the father to pay his bill. Is the school allowed to send a boy home because his parents are not paying what they owe?

A similar question is dealt with in *Teshuvos Maharam Mintz* (*siman* 48). He does not allow the school to penalize the child. His source is our *Gemara* which states that anyone who withholds a *halachah* from a student is considered one who is stealing the heritage his friend had inherited from his ancestors. The verse declares about Torah that it

is, “*Morashah kehillas Ya’akov*”—“The heritage of the community of Jacob.” Torah belongs to the entire Jewish nation. *Hashem* intended for us to receive the Torah at the very moment He created the world. If you are well versed in Torah and can teach it to another Jew, you are obligated to share it with him. If you do not, you are considered a thief and even the fetuses in the wombs of their mothers will curse you. *Maharam Mintz* therefore rules that a teacher and school may not deny a Torah education to a Jewish child due to financial debt. *Maharam Mintz* points out that the Torah limits what a lender may do to coerce his borrower to repay him. A lender is not allowed to take an impoverished borrower’s work utensils as a form of security (*Devarim* 24:6), “*ki nefesh hu choveil*”—“for such an act is an assault on the soul.” Commentators explain that if a workman does not have his tools, he will not be able to earn any money for his daily needs. Without sufficient income, he will not have the peace of mind to learn Torah. If he does not learn Torah, his soul will be damaged. The Torah prohibits seizing work utensils for such an act can lead to loss of Torah. Certainly, one cannot withhold a child’s Torah learning in order to gain repayment of what is owed. *Rav Zilberstein* rules that a school may not deny the child the chance to study Torah because of money. The school should take the father to *beis din* and if the father loses in court, *beis din* has ways in which to coerce him to pay what is owed (*Chashukei Chemed*).

Sanhedrin 92

**A Doctor Is Agreeable and Offers a Discount:
Is It Permissible to Submit the “Deceptive”
Receipt to an Insurance Company and Get
Fully Reimbursed?**

R*euvein* traveled from Israel to the United States for business purposes. He bought an insurance policy to cover possible medical expenses. The policy states that if he requires medical treatment he is to visit a physician in the United States, lay out the money and pay the physician. He then brings a receipt upon his return to Israel and submits the receipt to the insurance company. The company will reimburse his costs minus fifty dollars. He is required to cover the first fifty dollars of the medical bill. During his trip, *Reuvein* was in need of medical care. He visited a doctor who was an observant Jew. The doctor appreciated *Reuvein's* Torah scholarship and study. While his going rate was two hundred dollars per visit, he charged *Reuvein* only one hundred dollars. *Reuvein* paid him the one hundred dollars. The doctor gave *Reuvein* a receipt stating that he had treated *Reuvein* and that the cost of the treatment was two hundred dollars. Upon *Reuvein's* return to Israel, is he allowed to submit to the insurance company the receipt stating that the fee for his care was two hundred

dollars? If he submits such a receipt, he will be reimbursed \$150. The policy actually calls for *Reuvein* to lose fifty dollars on the visit. If he submits the receipt, he will not lose anything; rather he will receive an extra fifty dollars. Perhaps the doctor was seeking to gift *Reuvein*. He was not seeking to offer a gift to the insurance company. Perhaps *Reuvein* may submit the receipt and accept \$150 from the insurance company for that is the gift that the doctor gave to him. Alternatively, possibly *Reuvein* is entitled to keep the full one hundred dollars that he expended and he should return the extra fifty dollars back to the company. The doctor gifted *Reuvein*. A third possibility is that *Reuvein* is required to inform the company that he only spent one hundred dollars, and he can only accept fifty dollars in return.

Our *Gemara* teaches that deception is a deplorable sin. A man who creates a false impression betrays *Hashem*. *Hashem's* seal is truth, and one who betrays truth is likened to an individual who worships idols. Is it wrong for *Reuvein* to present the “deceptive” receipt to the insurance company?

Rav Zilberstein rules that *Reuvein* has to give the insurance company fifty dollars and may only accept fifty dollars in return. *Reuvein* agreed to a policy which stated that if he had to visit a doctor he had to pay fifty dollars out of pocket and the insurance company would cover the rest. He has to fulfill his word. The fact that the doctor wanted to assist him and not the insurance company is irrelevant. *Hashem* has arranged that the insurance company should benefit from the doctor's appreciation of the Torah scholar. *Reuvein* should inform the insurance company that he paid one hundred dollars, and he may only accept fifty dollars back from the insurance company (*Chashukei Chemed*).

Can You Turn Down a Request to Serve the Community?

Our *Gemara* mentions the great merit in serving the community. A leader who guides the community with pleasantness will merit to lead them again in the World to Come. In *Midrash Vayikra Rabbah* (25:1) *Rav Huna* taught that if a person commits a sin for which he deserves death from Heaven he can gain forgiveness by doubling his usual learning. If he does not know how to study and learn, what should he do to live? He should accept to lead the community or to serve as a charity collector. The merit of serving the community will save him from premature death and will grant him life. *Darchoi Moshe* (*Yoreh Dei'ah siman* 252:2) teaches that a person is not allowed to refuse the community's request that he serve as a charity collector. Presumably, this is true about collecting charity and any other position that may help the community.

In the days of the *Maharsham*, the community wanted a certain member to serve in a leadership role. He turned down their request. Nevertheless, they persisted. They approached the *Maharsham* to ask him if they could force the man to accept the position. *Maharsham* (*Shu"t Maharsham Kuntres Tiruk Olam Choshen Mishpat siman* 231) quotes the words of the *Shu"t Even Shoham* on this issue. *Even Shoham* taught that we cannot force a man to accept a role he does not want to take. Yet, we may stress what our Sages teach in *Berachos* (55a). In *Berachos* (55a), the Talmud warns man not to reject matters that are filled with *Torah* blessings for he is showing disregard to the promises of the *Torah*. There is enormous blessing in working for the benefit of the community. Working for the community can save a person from death and act as a source of blessing. Anyone who

rejects the chance to serve the community is showing disregard to this blessing of the Torah.

Shu"t Tzitz Eliezer (cheilek 18 siman 81) was asked by a Torah scholar who was teaching students if he should accept the community's request to serve the community. Such communal involvement would help many individuals; however, it would come at the expense of his learning and teaching. *Tzitz Eliezer* rules that he should refuse the position. Learning Torah benefits the community because Torah study sustains the world. *Tzitz Eliezer* believes that a scholar should not interrupt his activity which holds up the world even for the sake of serving the community (*Me'oros Daf Hayomi*).

Sanhedrin 93**Should Authors of Holy Books Stay Anonymous?**

Our *Gemara* teaches that it is a merit to the prophet *Daniel* that his name adorns his book. *Nechemyah* was punished in that his name does not adorn the book that bears his words and instead is called the book of *Ezra*.³ *Daniel's* name on his book preserves him for all eternity. It is superior to siring sons and daughters. In light of this lesson, is it significant for an author to write his name in his book? Should all be made aware of who penned a work of Torah?

Chida points out that many *Mishnayot*, *Toseftot*, and *Baraitot* do not inform us of their author. Apparently, it is acceptable to remain anonymous. *Sefer Chassidim* (*siman* 367) writes that early sages who authored *Midrashim*, *Sifrei*, *Mechilta*, and other works did not offer their names in their works in order to maximize their reward in the future world. If their names were identified they would derive pleasure in this world of falsehood from their contributions. They preferred to maximize their reward for the future realm. Yet if the author knows that by revealing his name as the source of the work it

3. Even though in our Bibles we have a book named the book of *Nechemyah*, our Sages did not call it by that name. Our Sages called it the book of *Ezra*.

will increase learning, for the learners will feel they should study the work since it comes from a reliable source, then it is appropriate to reveal his identity in order to help the community.

Chida quotes an interesting rationale for an author revealing his identity. Our *Gemara* teaches that it is a merit for the author to be remembered. It is therefore fitting to reveal the author's name so as to receive this merit. *Chida* adds that since the times of the *Ge'onim* almost all of the holy works have had the names of the authors inscribed on them. A person who writes a work in our time and omits his name is guilty of prideful arrogance, *yuharah*. He is arrogating to himself a level that is inappropriate.

It is interesting to note that *Rav Yisrael Meir Kagan* wrote his name in his book *Mishnah Berurah*. He initially published his book on the laws of speech, *Chafetz Chaim*, without his name. Yet, ironically, he is universally called the *Chafetz Chaim* rather than the *Mishnah Berurah* (*Me'oros Daf Hayomi*).

Is There Reason to Fear Saying, “Hareini Kapparas Mishkavo”?

