

# PESACH TO GO 5766

## Contemporary Halachic Matters

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# Mechirat Chametz: Theory and Practice

The Torah (Shemot 12:19 and 13:7) prohibits possession of chametz on Pesach. As such, there is a biblical requirement to dispose of all chametz in one's possession. As an alternative to the disposal of chametz, many people sell their chametz to a non-Jew (*mechirat chametz*) as a means of removing the chametz from their possession. They then reacquire the chametz after Pesach from the non-Jew. This article will explore the basis for *mechirat chametz* and the method of acquisition that is used both in the sale and the reacquisition.

## Is *Mechirat Chametz* an Inappropriate Loophole?

A cursory examination of the *mechirat chametz* practice may lead one to the conclusion that *mechirat chametz* is merely a legal loophole. R. Yisrael Isserlin, *Terumat HaDeshen* 1:302, rules regarding the prohibition of charging interest on a loan (*ribbit*), that one should not seek out loopholes that avoid violation of a biblical prohibition. Ostensibly, one should apply the same logic to *mechirat chametz* and conclude that since the purpose of *mechirat chametz* is to avoid the biblical prohibition of owning chametz, *mechirat chametz* should be prohibited.

However, the comments of *Terumat HaDeshen* cannot possibly serve as the basis for prohibiting *mechirat chametz* because *Terumat HaDeshen* authored another responsum (1:120) which explicitly permits *mechirat chametz*, and this responsum serves as the basis for modern-day *mechirat chametz* (See *Beit Yosef, Orach Chaim* 448, and *Shulchan Aruch, Orach Chaim* 448:3). One must then ask: why isn't *mechirat chametz* a violation of the prohibition to create a legal loophole in order to avoid a biblical prohibition?

Perhaps the answer is based on the comments of *Shach, Yoreh Deah* 157:20. *Shach* explains that there are two types of legal loopholes. The first type of loophole is one where there are terms built

into the transaction that serve to control the transaction and protect both parties from the inherent risk normally associated with such a transaction. The second type of loophole is one where the transaction is carried out normally with no special terms and both parties subject themselves to a certain element of risk. The first type of transaction is fictitious and is prohibited if the purpose is to prevent violation of a biblical prohibition. The second type of transaction is permitted because there are no false clauses in the transaction.

One can now suggest that the reason why *Terumat HaDeshen* permits *mechirat chametz* is because it belongs to the second category of transactions. *Mechirat chametz* (if done properly) is a transaction devoid of any false terms of sale. If the non-Jew decides to retain possession of the chametz after Pesach, he is legally entitled to do so. Similarly, if the seller of the chametz decides not to reacquire the chametz after Pesach, the non-Jew is legally bound to the sale and he has no legal claim to the money that is used for purchase of the chametz. Since both parties subject themselves to the normal risks associated with a transaction, the transaction is similar to the second category of loopholes and is permitted.

*Terumat HaDeshen's* opinion notwithstanding, some Acharonim prohibit all forms of legal loopholes when their purpose is to prevent violation of a biblical prohibition. R. Yosef D. Soloveitchik urged his followers to refrain from *mechirat chametz* on all types of *chametz* whose possession on Pesach entails a biblical prohibition (see *Nefesh HaRav* pg. 177). R. Alexander S. Shor, *B'chor Shor, Pesachim* 21a, agrees that one should not rely on any type of loophole to avoid a biblical prohibition. However, he suggests that since one can actually accomplish the biblical requirement to dispose of one's chametz by nullifying the chametz (*bittul chametz*), *mechirat chametz* is only necessary to accomplish the rabbinic requirement of totally removing chametz from one's possession. Since the loophole

of *mechirat chametz* only serves to avoid violation of a rabbinic prohibition, *B'chor Shor* permits *mechirat chametz*.

### The Method of Transaction

In order to properly execute *mechirat chametz*, the transaction must be a halachically significant transaction. The Mishna, *Kiddushin* 26a, states that transactions of movable items must be performed by physically transferring possession of the item (*meshicha* or *hagba'ab*). A transaction cannot be completed by merely transferring money from the buyer to the seller. There is a dispute in the Gemara, *Bechorot* 13b, whether this is true for transactions between Jews and non-Jews. According to R. Yochanan the proper method of transaction between a Jew and a non-Jew is through physical transfer of possession of the item. However, according to Reish Lakish, the transaction is performed through monetary transfer. Tosafot, *Avodah Zarah* 71a, s.v. *Rav Ashi*, note that the final ruling is a matter of dispute. Rashi sides with the opinion of Reish Lakish and Rabbeinu Tam sides with the opinion of R. Yochanan. Tosafot add that in order to fulfill both opinions, one should perform both physical transfer of the item and monetary transfer when performing a transaction with a non-Jew that has ritual significance.

As such, *Mishna Berurah* 448:17, rules that when selling one's chametz, one should not only insist that the non-Jew pay for the chametz, but he should also take physical possession of the chametz. However, due to the large volume of chametz involved in a single sale, it is highly impractical to insist that the non-Jew take actual physical possession of all of the chametz. Therefore, *Mishna Berurah* 448:19, recommends combining monetary transfer with other forms of transaction. There are a few possible forms of transaction that may be used. First, the Gemara, *Bava Metziah* 74a, states that there are situations where one can enact a transaction by performing an action that local businessmen use to close a deal. One modern example is a handshake. Second, the Mishna, *Kiddushin* 26a, states that one can transfer movable items as part of a real estate transaction. Regarding *mechirat chametz*, *Mishna Berurah*, *ibid*, suggests selling or renting land as part of the sale, and including the chametz in the package. Third, *Mishna Berurah* 448:17 also recommends including *kinyan*

*chalipin* (barter transaction) as a means of transferring the chametz. This is accomplished by the non-Jew giving an item of his in exchange for the chametz.

### The Reacquisition of the Chametz

*Mishna Berurah*, *Biur Halacha* 448:3, s.v. *B'Davar*, notes that common practice demands that the sale price of the chametz should reflect the value of the chametz. However, he adds that there is no requirement for the non-Jew to pay in full at the time of the sale. It is sufficient if he pays a down-payment at the time of the purchase and incurs the balance as debt.