Our *Gemara* teaches about *Mashiach*. *Rabbi Aleksandri* taught that *Mashiach* is laden with sufferings. *Maharsha* explains that *Mashiach* has accepted upon himself to suffer for the sins of others. He accepts pain so as to garner atonement for others' misdeeds. *Maharsha* points out that an ordinary person is not obligated to accept upon himself suffering for the sake of creating amends for others. The redeemer does so. A child should also do so for his deceased parent as part of the *mitzvah* of honoring a parent after death. *Gemara*

Kiddushin (31b) teaches that a child honors his deceased father by quoting his Torah lessons and stating, when invoking the father, “*Hareini kapparas mishkavo*.” *Rashi* explains that the meaning of this declaration is “*Alai yavo kol ra hara’ui lavo al nafsho*”—“May all misfortune his soul deserves come upon me.” A child lost his father and knew his father had sinned. He feared he would now suffer if he would fulfill Jewish law and declare “*Hareini kapparas mishkavo*” each time he mentioned his father’s name. Is the child allowed to refrain from saying, “*Hareini kapparas mishkavo*”?

Rav Moshe Feinstein (quoted in *Betzeil Hachochmah cheilek 6 siman 17-20*) teaches that the child has no reason not to say, “May I atone for him.” Saying, “*Hareini kapparas mishkavo*” does not invoke punishment. *Rav Moshe* disagrees with the *Maharsha* on our *Gemara*. According to *Rav Moshe*, an ordinary Jew only suffers for his own misdeeds. A son says, “*Hareini kapparas mishkavo*” to bestow honor upon his parent. By the son stating that he would like to receive all the suffering the father may deserve, he is giving homage and honor to his father. In *Gemara Sukkah*, *Reish Lakish* says, “*Hareini kapparas Rabbi Chiya*.” *Rashi* explains there that *Reish Lakish* sought to honor *Rabbi Chiya*. By declaring about *Rabbi Chiya*, “*Hareini kapparas Rabbi Chiya*,” he was merely honoring him. In light of the ruling of *Rav Moshe*, there would be no need for the son, in our scenario, to fear any repercussion. He should say about his father, “*Hareini kapparas mishkavo*” (*Chashukei Chemed*).

Sanhedrin 94**May a Torah Teacher Shame Her Student?**

A teacher brought her question to *Rav* Zilberstein. She had a student in her class who did not apply herself to her studies. The girl would daydream and not focus on the lesson. Was the teacher allowed to call on her in class and ask her to repeat what had just been taught? Such a request will shame the young girl who will surely stammer and be unaware of the correct response. There is a prohibition against publicly shaming another person. Is the teacher allowed to shame her student in her attempt to teach her Torah?

Rambam (Hilchos Talmud Torah 4:5) rules that if a rabbi is certain that his students are lazy in their Torah studies, are not applying themselves to the lessons, and therefore not succeeding in their learning, he is obligated to be angry and shame them with his words in order to sharpen their minds. Perhaps this only applies to male students who have a *mitzvah* to study Torah and does not apply to young girls who do not have this *mitzvah*.

Sefer Chassidim (siman 313) teaches that a father must teach his daughters the laws of the *mitzvos*. Our *Gemara* states that in the days of King Hezekiah there was widespread teaching of Torah. In those days one could check from the North to the South and would not

discover a young boy or girl, man or woman, who was not expert in the laws of purity and impurity. The *Gemara* specified that the girls were learned as well. *Chafetz Chaim* (*Likutei Halachos Sotah* chapter 3) teaches that what the Sages said to discourage women from the study of Torah only applied in those days, when the girls lived in their parents' homes. There, they could learn from their mothers and fathers all that a Jewish mother is required to know. In those times, we could rely on the traditions being learned from parents. Parents were revered and formal instruction and study were not as necessary. Times have changed. In our days, parents are not respected as they should be and many girls do not reside with their parents once they mature. It is now a great *mitzvah* to teach Torah to women in order to strengthen faith and observance of law.

Rav Zilberstein rules that if the teacher is educating her student on Jewish laws or Jewish thought, she is allowed to shame her student in order to improve her studies, just as *Rambam* rules a male teacher may shame his students to get them to apply themselves to Torah studies (*Chashukei Chemed*).

Sanhedrin 95**When Is Atonement Needed if Tragedy Occurs Through a Person?**

Shu"t Noda Biyehudah (*Kama Orach Chaim siman 34*) deals with a person who felt guilt. The man asking the *Noda Biyehudah* was a merchant. He had goods he would give to others to transport and sell. An old man in his community needed money. The man had been involved in transport in the past. The man asked the merchant for some goods to take to another town and sell. The man's wife was upset when she heard of her husband's request and told her husband that he was old and infirm. It was hard for him to travel on the roads. It was burdensome and dangerous and perhaps a tragedy would ensue. The man did not heed his wife's words and continued to pressure the merchant for goods. The merchant proceeded to give him some items and the man set out on his way. In his effort to transport the goods, the man died, causing the merchant to feel guilty. He asked *Noda Biyehudah* about the acts of penance he should perform as atonement.

Noda Biyehudah ruled that the merchant was not required to perform any act of atonement. The old man had initiated the event and had chosen to take the risk of transporting the goods. The merchant bore no liability.

Noda Biyehudah brought proof to his ruling from our *Gemara* which discusses the crime of the killing of the *Kohanim* of the city of Nov. It states that King David bore responsibility for the tragedy.

David did not seek to harm the people of Nov. Yet since a misfortune had occurred through him, he bore guilt. Why did the *Gemara* not mention that David bore guilt for the death of *Avner*? *Avner* came to Chevron to pledge his allegiance to David and ended up getting killed by *Yoav*. Apparently, David bore no liability for what happened to *Avner* for *Avner* initiated the event by coming to Chevron. David had not called him. While tragedy resulted, David bore no guilt. So too, in our case, the old man had initiated the perilous transport. The merchant was therefore like David in relation to *Avner*; he held no responsibility. He was not obligated to perform any act of penance.

Mahari Veil (*siman* 125) rules that if someone sends a messenger to perform a task and the messenger dies en route, the sender requires atonement. In that instance, the sender was the initiator. In our case, in which the one who died initiated the trip, the merchant does not need to perform an act of atonement (*Mesivta*).

Sanhedrin 96**Can I Write My Father's Name on a Form?**

A man went to a government office and was asked to fill out a form which required him to write his father's name. He asked *Rav Zilberstein* if he was allowed to write out his father's name. *Shulchan Aruch (Yoreh Dei'ah 240:2)* rules that a son is not permitted to call his father by name, both during the father's lifetime and following his passing. A son should refer to his father as *Abba Mari*. Does this apply to writing? Is a son forbidden to write his father's name?

Ru'ach Chaim is strict. He rules that a son normally may not write his father's name. He is only allowed to do so when he intends to bestow honor upon his father, as in our *Gemara*. In our *Gemara* it relates that King *Beladan* had to abdicate the throne for his face had transformed and he looked like a dog. His son, *Merodach*, succeeded him yet still sought to honor his father. *Merodach* had written on the royal decrees, "*Merodach Beladan* son of *Beladan*." *Maharsha* explains the practice. *Beladan* looked like a dog. People do not honor someone who appears that way. It would be understandable if the son had attempted to conceal his father's name yet he was demonstrating that he still honored his father greatly. He would write the name in order to indicate that, as far as he was concerned, his father's name

was the most special and honorable name in the world. He would even call himself by his father's name to link himself to the glory of his father.

Shu"t Yosef Ometz (siman 87) points out that many sages would write the names of their fathers. *Rashi* signed his responsa as "*Shlomo ben Yitzchak*," *Rambam* used to sign his letters with "*Moshe ben R' Maimon*," *Rabbeinu Tam* wrote, "*Ya'akov ben R' Meir*." Since many Torah giants would sign their names with their fathers' names, it is apparent that a son is permitted to write the name of his father.

Rav Moshe Feinstein (Igros Moshe Yoreh Dei'ah cheilek 1 siman 133) is also lenient. He rules that there is no prohibition against writing the name of the father. Verbalizing differs from writing. One may write the name of his father and need not add titles and honorary words to his father's name when he does so.

Since *Rav Moshe Feinstein* was lenient on this question, *Rav Zilberstein* rules that the man may fill out the form and write his father's name. If there is enough room on the sheet, he should add a title, such as Rabbi, to his father's name in order to certify the honor. (*Chashukei Chemed*).

Sanhedrin 97**Is the World Ending in the Year 6000?**

Rav *Katina* teaches, “The world will exist for six thousand years, (then) in one thousand it will be destroyed as the verse declares, ‘And *Hashem* will be exalted by Himself on that day.’” Most interpret this to mean that the world will continue normally for six millennia and will be destroyed in the seventh millennium. Does this truly mean that the world will come to an end in the seventh thousand? Is life on its path to destruction? There are many different opinions regarding this topic. Many do not interpret this lesson literally. *Ra’avad* (*Hilchos Teshuvah* 8:8) interprets the *Gemara* literally. The world will be in its present form for six thousand years. It will then be demolished and turn into a wasteland for one thousand years.

Some teach that this process will repeat itself. After six thousand years the world will return to nothingness and then the world will restart. Just as *shemittah* occurs each seventh year and the cycle begins anew in the eighth year, each thousand years will be comparable to a year in the *shemittah* cycle. The seventh thousand will encompass a time of cessation of activity but will be followed by a new six thousand years of life. This will continue for 49,000 years. In the year 50,000, a year corresponding to the *yovel* year, the world will come to an end

in a final manner (*Rikanati Parashas Behar, Rav Chasdai Crescas Or Hashem ma'amar 4 sof derush 1, ma'amar 3 kelal 1, Machzor Vitri siman 134, Rabbeinu Bechaye Parashas Beha'alo-secha*).

In the work *Maggid Meisharim (Parashas Behar)*, the angel tells *Rav Yosef Karo*, author of the *Shulchan Aruch*, that in the seventh thousand, the inhabitants of earth will not perish. The power of nature will merely weaken. This is called destruction in the Talmud. It merely means less life and passion. *Shelah Hakadosh (Ma'amar Beis David)* teaches that in the seventh thousand, new souls will not be formed. Hashem will only send down to earth the souls that had already lived in the earlier six thousand years of life. *Radbaz (Shu"t cheilek 2 siman 839)* disagrees with *Shelah* and *Maggid Meisharim*. He argues that all living creatures will die in the seventh thousand, but he believes that the world will not return to the pre-Genesis state of *tohu vavohu*.

A novel interpretation of the *Gemara* is suggested by *Me'iri* in his introduction to *Avos*. *Me'iri* teaches that the world will embody life for six thousand years. Out of those six thousand, one thousand will be a time of terrible difficulties. Since it is a period of great misfortunes and travails, it is called a time of destruction. The meaning is that the sixth thousand, the years 1240-2240 in the Common Era, are a time of struggles and disasters for our nation. This era has already been witness to the expulsion from Spain, blood libels, and the Holocaust. *Me'iri* teaches that our *Gemara* is predicting these difficult times.

Rambam (Moreh Nevuchim cheilek 2 perek 29) rules that the world is not slated for destruction at all. The verse (*Koheles 1:4*) says, “*Veha'aretz le'olam omades*”—“And the world stands forever.” The earth will continue. Our *Gemara* contains a lesson from *Rav Katina* yet it is a minority view. *Halachah* is in accordance with the majority view that the world is not hurtling towards *tohu vavohu (Me'oros Daf Hayomi)*.

Should a Nurse Bandage a Man Who Wants the Dressing to Prevent Disputes in His Home?

Our *Gemara* teaches about what the world will be like immediately prior to the arrival of *Mashiach*. *Rabbi Yehudah* taught that the generation that will merit to receive *Mashiach* will exhibit the following characteristics. The place where the sages gathered for learning will become a place of meeting for immorality. The Galilee will become desolate. The *Gavlan* will be empty. Residents of the borders of Israel will wander from town to town and beg for charity yet will be turned away empty handed. The wisdom of scholars will be disparaged while those who fear sin will be considered abominable. The face of the generation will liken the face of a dog. Finally, truth will be absent. *Rav Yitzchok Zilberstein* related a question about lack of truth that was presented to him.

A nurse worked in a health clinic. A man came into the clinic with a request, “Please bandage my hand. I work and am supposed to come home at a certain time. After work today, I got delayed by visiting a sick person. It was a very important *mitzvah* and I had to perform it, but I have a problem at home. My wife gets upset with me any time I come home later than I should. She will certainly scream at me if I tell her that I visited a sick individual after work instead of coming home and helping out. Our *shalom bayis* will be undermined. Can you bandage my hand? I will pay for the costs. If I come home with a bandage, my wife will think that I was injured after work and therefore was delayed in coming home. The peace in our household will be saved.” The nurse called *Rav Zilberstein* and asked if he should acquiesce to the request.

Rav Zilberstein rules that the nurse is obligated to place the bandage. Our *Gemara* teaches about the importance of truth yet there are times when it is proper to lie. For the sake of peace, falsehood is allowed. All Jews are obligated to try and help each other attain peace in the home. If the man is telling the nurse the truth, the nurse should bandage him in order to maintain peace in the household. If the nurse suspects that the story is inaccurate, he should not put on the bandage. Perhaps the man sinned after work and is trying to conceal it from his wife. The nurse should not allow himself to be an enabler of misbehavior (*Chashukei Chemed*).

Sanhedrin 98**Is There a Guarantee of Redemption?**

Our *Gemara* records a dispute between *Rabbi Eliezer* and *Rabbi Yehoshua*. *Rabbi Eliezer* is of the opinion that the Jewish nation must repent in order to merit redemption; if we engage in *teshuvah* we will be redeemed. *Rabbi Yehoshua* is of the opinion that even if we do not repent, we will merit redemption. A redemptive era is built into the very reality of the world. At a set time, the *Mashiach* will arrive. Our *Gemara* records the back-and-forth between *Rabbi Eliezer* and *Rabbi Yehoshua*. In our *Gemara*, *Rabbi Yehoshua* has the final word and *Rabbi Eliezer* does not have a response to the proof that *Rabbi Yehoshua* offers.

In Tractate *Rosh Hashanah* (10b), we have another dispute between *Rabbi Eliezer* and *Rabbi Yehoshua*. They argue about when *Hashem* created the world. According to *Rabbi Eliezer*, *Hashem* created the world in the month of *Tishrei*. *Rabbi Eliezer* states there that redemption will occur in *Tishrei*. *Rabbi Yehoshua* is of the opinion that *Hashem* created the world in the month of *Nissan* and redemption will come in *Nissan*. Perhaps this argument is identical to the argument in our *Gemara*. According to *Rabbi Eliezer*, redemption must be earned. He therefore views the month of *Tishrei*, when we

are judged, as the first month and the month in which we will merit redemption. Earning reward will bring redemption. *Rabbi Yehoshua* disagrees and contends that redemption will occur in *Nissan*, which is not a time of judgment; it is the time of spring. Just as nature revives itself in *Nissan*, *Rabbi Yehoshua* is of the opinion that redemption is guaranteed to occur. He believes that redemption is part of *Hashem's* nature. At a set time, even if we are not deserving, the redemption will materialize.

Gemara Berachos (59b) teaches then when the sun is back to its original spot, the location it was in when *Hashem* created it, a blessing is to be recited. This occurs every twenty-eight years on a Wednesday in *Nissan*. That morning the blessing of *Baruch Oseh Ma'aseh Bereishis* is to be recited upon seeing the sun. All authorities record this law.

This law is striking. Perhaps the world was created in *Tishrei*. If the world was created in *Tishrei*, the time for the blessing of the sun should take place on a Wednesday in *Tishrei*. Why do we recite *Birkas Hachamah* in *Nissan* and not in *Tishrei*?

Perhaps the *halachah* requiring us to bless *Hashem* for the sun on a Wednesday in *Nissan* is a further confirmation that *halachah* is in accordance with *Rabbi Yehoshua*. The world was created in *Nissan*. The sun is back to its original spot in *Nissan*, and redemption will occur in *Nissan*. Redemption is therefore guaranteed. It is part of the fabric of the universe. It will certainly happen at its time, even if, Heaven forbid, we are not righteous or deserving (Rav Yosef Zvi Rimon).

How Can We Find the Strength to Withstand the Redemptive Travails?

In the *Birkas Hamazon* that is recited on *Shabbos*, we ask *Hashem* for the future era of a lengthy *Shabbos*, “*Harachaman Hu yanchileinu yom shekulo Shabbos umenuchah lechayei olamim.*” We then ask *Hashem* for the *Mashiach*, “*Harachaman Hu yezakeinu liymos haMashiach ulchayei ha’olam haba.*” This is troubling. First, *Mashiach* will come. According to many, during the times of *Mashiach*, nature will continue. We will merely merit to be free of gentile subjugation. Following the times of *Mashiach*, reality will change. We will embark on a World to Come, a realm of lengthy Sabbath. We should first ask *Hashem* for the days of *Mashiach* and then for the era of a lengthy *Shabbos*. Why is our request seemingly out of order?

Haggadah Chalukah Derabbanan resolves this problem based on our *Gemara* which contains discussions of the Sages about the times of *Mashiach*. *Ulla* said, “Let him come but I do not want to see him.” *Ulla* feared the terrible travails that will accompany redemption. He wished to never witness such suffering. *Rav Yosef* though said that he wished for *Mashiach* to arrive and would be glad to sit in the shade of the excrement of *Mashiach’s* donkey. *Rav Yosef* is teaching that since the times of *Mashiach* will lead to the era of *Shabbos*, and that era is so special, he would joyfully live in a time with a bit of a connection to that era. Now we have an answer to our question. We ask for the times of *Shabbos* and then for the times of *Mashiach*. If we would initially ask for the times of *Mashiach* we might be dispirited. How can we look forward to living in times of great travail? This is why we first remind ourselves of the World to Come by first asking for the era of eternal *Shabbos*. That time is so special, pleasurable, and meaningful that the thought of it offers us the strength to withstand the redemptive travails and to hope for *Mashiach* (*Mesivta*).

Sanhedrin 99**If You Have Some Money for Charity, Should You Buy an Item for the Shul or Should You Donate the Funds to Support Torah Scholars?**

A synagogue in Israel did not have scrolls of the Prophets to use for *Haftarah*. A member of the synagogue pledged an amount of money for charity. The *shul gabbai* approached him and asked him to buy scrolls of prophetic writings for the *shul*, but the rabbi of the *shul* asked him to donate funds for the Torah scholars who study in the synagogue. What should the donor choose to do? Is it best to purchase a scroll which will last and provide merit for many years, or is giving money to support Torah scholars preferable?