While this solution is very practical in executing the initial transaction, it does complicate the reacquisition of the chametz after Pesach. If the non-Jew were to pay in full prior to Pesach, that money could be used to repurchase the chametz after Pesach. However, since common practice is that the non-Jew only pays a down-payment, there are insufficient funds in the down-payment to repurchase the chametz. It is also not possible to nullify the sale on grounds that the non-Jew failed to pay in full because nullification of the sale would retroactively place the chametz in possession of the Jew for the entirety of Pesach.

Therefore, there are two possible methods of reacquiring the chametz. The first option is to initiate a new sale that reacquires the chametz. The balance that the non-Jew owes is factored into this new sale. The second option is to seize the chametz in lieu of the debt incurred by the non-Jew. The advantage of this second option is that it doesn't require a new sale after Pesach. However, R. Shlomo Kluger, *HaElef Lecha Shlomo*, *Orach Chaim* no. 221, doesn't recommend such a practice. He suggests that seizure of property for defaulting on a payment is something that is normally done through *beit din*. Therefore, seizure of the chametz without a *beit din* would cast aspersions on the original sale. This view is also reflected in *Mishna Berurah*, *Biur Halacha* 448:3 s.v. *Mechira*. R. Kluger notes that if the non-Jew is not available after Pesach for the reacquisition of the chametz, a *beit din* may authorize seizure of the chametz as payment for the balance of the original sale.

## The Mitzvah of *Eiruv Tavshilin*

It is well known that if Yom Tov occurs on a Friday, there is an obligation to establish an *eiruv tavshilin* prior to Yom Tov. This allows one to prepare food on Yom Tov that is going to be served on Shabbat. What is not as well known is the function and purpose of the *eiruv tavshilin* as well as the mechanism by which it operates. This article will explore these questions and provide modern-day practical applications.

### Preparing non-Yom Tov food items on Yom Tov

The Torah (Shemot 12:16) permits *melacha* on Yom Tov for the purpose of *ochel nefesh* (food preparation). However, food preparation is only permitted if one intends to eat that food on Yom Tov. The Gemara, *Pesachim* 46b, cites a dispute between Rabbah and Rav Chisda whether one is culpable for baking on Yom Tov with intent to eat the food item after Yom Tov. Rav Chisda is of the opinion that one is culpable. Rabbah disagrees and maintains that one is not culpable because there is always the possibility that guests may come and the food will in fact be served on Yom Tov. This principle is known as *ho'il* (based on the term *ho'il umikla'ei lei orchim*, translated as "since there is a possibility of guests arriving"). Rabbah attempts to prove the principle of *ho'il* from the concept of *eiruv tavshilin*. If there is a concept of *ho'il*, one can understand why it is permitted to prepare food on Yom Tov that is going to be eaten on Shabbat. The concept of *ho'il* permits all food preparation on a biblical level even if one intends to eat the food item after Yom Tov. The prohibition of preparing food on Yom Tov with intent to eat it after Yom Tov is rabbinic in nature. However, the rabbi permitted food preparation for Shabbat if one establishes an *eiruv tavshilin*. Rav Chisda responds that the reason why *eiruv tavshilin* works is because on a biblical level one may in fact prepare food on Yom Tov for the purpose of eating it on Shabbat.

While Rabbah's opinion does seem to be the lenient opinion, Tosafot ad loc., s.v. *Rabbah*, note that the principle of *ho'il* does not apply if

there is no possibility of actually eating the food on Yom Tov. Therefore, any food that is prepared at the very end of Yom Tov is not subject to the leniencies of *ho'il*. *Magen Avraham* 527, suggests that according to Tosafot, it is prohibited to prepare food at the end of Yom Tov for the purpose of eating it on Shabbat even if one establishes an *eiruv tavshilin*. *Magen Avraham* further notes that many communities have the practice of accepting Shabbat early in this instance in order to avoid this problem.

### How Does One Establish an *Eiruv Tavshilin*?

The Mishna, *Beitzah* 15b, records a dispute between *Beit Shammai* and *Beit Hillel* regarding the necessary components for an *eiruv tavshilin*. *Beit Shammai* require that two cooked items be set aside for the *eiruv* and *Beit Hillel* only require one cooked item. Rabbeinu Tam (cited in Tosafot *Beitzah* 17b s.v. *Amar Rava*) opines that while the opinion of *Beit Hillel* is accepted as normative, an *eiruv* of a cooked item is only sufficient for one who intends to cook on Yom Tov (for Shabbat) but does not intend to bake. If one intends to bake on Yom Tov, a baked item is required in addition to the cooked item. Rambam, *Hilchot Yom Tov*, Chapter 6, makes no mention of any requirement to incorporate a baked item into the *eiruv tavshilin*. *Shulchan Aruch, Orach Chaim* 527:2, rules that ideally one should use a cooked item and a baked item for the *eiruv tavshilin*. However, if only a cooked item was used it is permitted to bake.

### The Purpose of *Eiruv Tavshilin*

The Gemara, *Beitzah* 15b, records a dispute between Rava and Rav Ashi regarding the purpose of *eiruv tavshilin*. Rava is of the opinion that the purpose of *eiruv tavshilin* is to ensure that there is specific food that is set aside for Shabbat. The concern is that all of the food will be eaten on Yom Tov, and the Shabbat meals will not be given the due honor that they deserve. Therefore,

the rabbis instituted that one must prepare a Shabbat meal (or a portion of a Shabbat meal) prior to Yom Tov and by doing so, everyone will be cognizant of the importance of honoring the Shabbat with meals that are appropriate. Rav Ashi disagrees and maintains that the purpose of *eiruv tavshilin* is to serve as a reminder that it is normally prohibited to prepare food on Yom Tov that is intended for after Yom Tov. The rabbis instituted the *eiruv tavshilin* as the only means of doing so. [See *Ba'al HaMa'or*, *Pesachim* 14b, who connects the dispute between Rava and Rav Ashi to the dispute between Rabbah and Rav Chisda.]

Rabbeinu Asher, *Beitzah* 2:1, notes that there is an important practical difference between the opinion of Rava and the opinion of Rav Ashi. According to Rava, since the purpose of *eiruv tavshilin* is to prepare properly for Shabbat, the *eiruv* must be established on Erev Yom Tov and may not be established prior to Erev Yom Tov. However, according to Rav Ashi, since the purpose of the *eiruv* is to provide a reminder, the *eiruv* may be established prior to Erev Yom Tov. Additionally, if on Sukkot, both the first days of Yom Tov and the last days require an *eiruv tavshilin*, one may establish one *eiruv* that will serve as the *eiruv* for the first and last days. *Shulchan Aruch* 527:14, rules that one should not establish an *eiruv tavshilin* prior to Erev Yom Tov *l'chatchilah* (*ab initio*). However, if this was done, it is permitted *b'dieved* (*ex post facto*).

#### Are Guests Required to Establish an *Eiruv Tavshilin*?

A guest staying at someone else's house or in a hotel generally does not prepare food on Yom Tov. Is he required to establish an *eiruv tavshilin*? There are two components to this question. First, while the guest does not intend to prepare any food, he (or his wife) is required to light Shabbat candles. Is an *eiruv tavshilin* required for the lighting of Shabbat candles? Second, may the guest rely on the *eiruv tavshilin* established by the host (or the hotel caterer)?

There is a dispute among the Rishonim as to whether an *eiruv tavshilin* is required for kindling a flame. Tosafot, *Beitzah* 22a, s.v. *UMadlikin*, note

that if one does not specifically designate the *eiruv tavshilin* to permit the lighting of candles (*l'adlukei shraga*), it is prohibited to light the Shabbat candles. *Beit Yosef*, *Orach Chaim* 527, notes that Rambam, *Hilchot Yom Tov* 6:8, does not require *eiruv tavshilin* in order to light the Shabbat candles. R. Mordechai Karmy, *Ma'amar Mordechai* 527:18, rules that if one is in a situation where he does not need to prepare any food on Yom Tov for Shabbat, he should establish an *eiruv tavshilin* without a *beracha* and this will allow him to light Shabbat candles according to all opinions.

Regarding a guest at someone else's house, the Gemara, *Beitzah* 16b, states that Shmuel used to establish an *eiruv tavshilin* on behalf of the entire city. However, this *eiruv* was only effective for those who weren't able to establish their own *eiruv*. Those who intentionally relied on his *eiruv* were not included. According to Rabbeinu Asher, *Beitzah* 2:2, one can never forgo the obligation of establishing an *eiruv* and rely on the *eiruv* of another individual. This opinion is codified by *Shulchan Aruch*, *Orach Chaim* 527:7.

R. Avraham David of Butchatch, *Eishel Avraham* 527:7, questions the limitations of relying on someone else's *eiruv*. Clearly, one household only establishes one *eiruv*. What is more questionable is a situation where a married couple stays at their parents for the duration of Yom Tov. Is this couple required to establish their own *eiruv* or should they rely on the *eiruv* of their parents? *Eishel Avraham* concludes that if the guests are eating together with the hosts they do not require their own *eiruv*. If a situation arises where the guests are eating separately from the host (or from other guests) then each group requires its own *eiruv*. Based on the various mitigating factors, R. Ovadia Yosef, *Chazon Ovadia*, *Hilchot Yom Tov*, *Hilchot Eiruv Tavshilin* no.3, concludes that a couple staying at their parents' home is not required to establish their own *eiruv* in order to light candles. *Piskei Teshuvot* 527:17, presents the opinion of some Acharonim that if the couple has their own private quarters, they should establish their own *eiruv* without reciting a *beracha*.

# The Mitzvah of *Sippur Yetziat Mitzraim*

There are many mitzvot, practices, and traditions that relate to the first night of Pesach. The most central is the mitzvah of *sippur yetziat Mitzraim*, the recounting of the story of the exodus from Egypt. *Minchat Chinuch*, 21:1, asks a fundamental question regarding the mitzvah of *sippur yetziat Mitzraim*. The Mishna, *Berachot* 12b, as well as the Haggadah, record a dispute between Ben Zoma and Chachamim as to whether there is an obligation to mention the exodus from Egypt on a nightly basis (*zechirat yetziat Mitzraim*). Rambam, *Hilchot Keri'at Sh'ma* 1:3, rules in accordance with Ben Zoma that there is a mitzvah to mention the exodus on a nightly basis. If in fact there is such a mitzvah, what is added by having an additional mitzvah on the first night of Pesach of *sippur yetziat Mitzraim*; isn't there already a nightly obligation?

## The Difference between Sippur and Zechirah

R. Chaim Soloveitchik, *Chidushei HaGrach al HaShas, Pesachim* 116a, answers that the mitzvah that exists throughout the year is a mitzvah of *zechirah*, mentioning the exodus from Egypt. The mitzvah on the first night of Pesach is a mitzvah of *sippur*, recounting the exodus from Egypt. R. Chaim states that this difference is manifest in three ways. First, the *Beraita* (quoted in *Pesachim* 116a) states that part of the requirement of *sippur yetziat Mitzraim* is that it must be in question and answer format. The extent of this requirement is such that even if a person is alone, he must ask questions of himself. R. Chaim notes that this requirement only applies to the mitzvah of *sippur yetziat Mitzraim*. It does not apply to the nightly mitzvah of *zechirat yetziat Mitzraim*. Second, the Mishna, *Pesachim* 116a, states that the story of the Exodus must start by mentioning the dishonorable events and end with the praiseworthy events. R. Chaim notes that this requirement is limited to the mitzvah of *sippur yetziat Mitzraim* and not the mitzvah of *zechirat yetziat Mitzraim*. Third, the Mishna, *Pesachim* 116a, states in the name of Rab-

ban Gamliel that in order to fulfill the mitzvah of *sippur yetziat Mitzraim*, one must mention the *korban pesach*, the *matzah* and the *maror* and how they relate to the story of the exodus from Egypt. There is no such requirement when fulfilling the nightly obligation to mention the exodus from Egypt.

R. Chaim's grandson, R. Yosef Dov Soloveitchik (quoted in *Hagadat Si'ach HaGrid* no. 27), adds one more fundamental difference between the mitzvah of *sippur yetziat Mitzraim* and the mitzvah of *zechirat yetziat Mitzraim*. The mitzvah of *sippur yetziat Mitzraim* not only requires one to recount the story of the exodus from Egypt, but requires that one also praise the Almighty for all of the miracles that were performed at the time. This is why *Hallel* is recited on the first night of Pesach. As such, *Hallel* is part of the mitzvah of *sippur yetziat Mitzraim*.