Our *Gemara* teaches about the great reward a Jew will receive for involvement with and support for Torah scholars. “*Rav Chiya bar Abba* taught in the name of *Rabbi Yochanan* that all the prophets only describe the rewards for one who marries off his daughter to a Torah scholar or one who helps a Torah scholar in business; however, the Torah scholar himself (receives such a wonderful reward) that no eye, other than *Hashem*, has seen it.” *Chayei Adam* (*cheilek 1 kelal 31*) therefore rules that it is worthier to support Torah scholars than to sponsor the writing of a *Sefer Torah*. *Chayei Adam* comments

that this law is not well known. Many think that the greatest merit is to write a Torah scroll. They reason that those commissioning the writing of a scroll will earn a portion in the World to Come for themselves. They are mistaken. It is of utmost importance to support Torah scholars. If these donors would support poor Torah scholars, they would certainly have a greater *mitzvah*. *Shu"t Machaneh Chaim* (*Yoreh Dei'ah cheilek 3 siman 27*) also rules that it is best to sustain Torah study. A woman had fallen ill and put aside some funds to use for a *mitzvah*. With *Hashem's* help she recovered and now wanted to redeem her pledge. She proposed using the money to write a *Sefer Torah*. *Shu"t Machaneh Chaim* told her she should use the monies to support young students of Torah or to help out poor individuals who were too infirm or ill to work and provide for themselves. She had promised to use the funds for a *mitzvah* and probably intended to use them for the greatest possible *mitzvah*. Torah study is an exceptionally great *mitzvah*. It is, in a certain sense, equal to all the others. The donor, in our case as well, should help support the scholars (*Chashukei Chemed*).

Sanhedrin 100

Should a Husband and Wife Be Buried Next to Each Other?

Our *Gemara* teaches that in the future realm *Hashem* will grant to each *tzadik* 310 universes of reward. Why 310? What is the significance of this number?

Toras Chaim explains that in the Ten Commandments there are 620 letters. The letters correspond to the 613 *mitzvos Hashem* gave to *Moshe* at *Sinai* and the seven Rabbinic *mitzvos* such as reading *Megillah* and lighting *Chanukah* candles. Each *mitzvah* has a universe of reward. A righteous person deserves 620 worlds. *Gemara Berachos* (61a) teaches that *Hashem* initially created man with two sides, a male and female side. Each marriage is a recreation of the original unity of man and woman. This is why each righteous individual will receive 310 worlds of reward. The husband will return to life with his wife. They will each merit 310 worlds. Together, it will amount to the 620 worlds of reward. In light of this understanding, it is fitting for husband and wife to be buried alongside one another. They will return to life together and enjoy reward jointly.

Shu"t Chasam Sofer (cheilek 7 siman 34) writes that authorities wonder about a man who had several wives. Who should he be

buried with? Who will rise with him? Should he be buried next to his first wife or next to his later spouse?

Chasam Sofer quotes the *Gemara* in *Sotah* (2a). The *Gemara* teaches that a person's first spouse is the other half of his soul. Before he came to this world, a voice in Heaven announced that the daughter of so-and-so is for so-and-so. The second spouse is based on a person's merits. *Ari Hakadosh* has a unique explanation for this *Gemara*. He explains that there is a second half to each soul. Each male has a female half that is born to another family. This is the "first spouse." The soulmate match is referred to in the *Gemara* as "*zivug rishon*." Once a person enters this world, he starts to fulfill *mitzvos*. Sometimes he performs many *mitzvos*. At other times, he performs many sins. His actions change him. He ends up actually marrying a woman based on his deeds. According to this analysis, a person likely did not end up marrying his true other half. When the dead will return to life, a man will be matched with his true original other half. He may not be matched up with a woman he lived with while on earth. If a man was married multiple times, he may be buried wherever he wants. When he comes back to life, he may not be paired again with a wife he had on earth. Then the original intent of creation will be fulfilled. He will be united with his original soulmate.

The author of *Sho'eil Umeishiv* in his book *Yosef Da'as* (*Yoreh De'iah siman* 366:3) quotes *Sefer Hanitzachon* as teaching that a woman who was married more than once will return to life to be with her last husband. He writes that when a husband dies during the lifetime of his wife, it is akin to divorce. When a man and wife divorce, the wife may not return to her first husband if she married another man following the divorce. Since death is likened to divorce, once she marries a second man, she is prohibited to the first man. When all come back to life, she will be with her latest spouse, for

she will be prohibited to the earlier husband. In light of this, *Yosef Da'as* suggested that a woman who had children from one husband who died and married a second man, did not bear children from him, and died in his lifetime, should be buried next to the second husband. *Yosef Da'as* ultimately rejects the basic argument of *Sefer Hanitzachon*. There is no source that death of a husband is similar to divorce. Perhaps the woman does not become prohibited to her first husband once she marries her second spouse (*Mesivta*).

Sanhedrin 101**May a Kabbalist Create a Creature on Shabbos Using Sefer Yetzirah?**

Shu”t Chacham Tzvi (siman 93) and *Shu”t Ya’avetz (cheilek 2 siman 82)* record that their ancestor, *Rav Eliyahu Ba’al Shem*, created a “person” through mystical study and incantation. May a Kabbalist create a *golem*, like this, on *Shabbos*?

Geza Yishai (ma’areches 1 os 1) discusses this issue. One may argue that the Kabbalist is merely combining holy letters. He is meditating and thinking of holy thoughts. The being then comes into existence on its own; the Kabbalist is not creating it. Just as he can study *Gemara* on *Shabbos*, he should be permitted to study and meditate on the Kabbalah on *Shabbos*. He is not violating a Torah law when the *golem* emerges. On the other hand, one may argue that his verbalizing words of Torah is an action. He is creating with action. Perhaps he may not utter words that will result in a *golem* materializing for it would be a violation of the prohibition against building on *Shabbos*, *boneh*.

Geza Yishai initially argues that there is no prohibition of creating a person with words on *Shabbos*. Our *Gemara* teaches that a snake charmer is allowed to chant an incantation on *Shabbos* that would

freeze a snake or scorpion in its place. *Rashi* explains that the charmer is doing this to prevent the snake or scorpion from damaging. The novel insight of the *Gemara* is that such a freezing is not considered trapping on *Shabbos*. Apparently, trapping through words is not *tzad*; therefore, building through words should not be considered *boneh*.

Geza Yishai ultimately rules against creating a person with holy names on *Shabbos*. *Levush* (*siman* 328:45) explains that the snake charmer may freeze the aggressor with words since such trapping is not the normal manner in which to trap. Standard trapping entails a snare. Words and commands that accomplish trapping are considered *tzeidah kelachar yad*. Any *melachah* performed in an unusual manner is merely a Rabbinic prohibition. To protect against danger, the Rabbis waived their prohibition. Yet the normal way of creating a *golem* through *Sefer Yetzirah* is with words and meditations. Therefore, one who forms a person with holy names and *Sefer Yetzirah* is violating the Biblical prohibition of building on *Shabbos*.

Rav Zilberstein points out that *Mishnah Berurah* (328:143) writes that one may freeze the snake on *Shabbos* with a charm since it is not natural trapping. According to this reasoning, creating a being with *Sefer Yetzirah* on *Shabbos* is also a supernatural act. Therefore, the Biblical violation is not breached.

It is said that *Rav Yosef Zecharyah Stern* came to the author of *Leshem Shevo Ve'achlamah* with this matter. The *Leshem* thought for a moment and answered, "I do not see what the prohibition would be in creating a *golem* on *Shabbos*." *Shu"t Kerem Chamar* (*cheilek* 1 *siman* 3) also permits making a *golem* through *Sefer Yetzirah* on *Shabbos*. He argues that just as we may learn Torah on *Shabbos*, even though the learning causes spiritual worlds to form, we may study *Sefer Yetzirah* on *Shabbos* even though the learning will cause a *golem* to come to life (*Chashukei Chemed*).

Why Do Single Girls Not Cover Their Heads with a Yarmulka?

The *Gemara* relates that *Yeravam ben Nevat* showed disrespect to King *Shlomo* by removing his *tefillin* in front of the king. Commentators explain that in those days, men wore hats and *tefillin* for prayer. In order to remove his *tefillin*, *Yeravam ben Nevat* had to remove his head covering. The baring of his head in front of the king was deemed disrespectful. *Mishnah Berurah* (*Orach Chaim* 38:36) teaches that if a person is merely wearing a small *yarmulka*, he may remove his *tefillin* in the presence of his teacher or rabbi. As long as he keeps his head covered, he is displaying respect.

The reason men wear a head covering is to remember that *Hashem* is above us at all times. Why then do single girls not cover their heads? Shouldn't women also bear a reminder that *Hashem* is above them at all times?