The *Tosefta, Pesachim* 10:8, states that there is a requirement to learn the laws of Pesach the entire first night of Pesach. [*Shulchan Aruch, Orach Chaim* 481:2, codifies this *Tosefta* and writes that one is not required to stay up the entire night, but should at least learn the laws of Pesach until sleep overcomes him.] R. Soloveitchik, *ibid*, no. 22, comments that the requirement to spend the night learning the laws of Pesach is part of the mitzvah of *sippur yetziat Mitzraim*. One can then add another distinction between the mitzvah of *sippur yetziat Mitzraim* and the mitzvah of *zechirat yetziat Mitzraim*. As opposed to the mitzvah of *zechirat yetziat Mitzraim*, the mitzvah of *sippur yetziat Mitzraim* requires that one familiarize oneself with the laws that relate to the mitzvot of the first night of Pesach.

A unique aspect of the *seder* is that one is required see oneself (*lirot et atzmo*) as if he was personally liberated from Egypt (Mishna, *Pesachim* 116b). Rambam, *Hilchot Chametz UMatzah* 7:6, writes that one must exhibit oneself (*l'harot et*

*atzmo*) as if he was liberated from Egypt. Rambam then writes (*ibid*, 7:7) that this is the reason why one eats in a reclined position (*haseibah*), and why one drinks four cups of wine on the first night of Pesach. One can argue that the requirement to exhibit oneself as if he was liberated is an independent fulfillment of the mitzvah of *pirsumei nissa*, publicizing the miracles. However, one can equally argue that publicizing the miracles of the night is an added fulfillment of the mitzvah of *sippur yetziat Mitzraim*. Whereas the mitzvah of *zechirat yetziat Mitzraim* only requires that one mention the exodus from Egypt, the mitzvah of *sippur yetziat Mitzraim* demands that one re-experience the exodus.

### The Role of Children

An integral element of the mitzvah of *sippur yetziat Mitzraim* is the role of children. Rambam, *ibid*, 7:3, writes that one is required to make certain changes to the meal in order to elicit questions from the children. Rambam, *ibid*, 7:2, adds that even if the children do not ask any questions, there is a mitzvah to teach one's child about the events surrounding the exodus from Egypt.

The Gemara, *Pesachim* 109a, quotes R. Eliezer that one should grab the matzahs in order that the children don't sleep. Rashi, *ad loc.*, s.v. *Chotfin*, and Ra'avah, *Hilchot Chametz UMatzah* 7:3, interpret this to mean that the matzah should be eaten without delay in order that children should remain awake. Rambam, *ibid*, 7:3, states that R. Eliezer refers to the practice of stealing the *afikoman* in order that the children stay awake until the end of the meal.

There is another aspect of the mitzvah of *sippur yetziat Mitzraim* that seems to be at odds with Rashi's interpretation that the matzah should be eaten without delay. The Haggadah states that with regards to the mitzvah of recounting the exodus from Egypt, the more one adds in recounting the exodus from Egypt, the more praiseworthy he

is. The Haggadah supports this point by relating a story of five great sages who stayed up the entire night discussing the exodus from Egypt. Many commentaries (*Meyuchas LaRashbam ad loc.*, *Orchot Chaim ad loc.*, and *Kol Bo ad loc.*) ask, how can it be praiseworthy to spend more time recounting the exodus from Egypt; shouldn't the matzah be eaten without delay? They answer that the concept of spending additional time relating the story of the exodus from Egypt does not apply until after the matzah is eaten. The five great sages who spent the entire night discussing the exodus from Egypt only did so after they finished the *seder*.

*Mishna Berurah*, *Sha'ar HaTzi'un* 472:2, implies that there is a different answer implicit in the comments of R. Shimon Ben Tzemach (Rashbetz), *Ma'amar HaChametz* s.v. *Tanya*. Rashbetz writes that the children should be fed expeditiously. *Mishna Berurah* interprets this to mean that one does not have to perform the *seder* quickly. Rather one should make sure that the children eat earlier than the rest of the participants.

The practical difference between the two interpretations is whether one should perform the *seder* quickly and expound upon the exodus from Egypt after the *seder*, or whether one should expound upon the exodus from Egypt during the actual *seder* while providing the children with an abridged form of the *seder*. *Mishna Berurah* leans slightly towards the latter approach.

Both interpretations offer varied solutions as to how ensure that the children are active participants in the *seder*. They both agree that the participation of the children is of primary importance. Regardless of which approach one follows, one should ensure that the conversations and discussions surrounding the *seder* are age-appropriate to the participating children

## The Mitzvah of Achilat Matzah

The Torah, in referring to the holiday of Pesach as *Chag HaMatzot*, highlights the centrality of the mitzvah of eating matzah on Pesach. Although the laws of preparing matzah are intricate, the laws of eating it are not. Rambam, *Hilchot Chametz UMatzah* 6:1, states that if one eats a *k'zayit* (an amount equivalent to the volume of an olive) of matzah, he has fulfilled the mitzvah. However, Rambam's statement only describes the minimum requirement in order to fulfill the mitzvah of eating matzah. When one incorporates the mitzvah of matzah into the *seder*, numerous complexities arise.

### The Need for Three Matzahs

Most families have the tradition of placing three matzahs on the *seder* plate. What is the need for three matzahs? The Gemara, *Pesachim* 116a, derives from a verse (Devarim 16:3) referring to matzah as *lechem oni*, bread of poverty, that just as a poor person eats bread that is not whole, so too the matzah should be broken and not whole. R. Yitzchak Alfasi, *Pesachim* 25b, rules that because of this concept, the *seder* night serves as an exception to the rule of *lechem mishneh*, the rule that requires one to use two whole loaves for Shabbat and Festival meals. At the *seder*, one uses two matzahs, but one of them should be broken in order to fulfill the requirement of *lechem oni*. Rambam, *Hilchot Chametz UMatzah* 8:6, also concludes that only two matzahs are used, one whole and one broken.

However, Tosafot, *Pesachim* 116a, note that the requirement of *lechem oni*, does not impinge on the regular requirement to have two whole loaves at a Yom Tov meal. Therefore, there is a requirement to have three matzahs, two of which are used for *lechem mishneh*, and the third for *lechem oni*.

*Shulchan Aruch*, *Orach Chaim* 473:4, rules in accordance with the opinion of Tosafot, that three matzahs are required at the *seder*. However, the Vilna Gaon, *Biur HaGra*, ad loc., rules in accordance with the opinion of Rambam that only two matzahs are required. Furthermore, the Vilna Gaon adds that by

using three matzahs, one no longer fulfills the requirement of *lechem oni*. This is because the purpose of *lechem oni* is to have an inferior set of *lechem mishneh*. By having two whole matzahs plus a broken matzah, the set of *lechem mishneh* becomes superior to that of an ordinary Yom Tov meal. According to the logic of the Vilna Gaon, using three matzahs in order to fulfill both opinions is not an option, because by doing so one undermines the requirement of *lechem oni* according to Rambam. Most families have the tradition of using three matzahs. Nevertheless, some families use only two matzahs as per Rambam and the Vilna Gaon.

### Which Matzah is Used to Fulfill the Mitzvah?

For those who use three matzahs, another issue arises. Rosh, *Pesachim* 10:30, writes that since there is a requirement to have two whole matzahs, the *beracha* of *hamotzi* is recited on the two whole matzahs. However, since the *beracha* of *al achilat matzah* is recited on the broken matzah, one would have to eat a *k'zayit* from the whole matzah as well as another *k'zayit* from the broken matzah. As *Mishna Berurah*, *Sha'ar HaTziun* 475:6, (based on *Bach* 475) explains, the requirement to eat *lechem oni* demands that one should fulfill the mitzvah using the broken matzah. However, since the whole matzah is on top, it is improper to bypass the whole matzah in order to eat the broken matzah. Therefore, one should eat both matzahs together and fulfill the mitzvah on both matzahs simultaneously.

*Tur*, *Orach Chaim* 475, quotes that there is an opinion that is the reverse of Rosh's opinion. This opinion maintains that the *hamotzi* is recited on the broken matzah, and *al achilat matzah* is recited on the whole matzah. *Tur* writes that in order to satisfy both opinions, one should eat both the whole matzah and the broken matzah together. *Perisha* 475:1, explains that ideally one should eat the matzah upon which the *beracha* of *al achilat matzah* is recited immediately after recitation of the *beracha*. Since there is a dispute as to which matzah that is, one should eat a *k'zayit* of each one at the same time.

R. Yechezkel Landau, *Tzelach, Pesachim* 115b, notes that the items that we use as the basis of our measurements have gotten smaller since the times of the Talmud. Therefore, one should assume that the *k'zayit* is twice the size of a normal olive. *Mishna Berura* 486:1, rules that one should follow this stringency for biblical mitzvot. Despite this stringency, many Poskim (see R. Shlomo Z. Grossman, *Siddur Pesach K'Hilchato* 8:3) note that one who eats two *k'zaytim* of matzah in order to eat the whole matzah and the broken matzah together, does not have to eat two *k'zaytim* of the larger size *k'zayit* but rather two of the smaller size and by doing so, one will inevitably will fulfill the stringency of R. Landau.

### The Mitzvah of *Afikoman*

The Mishna, *Pesachim* 119b, states that one may not eat after eating the *korban pesach*. As Rashbam, ad loc., s.v. *k'gon*, explains, the *korban pesach* must be eaten by one who is satiated. Therefore, it is eaten at the end of the meal. The Mishna is teaching that not only must one eat the *korban pesach* at the end of the meal, but one may not eat afterwards in order that the taste of the *korban pesach* remains in one's mouth. This principle is known as *afikoman*.

The Gemara, ad loc., further states that the principle of *afikoman* applies to matzah as well and therefore one may not eat anything after eating the matzah at the end of the meal (known colloquially as the *afikoman*). Rashi, ad loc., s.v. *Ain*, notes that the *afikoman* is the primary matzah and serves as the matzah in which one fulfills the biblical obligation to eat matzah. However, Rosh, *Pesachim* 10:34, maintains that the mitzvah of matzah is fulfilled with the matzahs upon which one recites the *berachot*.

The most significant difference between Rashi's opinion and Rosh's opinion is the time in which one must eat the *afikoman*. The Gemara, *Pesachim* 120b, quotes a dispute between R. Elazar Ben Azariah and R. Akiva regarding the final time to eat the *korban pesach*. R. Elazar Ben Azariah is of the opinion that the final time is midnight. R. Akiva is of the opinion that the final time is dawn. The Gemara then quotes Rava who states that according to R. Elazar Ben Azariah, one who does not eat matzah until after midnight does not fulfill the mitzvah of matzah. Tosafot, ad loc., s.v. *Amar*, question whether the halacha follows R. Elazar Ben Azariah or R. Akiva. Rosh, *Pesachim* 10:38, notes that if one as-

sumes that the fulfillment of the mitzvah of matzah is performed through eating of the *afikoman*, one should be stringent as this is a matter of Torah law. He then writes that for this reason, Rabbeinu Tam was particularly careful to eat the *afikoman* before midnight.

R. Avraham Borenstein, *Teshuvot Avnei Nezer, Orach Chaim* 381, provides a novel approach to the concept of *afikoman*. R. Elazar Ben Azariah's opinion that one must eat the *korban pesach* before midnight is derived from *makkat bechorot*, the slaughter of the Egyptian first-born, which was exactly at midnight. *Avnei Nezer* suggests that according to R. Elazar Ben Azariah, one should ideally eat the *korban pesach* exactly at midnight. However, since it is impossible to perform such a feat, the formulation of the mitzvah was such that at midnight, the *korban pesach* should be the dominant food item in one's digestive system. Therefore, one must eat the *korban pesach* before midnight, and one may not eat anything else after eating the *korban pesach*. By refraining from eating after the *korban pesach*, the *korban pesach* becomes the dominant food as the taste of the *korban pesach* remains in one's mouth.