Poskim explain that the Rabbis instituted an obligation to cover the head as a response to gentile religious practices. The Torah commands us to refrain from following the gentiles in the manners in which they worship. In churches, the men remove their hats. To keep us distinct, the Sages instituted that our men must don a covering on their heads when we recite matters of holiness (*Shulchan Aruch Orach Chaim siman* 91:3). To remind us not to pray bareheaded, it was legislated that one should not walk bareheaded all day (*Shulchan Aruch Orach Chaim* 2:6). The gentile women act differently in church. They cover their heads with hats when they attend their houses of worship and pray. To keep us distinct, it was instituted that single Jewish women not cover their heads in *shul* so as to not appear as gentiles (*Tzitz Eliezer cheilek* 12 *siman* 13).

Sanhedrin 102**May a Young Man Whose Parents Are Alive Say Kaddish?**

Our *Gemara* discusses the power of words. “*Beris kerusah lasefasayim*”—“There is a covenant to the lips.” If you feel one way, yet you say something else, you will find the words coming true. Words matter. The *Gemara* relates that King *Yehu* was a righteous man who fulfilled the will of *Hashem*. Yet he was an idolator. The *Gemara* explains that his idolatrous acts stemmed from words. To try and gather the wicked *Baal* priests, *Yehu* told them, “*Ahab* worshipped *Baal* a little, I will worship *Baal* a lot.” Since he uttered these words, and *beris kerusah lasefasayim*, he wound up continuing to worship idols.

Shulchan Aruch Harav (*Choshen Mishpat Hilchos Shemiras Guf Vanefesh Uva'al Tashchis siman 12*) rules that you may never express with your words a prediction of misfortune for yourself or another Jew; words are powerful. If you proclaim that a man will pass away, the declaration may cause the tragedy to materialize. Moreover, it is even prohibited to say, “*Ya'akov* must not be alive, for if he were alive, he would have come to me.” *Shulchan Aruch Harav* also rules that a father or mother should not try and frighten their child with

a non-kosher creature. Parents should never say, “If you misbehave, the dog or cat may come and snatch you.” There are damaging angels named dogs and cats. Invoking terror from a dog and cat may give these destructive angels license to come and harm the child, *beris kersah lasefasayim*.

Shu”t Pri Hasadeh (cheilek 4 siman 92) rules that a young man whose father is alive should never recite the mourner’s *Kaddish*. It is a widespread custom that mourners recite the *Kaddish*. If a young man whose father is alive said *Kaddish*, an onlooker may ask someone, “Why is this man saying *Kaddish*? Did his father pass away?” The friend may speculate and say, “I guess the father passed away.” Such a conversation may cause harm to the father because, again, words have power. Predicting misfortune may, in turn, lead to misfortune. A son must be careful to try and prevent his father from getting hurt via words, and therefore should refrain from reciting the mourner’s *Kaddish (Mesivta)*.

Sanhedrin 103

Why Don't Our Rabbis Protest Sin More Often?

Our *Gemara* discusses King *Tzidkiyahu*, the king of Judea when *Nevuchadnetzer* conquered Judea and destroyed the First Temple. Our *Gemara* teaches that King *Tzidkiyahu* was a very righteous man. When the Almighty saw the sinfulness of the generation of *Tzidkiyahu*, He wished to return the world to *tohu vavohu* but in the merit of *Tzidkiyahu*, all of humanity was saved. The *Gemara* proceeds to challenge this lesson. The prophet states that *Tzidkiyahu* acted evilly in the eyes of the Almighty. How can we claim he was righteous? The *Gemara* answers that *Tzidkiyahu* was personally perfect, but did not protest the sins of the generation.

Rambam (*Hilchos Dei'os* 6:7) rules that anyone who can protest against the iniquities of sinners and does not do so, is included in their sin. Many rabbis witness transgressions. Why do we not often hear of their protests? Our *Gemara* teaches that *Tzidkiyahu* was referred to as a sinner because he did not protest. *Rambam* records the mandate of protest; why do contemporary rabbis seemingly ignore this obligation?

Rama (*Yoreh Dei'ah siman* 334:48) teaches that we are not

obligated to lose money in order to fulfill the mandate of protest. Our contemporary society is litigious and pugnacious. Rabbis are aware that if they protest the behavior of sinners, the sinners would turn combative and threaten their livelihoods and personal safety. This is why, in our times, many rabbis frequently do not protest misdeeds. The *Derishah* writes that in our times sages do not impose bans and excommunications on grave sinners because our people are violent. If placed in *niduy*, they may fight the courts and even commit murder (*Taz* 334:23). *Pis'chei Teshuvah* quotes the *Bechor Shor* who suggests that too many people rely on the ruling of *Rama*. He argues that *Rama* only meant to justify lack of protest in places where it is clear that the protest will cause financial loss. If the rabbi is not sure that his protest will generate loss of funds or physical harm, he should follow the mandate of the Torah not to fear any man and protest sin (*Mesivta*).

Sanhedrin 104

Should a Relative Other Than a Son Recite Kaddish?

Our *Gemara* discusses the list in the *Mishnah* of kings and ordinary citizens who do not have a portion in the World to Come. The three kings who do not have a portion in the World to Come are *Yeravam*, *Achav*, and *Menasheh*. The *Gemara* asks, “Why isn’t *Ammon* listed as a king who does not have a portion in the World to Come?” It answers that *Ammon* sired a righteous son, King *Yoshiyahu*. *Yoshiyahu* saves his father and brings his father into the World to Come. The *Gemara* posits that a son can save his father but a father cannot save his son. *Yoshiyahu* saved *Ammon*, but our father *Yitzchak* was unable to save his son *Eisav*. *Shu”t Binyamin Zev (siman 201)* derives a lesson about *Kaddish* from this.

According to *Binyamin Zev*, only a son should recite *Kaddish* for his deceased father. When a son recites *Kaddish*, it is a merit for the father. The father receives credit for his son who sanctifies *Hashem’s* name through the leading of a *Kaddish*. No other relative can accomplish such a merit. *Eliyah Zutah* writes that a father should not recite *Kaddish* on behalf of his son who passed away. The *Kaddish* of the son is a merit for the father for it demonstrates that the father

created a son who sanctifies the name of Heaven. Yet if a father recites *Kaddish* for a son, it does not indicate anything regarding the son. Our *Gemara* established a principle that the son can create merit for the father yet the father cannot save the son.

Shu"t Torah Lishmah (*siman* 412) discusses hiring someone to say *Kaddish*. He argues that there is no point in that. *Kaddish* helps the deceased, for when a son sanctifies the name of *Hashem*, it is credited to his father. Hiring someone is not akin to the son sanctifying the name of *Hashem*. *Torah Lishmah* then quotes *Magein Avraham* who disagrees with him. *Magein Avraham* writes (*Orach Chaim* 132:2) that if a son cannot recite *Kaddish*, it is better for him to hire someone to say it on his behalf than to have a friend perform a favor and recite *Kaddish* for the father. Clearly the deceased gains even when someone who is not his son recites *Kaddish* for him. Then *Torah Lishmah* suggests that perhaps when a son pays someone to recite *Kaddish* it is considered that the son himself said it since the payment designated him as his emissary.

Shu"t Shevus Ya'akov (*cheilek 2 siman* 93) writes that in some places it is the accepted practice for a father to recite *Kaddish* for his deceased son. Our *Gemara* taught that *Yitzchak* could not provide merit to save *Eisav*. *Eisav* was terribly wicked and due to deeply rooted wickedness his father could not help him. However, an ordinary child may be helped by his loving father and when the father recites *Kaddish* for the child he can add merit to the child (*Mesivta*).

Sanhedrin 105**Does Judaism Believe in Reincarnation?**

The Karaites were a sect of Jews who only accepted the literal meaning of the Torah's words and rejected the oral tradition. They also believed in reincarnation where souls would come back and live multiple times. They even claimed that the soul of a person may return and get reincarnated into the body of a dog or a cat. *Rav Sa'adyah Gaon* fiercely fought the Karaites and their heresy. In *Emunos Vedei'os (ma'amar 6 os 7)*, *Rav Sa'adyah Gaon* rejects the belief in reincarnation. He refers to such a belief as confused hallucination.

The masters of Jewish mysticism, however, teach that Judaism does believe in reincarnation of souls. *Ya'avetz* points out that *Rav Sa'adyah* was never exposed to the Kabbalah. The Kabbalists speak often of reincarnation. *Ben Yehoyada* feels that our *Gemara* is proof to the doctrine that souls return.

Our *Gemara* states that *Lavan* the Aramean, *Be'or* (father of *Bilam*), and *Kushan Rishasayim* (a Syrian king who enslaved the Jews in the days of the Jewish judge *Otniel ben Kenaz*) were all the same person. *Ben Yehoyada* argues that this *Gemara* cannot be taken literally. *Ya'avetz* points out that more than five hundred years elapsed from the days of *Lavan* to the days of the Jewish judges.