Based on this understanding of R. Elazar Ben Azariah's opinion, *Avnei Nezer* provides a simple solution for those who cannot finish the *seder* before midnight. Since the time of midnight is only significant in that the *afikoman* must play the dominant role in one's digestive system at midnight, one can simply eat matzah immediately prior to midnight and refrain from eating until midnight. In this way, the opinion of R. Elazar Ben Azariah is satisfied and one has fulfilled the mitzvah of matzah. Once midnight arrives, even R. Elazar Ben Azariah agrees that one may continue eating as the only critical time is midnight itself. After one finishes the meal, one then eats matzah again to satisfy the opinion of R. Akiva that one may eat the *afikoman* until dawn. One should not eat anything else after eating this second *afikoman*. [See *Ran, Pesachim* 27b, s.v. *Garsinan*, who notes that there are people who are meticulous to finish the fourth cup of wine before midnight.]

## The Mitzvah of *Haseibah*

The Mishna, *Pesachim* 99b, states that there are certain activities at the *Seder* that must be performed in the reclined position. This is known as the mitzvah of *haseibah*. This article will discuss the nature of the mitzvah and the practical applications that emerge from this discussion.

### Which Mitzvot Require *Haseibah*?

The Gemara, *Pesachim* 108b, states that the mitzvah of eating matzah requires *haseibah* and the mitzvah of *maror* does not require *haseibah*. With regards to the mitzvah of drinking four cups of wine, there is a dispute as to whether *haseibah* is required for the first two cups or the last two cups. The Gemara concludes that since there is a dispute, one should recline for all four cups. Rambam, *Hilchot Chametz U'Matzah* 7:8, states that one who reclines for all other eating and drinking activities of the evening is considered praiseworthy.

Rabbeinu Asher, *Pesachim* 10:20, rules that if *haseibah* is omitted from the eating of the matzah or from the drinking of the four cups of wine, the mitzvah must be performed again in a reclined position. Rabbeinu Asher notes that there is a reluctance to require repetition of drinking the third and fourth cups of wine because by doing so, it gives the impression that more than four cups of wine are required. That concern notwithstanding, Rabbeinu Asher concludes that if one omitted *haseibah* from the third and fourth cups, one should repeat drinking those cups in a reclined position. Rabbeinu Asher's opinion is codified by *Shulchan Aruch, Orach Chaim* 480:1.

Rama, *Orach Chaim* 472:7, presents a different approach to the situation where one omitted *haseibah* from the third or fourth cup of wine. Ra'aviah, no. 525, states that nowadays people do not normally eat in a reclined fashion and therefore the mitzvah of *haseibah* does not apply. While most Rishonim do not accept the opinion of Ra'aviah, Rama (based on *Agudah, Pesachim* 10:92) factors in the opinion of Ra'aviah in certain situations. There-

fore, in general, if one omits *haseibah*, that activity must be repeated. However, regarding the third and fourth cups, since there is a concern that repeating the third or fourth cup will give the impression that there is a requirement to drink more than four cups, one may rely on the opinion of Ra'aviah, and one should not repeat drinking the third or fourth cup.

### Are Women Obligated to Recline?

There is another instance where Rama relies on the opinion of Ra'aviah. Rama, *Orach Chaim* 472:4, notes that although women should be obligated in the mitzvah of *haseibah*, the common practice of many women is to refrain from performing *haseibah*. Rama proposes that women rely on the opinion of Ra'aviah that nowadays the mitzvah of *haseibah* does not apply. One can question the Rama's ruling. If in fact, one can rely on the opinion of Ra'aviah, men should rely on this opinion as well. If one cannot rely on the Ra'aviah, why should women rely on this opinion?

It has been suggested that the answer lies in the nature of a woman's obligation in the mitzvah of *haseibah*. [See the article by R. Mordechai Willig in *Zichron HaRav* pp. 77-78. The suggestion is based on an idea developed by R. Moshe Soloveitchik, but the specific application to *haseibah* is from an unknown source.] *Haseibah*, like all other mitzvot performed at the *Seder*, is a *mitzvat aseh shehaz'man gerama* (time bound positive mitzvah). Women are normally exempt from *mitzvot aseh shehaz'man gerama*. However, there is a concept of *af hen bayu b'oto hanes* (women were also part of miracle, *Pesachim* 108b) which obligates women to observe all mitzvot that commemorate a miracle that women were a part of. Therefore, women are obligated to observe all of the mitzvot of the *Seder*. R. Moshe Soloveitchik opines that there are two aspects to the commemoration of a miracle. There is the *pirumei nissa* aspect, which serves to publicize the miracle. Additionally there is the *zecher lanes* aspect which serves to remember the miracle. The concept of *af*

*ben hayu b'oto hanes* only obligates women in the *pirsumei nissa* aspect, and not the *zecher lanes* aspect.

One can then explain that the dispute between Ra'aviah and the other Rishonim is based on the nature of *haseibab*. Ra'aviah is of the opinion that the purpose of *haseibab* is *pirsumei nissa*. Therefore, nowadays, since people do not eat in a reclined fashion, one cannot fulfill *pirsumei nissa*. The other Rishonim agree that one can no longer fulfill *pirsumei nissa*, but they maintain that there is a *zecher lanes* component to *haseibab*. By reclining, one remembers the miracle even though nowadays most people don't eat in a reclined fashion.

Now it is possible to understand the basis for women to rely on the opinion of Ra'aviah. A woman's obligation is limited to *pirsumei nissa*. She is exempt from the *zecher lanes* aspect of *haseibab*. Therefore, since nowadays, the *pirsumei nissa* aspect cannot be fulfilled, women are exempt from *haseibab*. However, men - who are still obligated in the *zecher lanes* aspect of *haseibab* - must still recline in order to remember the miracle.

#### ***Haseibab* for Left-Handed Individuals**

The Gemara, *ibid*, states that one cannot fulfill the mitzvah of *haseibab* by leaning forward or backward. Rather one must lean on one's side. The Gemara states further that if one leans on his right side it is not considered *haseibab*. Additionally there is a concern that leaning on one's right side may cause choking. Rashbam, *ad loc.*, s.v. *Haseibat*, explains that the reason why leaning on the right side is not considered *haseibab* is because it is difficult to eat with one's right hand while leaning to the right. Rashbam *ad loc.*, s.v. *Shema*, explains that the reason why leaning to the right presents a choking hazard is because leaning to the right causes the epiglottis to open, allowing food to enter the windpipe (see also Rashi, *ad loc.*, s.v. *Shema*).

R. Yisrael Isserelin, *Terumat HaDesben*, 1:136, discusses which side a left-handed individual should lean on. He notes that if the reason why one can't lean to the right is because it is difficult to eat while leaning on one's right, a left-handed individual - who eats with his left hand - should lean to his right. However, based on the concern for choking, it would be equally dangerous for a left-handed individual to lean on his right side. *Terumat HaDesben* concludes that the concern for danger overrides the concern that it is difficult to eat while leaning to the left. Therefore, a left handed individual should lean on his left side. This ruling is codified by Rama, *Orach Chaim* 472:3.

One can question this ruling. A left-handed individual who leans to his left cannot eat comfortably. As such, if he leans to his left, there should be no fulfillment of the mitzvah of *haseibab*. While there is a concern that leaning to the right presents a danger, leaning to the left ostensibly serves no purpose. If so, why didn't *Terumat HaDesben* simply rule that a left-handed individual is exempt from the mitzvah because the method in which he can fulfill the mitzvah presents a danger? [*Mishna Berurah*, *Biur Halacha*, 472:3 s.v. *V'Ain*, applies this logic to an amputee who doesn't have a right arm. The amputee cannot possibly eat while leaning on his left side and he is exempt from *haseibab*.]

Perhaps the answer is based on the aforementioned suggestion that there are two aspects to the mitzvah of *haseibab*. A left-handed individual cannot fulfill *pirsumei nissa* by reclining on his left side because it is uncomfortable for him to eat in that manner. However, reclining on his left side is preferable to eating in the upright position because he can still fulfill the *zecher lanes* aspect by reclining on his left side.

# Understanding *Yom Tov Sheini Shel Galuyot*

The Gemara, *Beitzah* 4b, cites Abaye who states that the practice of observing an additional day of Yom Tov in the Diaspora (*Yom Tov Sheini Shel Galuyot*) originated in the times when *Beit Din* would establish the new month based on an eyewitness account of the new moon. It often took an extended period of time to communicate this message to the communities in the Diaspora. For this reason those communities observed an additional day of Yom Tov. Abaye notes that although nowadays, the new month is not established based on an eyewitness account, and the calendar is fixed and known to all, those in the Diaspora continue to observe an additional day of Yom Tov. This article will discuss two approaches to understand *Yom Tov Sheini Shel Galuyot* and the practical differences between the two approaches.

## *Yom Tov Sheini Shel Galuyot*: Rabbinic Decree or *Minhag*?

The Gemara, *ibid*, quotes a dispute between Rav and Rav Asi as to whether the first day of Yom Tov and *Yom Tov Sheini Shel Galuyot* are considered one elongated day or two distinct days. Rashi *ad loc.*, explains that Rav, who holds that the two days of Yom Tov are two distinct days, is of the opinion that since both days cannot logically coexist, they are treated as two independent days. Rav Asi, who is of the opinion that both days are considered one elongated day, is of the opinion that the observance of *Yom Tov Sheini Shel Galuyot* nowadays is based on a rabbinic decree that defines the day as an extension of the first day of Yom Tov. The Gemara implies that one practical difference between Rav and Rav Asi is whether there is an obligation to recite *Havdalah* between the first day of Yom Tov and *Yom Tov Sheini Shel Galuyot*. If the two days are two independent days, there should be an obligation to recite *Havdalah*. If they are considered one elongated day, there is no obligation to recite *Havdalah*.

Rashba, *Beitzah* 4b, s.v. *V'Hashta*, notes that although we follow the opinion of Rav, we don't recite *Havdalah* between the two days of Yom Tov. He

explains that when the Gemara suggests *Havdalah* as a practical difference between the opinions of Rav and Rav Asi, it is following the opinion of R. Eliezer (*Eiruvim* 39a) that there is no concern of desecrating *Yom Tov Sheini Shel Galuyot* by treating *Yom Tov Sheini Shel Galuyot* as a day of doubt *vis-à-vis* the first day of Yom Tov. However, the normative opinion is that of the *Chachamim* who disagree with R. Eliezer and maintain that certain activities constitute a desecration of *Yom Tov Sheini Shel Galuyot*. Rashba maintains that reciting *Havdalah* on *Yom Tov Sheini Shel Galuyot* for the first day of Yom Tov would constitute a desecration of *Yom Tov Sheini Shel Galuyot*.

It is clear from Rav Asi's opinion that *Yom Tov Sheini Shel Galuyot* is considered a full-fledged rabbinic decree. There are two possible reasons why Rav disagrees. Perhaps he disagrees because he does not consider *Yom Tov Sheini Shel Galuyot* to be a rabbinic decree but rather an ancient *minhag* (tradition). Or perhaps he agrees fundamentally that it is considered a rabbinic decree. Rather, he disagrees on the grounds that the rabbinic decree was not formulated in manner that *Yom Tov Sheini Shel Galuyot* is considered an extension of the first day of Yom Tov.

This question seems to be the basis of a dispute between Rabbeinu Tam (cited in *Tosafot*, *Sukkah* 44b, s.v. *Kan*) and Ran, *Sukkah* 22a, s.v. *Itmar*. Rabbeinu Tam is of the opinion that *Yom Tov Sheini Shel Galuyot* is not based on a rabbinic decree but on a *minhag*. Ran disagrees and maintains that it is based on a rabbinic decree.

Ran questions Rabbeinu Tam's approach from the *beracha* recited on the matzah on *Yom Tov Sheini Shel Galuyot*. The *beracha* recited on the matzah on the second night of Yom Tov includes the term "*v'tzivanu*" (you commanded us). The Gemara, *Shabbat* 23a, states that it is appropriate to recite "*v'tzivanu*" on a rabbinic decree. Ran claims that it is not appropriate to recite "*v'tzivanu*" on a *minhag*.