Bilam himself only lived for thirty-three years (*Sanhedrin* 106b). It is difficult to accept that his father *Be'or* lived for more than five hundred years. Our *Gemara* is based on the doctrine of *gilgulim*. The soul of *Lavan* was reincarnated into *Be'or* and later entered the world again as *Kushan Rishasayim*. In his book *Torah Lishmah* (*siman* 458), *Rav Yosef Chaim* quotes an interesting proof to the concept of *gilgulim*. *Shlomo Hamelech* declares in *Koheles* (1:4), “*Dor holeich vedor ba*”—“A generation goes and then a generation comes.” This seems out of order. It should state that a generation comes and then a generation goes. The order of the verse is to teach us that many souls are reincarnated. The souls of a generation leave and then return in new bodies. A generation goes in order to then come back.

In his commentary to the book of *Iyov* (chapter 33), *Ramban* teaches that the doctrine of reincarnation helps resolve the challenge of why the righteous suffer. Many virtuous people are reincarnated souls. Sins performed in earlier incarnations impact the fate of their lives while living at this time.

The concept of reincarnation is invoked by *poskim*. *Shu”t Maharam Mintz* (*siman* 14) rules that a father may not recite the blessing of “Who performs for the guilty acts of kindness”—“*Hagomel lachayavim tovos*” when his young child recovers from an illness. A father may cause a child to fall ill. Children are punished for the sins of their fathers. For this reason, when a child reaches adulthood, a blessing is recited in which the father expresses gratitude that he will no longer cause any misfortune onto his child, “*Baruch shepetarani mei'onsho shel zeh*.” Yet not every one of the child’s misfortunes is caused by the father. Occasionally the child suffers due to his actions in an earlier iteration of life. The father has no share in that guilt. Perhaps the illness this child suffered resulted from actions of a previous incarnation. The father therefore cannot honestly say that

he is the guilty one who received a favor when his son recovers. He cannot say, “*Hagomel lechayavim tovos shegemalani kol tov.*”

Shu”t She’eilas Ya’avetz (cheilek 1 siman 110) believes that the prohibition against causing an animal pain, *tza’ar ba’alei chaim*, only applies to animals that perform labor such as oxen or horses. There is no prohibition against afflicting or killing small creatures that do not serve man, such as worms or flies. *Ya’avetz* rules that a person may kill flies that annoy him. The fly is angering the person and there is no law of caring for the life and welfare of tiny critters. However, *Ya’avetz* records that the holy *Ari* would instruct his students not to harm any creature, even the mosquitos. The *Ari* thought that you are unaware where a soul may be reincarnated. The fly buzzing near you may contain a *gilgul*. The very pious therefore treat it with care and respect (*Mesivta, Me’oros Daf Hayomi*).

*Sanhedrin 106***May a Scribe Write a Torah Scroll with a Metal Pen?**

Our *Gemara* teaches that the bite of a lover is often better than the kiss of a hater. *Achiyah Hashiloni* was a prophet who loved the Jewish nation. *Achiyah* predicted misfortune for the Jews. *Bilam* was a hater. *Bilam* blessed the Jewish nation. *Achiyah's* disaster is more favorable than *Bilam's* good wishes. *Bilam* compared the Jews to a cedar. *Achiyah* predicted that God will weaken us and our existence will be shaky, like a reed in the water. A reed lives in a place of water, it survives all winds, it may bend to the gales of wind but when the wind passes it stands again, and a reed, when cut quickly, regrows to its former size. Cedars differ; a cedar does not live in a place of water, and it can be overturned by the South wind. Finally, the *Gemara* adds, great is the reed for the *kulmus* with which Torah scrolls, and books of the prophets, and the holy writings are composed comes from the reed.

Gra explains that this *Gemara* is the source for the ruling of *Rama* (*Yoreh Dei'ah* 271:7) that some maintain that a *Torah* scroll must be written with a *kulmus* from a reed rather than a feather. The *Levush* explains the difference between a reed and a feather. A reed enables writing; a feather etches into the parchment and then

fills the etched sections with ink. A Torah scroll is to be written, not engraved, and according to this point of view, a feather engraves while a reed inscribes. The *Levush* ultimately rules that common practice is to permit the writing of a Torah scroll with a feather. *Aruch Hashulchan* (*Yoreh Dei'ah* 271:38) explains our practice. The reeds in Europe were weak and did not write well. The feathers from kosher animals produce fine writing. Our *Gemara* never stated that there is an obligation to use the reed for Torah scrolls; it merely recorded a practice of applying the reed for the production of Torah scrolls. *Messeches Sofrim* is the source for all the laws of how to write Torah scrolls. It never mentions any requirement regarding a reed. *Aruch Hashulchan* does rule that a scribe may not use a metal tool to write a Torah scroll. He offers two reasons for this ruling. One—metal cuts parchment. Writing with a metal pen would be considered engraving and etching, as opposed to writing. Two—metal shortens a person's life and Torah endows us with life. It is inappropriate to use an item that shortens life for Torah which increases life. He adds that even a student of Torah should not use metal to record his Torah insights. According to *Aruch Hashulchan*, *yeshivah* students should only use plastic pens to document Torah thoughts for metal is not a fit for Torah.

In Yemen and other countries that were blessed with strong reeds, the custom of Jewish scribes was to write Torah scrolls with reeds. The reeds they used were called *knei suf*. Due to their hollow nature, the Yemenite Jews referred to them as *chalal*. These reeds grew in places of water (*Kuntres Beis Hillel* 10 page 24).

Shu"t Shevet Halevi (*cheilek 2 siman* 136) writes that in our day there are golden pens that a scribe may use to write a *Sefer Torah*. These pens may be used on two conditions. One—if it is difficult for the scribe to manage a feather. Two—the pen will produce a superior

product than that of the feather. It is the longstanding custom to use a feather. Generally, we should not deviate from custom. Yet if a greater result will ensue, and it is troublesome to use the feather, the *Sefer Torah* may be written with a metal tool. The reasons of the *Aruch Hashulchan* do not apply to these metal implements. *Aruch Hashulchan* suggests that a metal rod will puncture the parchment; our pens clearly do not etch into the parchment and they write as smoothly as feathers. The *Aruch Hashulchan* also argues that metal which shortens a person's life should not be used to create a Torah work, for Torah symbolizes increased life. As gold and silver are not used for weapons, they do not symbolize shortening of life (*Ramban Shemos 20:21*). Only bronze is a symbol of shortening life. According to *Shevet Halevi*, a golden pen has no negative connotations and may be used to produce a Torah scroll (*Mesivta*).

Sanhedrin 107**Why Did the Rabbis Prohibit Autopsies?**

Our *Gemara* relates a story about King David. David's son *Avshalom* rebelled against him and attempted to kill him. David had to flee and then sought to worship idols. He was met by *Chushai Ha'arki* who asked him why he wanted to worship idols. David explained, "My son is trying to kill me. If people think that I am a righteous king yet I have a son who seeks to kill me it will be a desecration of *Hashem's* name, *chillul Hashem*. I do not want to desecrate the holy realm; therefore I will worship idols. People will hear about my apostasy. They will assume I was sinful before *Avshalom* rebelled. They will ascribe my misfortunes to my misbehavior. The name of *Hashem* will not be desecrated." *Chushai* convinced David to refrain from worshipping idols. He explained to David that if he would worship idols it would be a worse desecration of *Hashem's* name. People would claim that even a righteous king worships idols. The Jewish faith would be terribly dishonored. *Chushai* convinced David that people would ascribe his misfortunes as a result of his marriage to a captured bride which leads to a rebellious son. *Avshalom's* mother was a captured bride. Hearing the story of *Avshalom* would not lead to a *chillul Hashem*; rather it would cause a sanctification of *Hashem*,

for it would confirm that the warning of our tradition may come to fruition.

Chazon Ish (Pe'eir Hador cheilek 2 page 185) points out that both *Chushai* and David agreed that the highest priority was avoiding *chillul Hashem*. If worshipping idols would have prevented desecration of *Hashem's* name, idols would have been worshiped. This is surprising. We have a rule that a Jew must die to avoid worshipping idols. Why did David and *Chushai* accept idol worship to prevent *chillul Hashem*? A great principle emerges from this story. The worst sin is desecrating *Hashem's* name. A Jew may worship idols to prevent the desecration of *Hashem's* name. If a Jew can worship idols to prevent desecration of *Hashem's* name, he must also be willing to die and avoid desecrating *Hashem's* name. Generally, avoiding idol worship is more important than preserving your life, but if avoiding desecrating *Hashem's* name is superior to avoiding idol worship, it is certainly more significant than saving lives.

Shu"t Noda Biyehudah and the *Chasam Sofer* were asked about autopsies. Generally, saving lives overrules other *mitzvos*. We desecrate *Shabbos* to save a life. *Shabbos* observance is a *mitzvah* of the greatest importance. Desecrating a body is merely a prohibition. They asked *Noda Biyehudah* if it permissible to desecrate bodies so that doctors will learn how to better treat individuals and science will expand its knowledge of diseases and cures. For the sake of saving lives, it should be acceptable to desecrate the dead. *Noda Biyehudah* ruled that it is a danger to life only when we face an immediate danger. If an autopsy on a relative may save an ailing individual, it may be performed. Saving future lives is not a reason to perform an autopsy. What is the meaning of this ruling? Why is future lifesaving not enough to permit an autopsy in the here and now? *Chazon Ish* explains the ruling with the insight from our *Gemara*.

Avoiding *chillul Hashem* is the highest priority in Jewish practice. David and *Chushai* were willing to perform idolatry to avoid *chillul Hashem*. If a *mitzvah* is constantly violated to the point that it is never kept, it is a *chillul Hashem*. *Noda Biyehudah* realized that if he would permit autopsies to enable scientific discovery and medical training, Jews would never be buried. All would be subject to autopsies. The *mitzvah* of Jewish burial would be abrogated. This would create a *chillul Hashem*; avoiding it is more imperative than saving lives. This is why *Noda Biyehudah* only allowed autopsies in limited circumstances. The autopsy was then not *chillul Hashem*, it was a mere sin which may be pushed aside to save a life.

Aruch Laneir (*Sukkah* 53b) also rules that *chillul Hashem* overrides saving lives. The *Gemara* relates that when King David dug the tunnels for the altar, the depths of water rose to try and swamp the world. David was unsure if he could erase *Hashem's* name to cause the waters to recede. What was his doubt? We violate *Shabbos* to save lives. Certainly, we should be allowed to violate "Do not do so to *Hashem* your Lord," a mere prohibition, to save the world from death by drowning. The answer is that David thought that erasing *Hashem's* name violated the sin of *chillul Hashem*. Nothing can justify *chillul Hashem*. *Achitofel* taught David that since we are to erase *Hashem's* name to bring peace between a wife and a husband, erasing the name of *Hashem* is a mere prohibition rather than *chillul Hashem*. David then agreed to throw parchment with *Hashem's* name into the water and save the world (*Mesivta*).

Sanhedrin 108**May I Feed My Pretty Fish Smaller Live Fish?**

I own an aquarium, filled with beautiful fish. I do not have fish food but the fish in the aquarium would enjoy eating other fish. Am I allowed to buy live fish and feed them to the fish in the tank? Is this forbidden because of the prohibition against *tza'ar ba'alei chaim*? Does *tza'ar ba'alei chaim* apply to killing a creature?

Noda Biyehudah and *Sho'eil Umeishiv* argue about this issue. *Noda Biyehudah* (*Mahadura Tinyana Yoreh Dei'ah siman 10*) discusses hunting. A man owned a large property with many wild animals and asked if he may take a rifle and hunt. Is it *tza'ar ba'alei chaim* to shoot animals for sport? *Noda Biyehudah* rules that there are two reasons why hunting is not prohibited because of *tza'ar ba'alei chaim*. One—it is not *tza'ar ba'alei chaim* to inflict pain on an animal to help a human. Activity that serves a human purpose does not violate *tza'ar ba'alei chaim*. Two—*tza'ar ba'alei chaim* only applies to an animal afflicted and left alive; it is not *tza'ar ba'alei chaim* to take the life of an animal. *Sho'eil Umeishiv* (*Mahadura Tinyana siman 65*) disagrees and rules that killing an animal is prohibited as *tza'ar ba'alei chaim*.

Our *Gemara* relates that in the ark there was a creature, *zikita*, about which *Noach* did not know what it consumed. *Noach* was once

cutting a fruit in front of the *zikita*. A worm crawled out of the fruit and the *zikita* ate it. He then realized that it ate worms. He would mix bran with water and allow the mixture to spoil and fill with worms and then feed the worms to the *zikita*. This seems to prove that one may feed living creatures to other animals. However, *Rav* Zilberstein rejects this proof. In the ark, there was nothing else that the *zikita* would consume. In our scenario, the owner of the aquarium can easily find other sustenance for the fish; perhaps he is forbidden to offer live fish to the fish in his tank.

Ultimately, *Rav* Zilberstein prohibits feeding live fish to the fish in the aquarium. *Rav Moshe* Feinstein rules that while there is no prohibition against killing mice and other revolting creatures, a person should not kill such creatures with his own hands. Killing a living creature causes a person to be less kind and more insensitive. The Torah has to promise the Jews that when they kill the city of idolatry, they will remain merciful people. There is no vow that killing fish to feed fish will not result in a negative emotional impact. As such, it is preferable to find different food, and not put living fish into the mouths of other fish (*Chashukei Chemed*).

Sanhedrin 109**Why Do Chimpanzees Deserve a Special Blessing?**

Shulchan Aruch (*Orach Chaim* 225:8) rules that if you see an elephant or chimpanzee you should recite a blessing, “*Baruch Atah Hashem Elokeinu melech ha’olam meshaneh habriyos*”—“Blessed are You *Hashem* king of the world who makes unusual creations.” *Mishnah Berurah* explains that this only applies to the first time in your life that you see an elephant or a chimpanzee. If you have seen an elephant thirty or more days prior to this, you recite the blessing without saying *Hashem’s* name. Why are the elephants and chimpanzees different from all other animals? Why do we recite this blessing only on them if there are many unusual creatures? *Melech Shlomo* (*Kilayim* 8:6) quotes *Rabbi Meshulam* who explained this law based on our *Gemara* which discusses the generation of the dispersion. The *Gemara* teaches that there were three groups. One wanted to build a tower to climb into heaven and settle there. A second group wanted to build the tower to climb into heaven and battle *Hashem*. The third group wanted to build the tower to climb it and worship idols. *Hashem* punished each group differently. The group that wanted to go up to heaven and settle there was scattered;

the group that wished to wage war was transformed into demons and chimpanzees; and the group that wanted to worship idols had their languages scrambled, hence being unable to communicate with one another. *Seder Hadoros* writes that some of the members of the generation of the Tower of *Bavel* were transformed into elephants in addition to those turned into chimpanzees . This is why only these animals receive the blessing of “*Meshaneh habriyos*,” thanking *Hashem* for changing creatures; He morphed certain people into chimpanzees and elephants.

Rav Zilberstein explains a *halachah* unique to chimpanzees because of this lesson. *Rambam* (*Hilchos Berachos* 6:13) rules that all can pour the water on the hands for the *mitzvah* of *netilas yadayim*: an imbecile, deaf-mute, and a child may pour the water as can a chimpanzee. Why does *Rambam* only mention a chimpanzee? What about a dog? If a dog poured water on your hands, would you have fulfilled the *mitzvah* of *netilas yadayim*? *Rav Zilberstein* quotes *Rav Ya'akov Kaminetzky* who explained *Rambam* with our *Gemara*. The chimpanzee was initially a human; therefore, it may pour water on a man's hands and be considered water poured with the force of man. A dog was never a person. Dogs therefore cannot pour water on the hands of a person for the *mitzvah* of *netilas yadayim*. The act of a dog cannot be classified as *ko'ach gavra*. *Rav Zilberstein* believes that the same law should apply to an elephant. According to *Seder Hadoros*, the elephants were also originally the men of the generation of dispersion. Elephants are highly intelligent. Elephants can understand human language because of their common heritage with people. If an elephant were to pour water on your hands before you wished to consume bread, you may recite the blessing of “*Al netilas yadayim*” (*Chashukei Chemed*).

Sanhedrin 110

Should You Quit Your Job as a Charity Collector Because of Rumors?

There was a charity collector who discovered that people were spreading rumors that he was taking from the charity funds for his own benefit. He was quite distraught that his reputation was being so sullied. He approached *Rav Zilberstein* and asked, “Should I quit the position to stop all the talking about me? *Hashem* has obligated us to be clean in His eyes and clean in the eyes of our fellow Jews. Perhaps the fact that others talk about me is reason to quit. Alternatively, maybe I should continue in the position and consider the nasty talk as an atonement I am gaining for my sins. What should I do?”

Our *Gemara* tells us that even our greatest leader, *Moshe Rabbeinu*, was the victim of offensive talk. Our *Gemara* teaches about the story of *Korach*. The *Gemara* explains that people accused their wives of carrying on affairs with *Moshe Rabbeinu*. The *Gemara* in *Mo'eid Kattan* (18b) teaches that a man is only suspected of a sin if he has somewhat violated that sin. The *Gemara* there challenges this assertion from our *Gemara*. In our *Gemara*, we learn that Jews in the desert suspected *Moshe Rabbeinu* of illicit behavior with their wives. *Moshe* was completely innocent of the charges. Nevertheless,

he was suspected of these horrors. Doesn't *Moshe's* experience prove that a man might be suspected of a crime even though he is fully innocent of the crime? The *Gemara* answers that the people did not truly suspect *Moshe* of misbehavior. *Moshe* had enemies; there were Jews who hated him and wanted to destroy him. Those haters spread the false rumors in order to harm him. When a man has enemies, suspicions about his behavior are not indicative of wrongdoing. The suspicions may be the result of the false rumors his enemies are spreading.

In our case, *Rav* Zilberstein rules that if the charity collector has enemies, he should not resign his position because of what people are saying. The *Gemara* in *Mo'eid Kattan* indicates that those who have enemies are often targeted and become the victims of false rumors and suspicions. However, if the charity collector is not aware of any rivals and his actions lead to questions and the rumors are insistent and never ending, he should take the rumors seriously. He does not need to stop his collection of charity. He is required to give the community an accounting of his actions and provide them with the money trail. Again, the source for this ruling is *Moshe Rabbeinu*.

In *Parashas Pekudei*, *Moshe Rabbeinu* gave the Jewish nation an accounting of all the donations to the *Mishkan*. *Moshe* did this to halt any suspicions regarding how the money was spent. *Rama* (*Yoreh Dei'ah siman 257:2*) rules that charity collectors should offer an accounting of how they distributed the funds so as to fulfill the mandate to be clean in the eyes of *Hashem* and in the eyes of man. *Noda Biyehudah* (*Tinyana Yoreh Dei'ah siman 157*) rules that this accounting does not need to be performed before each person who complains. The charity collector may present his books to the judges of the town. Some of the actions of a charity collector must be kept discreet and confidential. He also does not require a receipt for

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each expenditure. As a charity collector, it is understood that some expenditures would not warrant a receipt. If the charity collector will produce an accounting, he need not fear the offensive rumors. The suspicions are an atonement for his sins. He should accept them with love and continue with his holy service (*Chashukei Chemed*).

Sanhedrin 111

Should a Jewish Soldier Put on Tefillin in a Desert Rainstorm?

It was late in the day. The Israeli soldier had been busy all day with his army responsibilities. He had not had time to pray. He was stationed in the desert and realized that there was still some light out and that he could put on *tefillin*. However, he was in a bind as it was raining heavily. The rain may enter the *tefillin* boxes and erase the holy written parchments. He asked *Rav Zilberstein* what his course of action should be. Should he take the risk and put on the *tefillin*?

Rav Zilberstein points out that *Rav Moshe Feinstein* (*Igros Moshe Orach Chaim cheilek 1 siman 4*) argues that we should never perform a *mitzvah* at the expense of destroying holy writings. It is a severe mandate of the Torah to treat *Hashem's* objects with reverence and respect. We were commanded to smash the false idols and we were instructed not to do so to *Hashem* our Lord. His name is to be treated with respect and regard. In our *daf* we learn that if the majority of the residents of a city worship idols, all the city residents are put to death by sword and all the property is gathered in the city's main street and destroyed. Yet, the holy scrolls are not burned but rather buried.

Minchas Chinuch finds this law difficult. We generally hold by

a rule that positive commands override prohibitions, *aseih docheh lo ta'aseih*. Why is the law to bury the scrolls of the *ir hanidachas*? There is a positive *mitzvah* to destroy the property of the idolatrous town. Shouldn't this positive obligation override the prohibition against mistreating scrolls that contain the name of *Hashem*? *Minchas Chinuch* answers that since burning the scrolls is a great disgrace to *Hashem's* name, the Sages suspended the positive *mitzvah* of destroying them as *ir hanidachas* property. *Rav Moshe* argues that our *Gemara* teaches that since destroying *Hashem's* name is such a grave sin, a positive *mitzvah* cannot quash it. No *mitzvah* should be performed at the cost of destroying a holy work. According to *Rav Moshe* then, presumably, the soldier should not put on the *tefillin*.

Rav Zilberstein distinguishes between the case in which *Rav Moshe* issued his ruling and the soldier's scenario. *Rav Moshe* discussed a man with a contagious disease. May he bring his *tefillin* with him to the hospital? The hospital will treat him, but following his death, they will destroy all his possessions. Should he bring his *tefillin* to put them on as long as he lives, while knowing that eventually they will be destroyed? *Rav Moshe* ruled that he should not bring the *tefillin*. That case was one in which there was a certainty that the *tefillin* would be destroyed. Our case is different. The soldier is not certain that the rain will ruin the *tefillin*. There is a fear that the *tefillin* may get damaged; there is a risk that he will cause a ruining of a holy object. This should be classified as *gerama*, indirect cause. *Messeches Shabbos* teaches that through *gerama*, erasing the name of *Hashem* is allowed. Here too, it would be permissible. In addition, many *poskim* teach that the sin of erasing *Hashem's* name is only possible if the erasure was a destructive act. We may not damage holy objects with destructive behaviors; see *Sdei Chemed* (*cheilek 4 ma'areches 40 kelal 12:3*). In our instance, the soldier's act is a constructive one. He is

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putting on *tefillin*. The damage may occur from Heaven. Since his act is constructive, it is not a violation of *lo ta'asun kein leHashem Elokeichem*. Rav Zilberstein rules that the soldier should take the risk and put on the *tefillin* (*Chashukei Chemed*).

Sanhedrin 112**Who Comes First, the Person Holding
Tefillin in His Hands or the Person
Wearing the Tefillin?**

P*iskei Teshuvah* (*cheilek 2 siman 157*) quotes the *Beis HaLeivi* who discusses who should enter the room first, a man wearing *tefillin* or a man carrying *tefillin*? *Beis HaLeivi* rules that the man carrying the *tefillin* should receive greater honor and enter the room first. In Tractate *Nega'im* (13:9) the *Mishnah* discusses a man who enters a room that is afflicted with *tzara'as*. If the man is holding clothes in his hand, the clothes are immediately rendered impure. The man does not become impure instantly. Yet if the man is wearing his clothes, the garments are considered an appendage of the person. They are subordinate to the person. Since he does not become impure right away, they also do not become impure immediately. Only after the man remains in the room long enough to eat half a loaf of bread, do he and the garments become impure. In light of this precedent, in the case of *tefillin*, the man carrying *tefillin* in his hands should walk in first. The person who is wearing the *tefillin* has something attached to him and appended to him. His *tefillin* are subordinate to him. However, the man carrying the *tefillin* is bringing *tefillin* to the

room that have their own unique importance. Since the *tefillin* have their own significance, they should enter before the person who is wearing *tefillin*.

Piskei Teshuvah challenged this ruling because of *Yad Ramah's* comments on our *Gemara* which discusses an idolatrous city. If most of the residents worshiped idols, all the residents of the city die. The possessions of the city are gathered in the main street and burned. Our *Gemara* discusses the wigs of the righteous women in the city. If the wig was attached to the woman it would certainly not be burned. The *Gemara* is unsure about the status of a wig that is on a peg on the wall of a woman's home. *Yad Ramah* explains that the women of the Talmud would literally attach wigs to their heads with concrete and pitch. Such an attachment would certainly render the wig a part of the body and therefore would not be burned. The bodies of the residents of the *ir hanidachas* are not to be burned. According to this, only an object such as a wig, which is truly attached to a body, is considered a part of the body. *Tefillin* are not attached in any sort of permanent manner to the body of the person. The *tefillin* therefore are certainly not a part of the body. According to *Piskei Teshuvah*, when a person wears *tefillin*, they stand on their own just as when a person is carrying the *tefillin* in his hand (*Mesivta*).

*Sanhedrin 113***May a Person Build a Home in Jericho Today?**

Our *Gemara* teaches about Jericho. After Joshua conquered Jericho, he declared that it should be a *cheirem* to *Hashem* and should never be rebuilt. He forbade building the city on the same location even if it would be given a new name. He banned the building of such a city elsewhere and naming it Jericho. Joshua said that anyone who would build Jericho would be cursed. He would lay the foundation and lose his eldest son and when he would put up the final doors in the gates of the city would lose his youngest child. *Chi'el* foolishly tested this curse. When he began the construction, he lost his eldest and when he completed the construction, his youngest died.

In his book *Sheim Ushe'eiris* (*siman* 6), *The Nefesh Chayah* discusses the problem of Jews in our days who build homes in Jericho. How can they move there? Didn't Joshua curse those who build up Jericho?

Nefesh Chayah points out that the *Sifrei* (*Bamidbar* 81) teaches that there was a lush area of Jericho. It was five hundred *amah* by five hundred *amah*. When the Land of Israel was divided this section was left out. It was promised to whomever would end up losing his land for the construction of the *Mikdash*. It was eventually given to

Yonadav. His descendants ate from it for 440 years. This seems to indicate that during the times of the Judges, Jericho was a settled city. *Nefesh Chayah* suggests two possible resolutions. One—perhaps the fertile area was not in Jericho; it was merely close to Jericho. Second—perhaps Joshua only prohibited building the wall of Jericho. The city wall protects the city and transforms a settlement into a city. Joshua speaks of the gates. This is a reference to the gates of the city wall. Perhaps Jews are always allowed to buy homes and live in Jericho; we just may not rebuild its wall.

Shu"t Mo'adim Uzemanim (*cheilek 5 siman 347*) agrees with *Nefesh Chayah*. The curse of Joshua was against a person who would seek to build an entire city like Jericho in order to remember the Canaanite city. Yet a person who wishes to build a single home for himself to live in Jericho, without any desire to commemorate and remember the city Joshua defeated, may do so.

Rav Chaim Berlin (*Sha'arei Torah* year 5663 volume 4 *siman 42*) points out that in his day many Jews were developing new agricultural settlements in the Land of Israel. He warns them not to name any town Jericho. He believes that Joshua's curse is still applicable. The curse forbade the rebuilding of Jericho in its spot or building any other town and calling it Jericho. No one should risk violating the curse by naming his town Jericho (*Mesivta*).