In defense of Rabbeinu Tam, it should be noted the Gemara, *ibid*, states that the *berachot* recited on

*Yom Tov Sheini Shel Galuyot* are not necessarily warranted and the reason why they are recited is so that it does not lead to a desecration of Yom Tov. R. Ya'akov Y. Kanievski, *Kehillat Ya'akov*, *Berachot* no. 8, explains that the recitation of the *beracha* on matzah on *Yom Tov Sheini Shel Galuyot* is not reflective of any commandment of the mitzvah. Rather, the reason why one recites a *beracha* on *Yom Tov Sheini Shel Galuyot* is because the purpose of *Yom Tov Sheini Shel Galuyot* is to replicate the experience of the Jews in the Diaspora in times when they were actually in doubt as to which day was the authentic Yom Tov. In those times, they recited a *beracha* on the matzah on both of the days that they observed as Yom Tov. In trying to replicate that experience, we recite *berachot*. The *berachot* we recite are not *berachot* on the actual *mitzvot* that we fulfill, but rather have intrinsic significance in trying to replicate the experience of ancient times.

### Practical Differences Between the Two Approaches

There are a few potential practical differences between the approach that *Yom Tov Sheini Shel Galuyot* is based on a rabbinic decree and the approach that *Yom Tov Sheini Shel Galuyot* is based on a *minhag*. First, there is a rule that a circumcision that is not performed on the eighth day may not be performed on Shabbat or Yom Tov. Rambam, *Hilchot Milah* 1:15, rules that a circumcision that cannot be performed on Shabbat or Yom Tov may be performed on *Yom Tov Sheini Shel Galuyot*. Rabbeinu Asher, *Teshuvot HaRosh* 26:6, prohibits a delayed circumcision on *Yom Tov Sheini Shel Galuyot*. [*Shulchan Aruch*, *Yoreh Deah* 266:8, rules in accordance with the opinion of Rabbeinu Asher. Shach, *Yoreh Deah* 266:8, rules in accordance with the opinion of Rambam.]

Perhaps the dispute between Rambam and Rabbeinu Asher is contingent on the nature of *Yom Tov Sheini Shel Galuyot*. If *Yom Tov Sheini Shel Galuyot* is based on a *minhag*, it is arguable that the biblical commandment to perform a timely circumcision (see *Teshuvot Noda B'Yehudah*, *Yoreh Deah* 2:166) overrides the *minhag* to refrain from *melacha* on *Yom Tov Sheini Shel Galuyot*. However, if *Yom Tov Sheini*

*Shel Galuyot* is based on a rabbinic decree, it is within rabbinic authority to suspend a biblical mitzvah when it interferes with the observance of a rabbinic decree (see *Yevamot* 90b).

Second, there is a lengthy discussion among the Poskim regarding a resident of the Diaspora who visits Israel on Yom Tov and plans to return after Yom Tov. *Mishna Berurah*, 496:18, notes that majority of the Acharonim rule that in such a situation, the resident of the Diaspora should observe two days of Yom Tov. *Mishna Berurah* references the opinion of R. Shneur Zalman of Liadi, *Shulchan Aruch HaRav*, *Orach Chaim* 496:11, who maintains that he should only observe one day of Yom Tov.

Perhaps the issue of whether a resident of the Diaspora who visits Israel should observe *Yom Tov Sheini Shel Galuyot* is contingent on the nature of *Yom Tov Sheini Shel Galuyot*. If *Yom Tov Sheini Shel Galuyot* is a rabbinic decree, it is likely that the decree is location-based so that those who are in Israel don't observe *Yom Tov Sheini Shel Galuyot* and those in the Diaspora observe *Yom Tov Sheini Shel Galuyot*. However, if *Yom Tov Sheini Shel Galuyot* is based on a *minhag*, the observance of *Yom Tov Sheini Shel Galuyot* is not based on location but on the individual. Like all *minhagim*, a person follows the practices of the place in which he resides even he visits another location (*Mishna Pesachim* 50a). Since all communities of the Diaspora have accepted the *minhag* of observing *Yom Tov Sheini Shel Galuyot*, all residents of those communities must also observe *Yom Tov Sheini Shel Galuyot*.

[R. Chaim Soloveitchik (cited in *Mesorah* Vol. VI pg. 18) is of the opinion that in principle one should only observe one day of Yom Tov. However, one should also follow the stringencies of the *minhag* of the place in which he resides. Therefore, his prayers should be that of weekday (or *Chol HaMoed*) and he should don *tefillin*. However, he should refrain from *melacha* in order to follow the *minhag* of the place in which he resides. This opinion is popularly known as "a day and a half."]

## The Mitzvah of *Sefirat Ha'Omer*

The Torah (Vayikra 23:15) states that there is a mitzvah to count (the days and weeks) for a period of seven weeks in conjunction with the offering of the *korban ha'omer*. This counting is known as *sefirat ha'omer*. The Gemara, *Menachot* 66a, states that there is a mitzvah to count the days as well as the weeks. The Gemara then adds that Ameimar only counted days and not weeks for he held that counting nowadays is only done as a remembrance for the times when the *korban ha'omer* was offered. As Rashi explains, since nowadays there is no *korban ha'omer*, there is no biblical requirement to count. Therefore, Ameimar felt that it was sufficient to count the days and not the weeks as a remembrance of the times of the *Beit HaMikdash*. Rambam, *Hilchot Temidin UMusafin* 7:24, writes that the mitzvah of *sefirat ha'omer* applies in all times, implying that even nowadays there is a biblical obligation to count the days of the *omer*.

### The Opinion of Bahag

Tosafot, *Menachot* 66a s.v. *Zecher*, cite *Ba'al Halachot Gedolot (Bahag)* who is of the opinion that if one skips a day of counting, he may no longer continue counting. This is based on the verse *temimot* (complete) used by the Torah to describe the counting process. Apparently *Bahag* is of the opinion that if one day is missed, the counting is incomplete. Tosafot disagree with the opinion of *Bahag* as does Rabbeinu Yitzchak (cited in *Rosh, Pesachim* 10:41). [See R. Ovadia Yosef, *Yabia Omer, Orach Chaim* 3:28, who quotes many other Rishonim who disagree with the opinion of *Bahag*.]

*Shulchan Aruch, Orach Chaim* 489:8, rules that if one skips an entire day of counting, one should continue counting without reciting a *beracha*. The reason one continues counting is because according to most Rishonim, there still exists an obligation to count, even if one day is skipped. However, one does not count with a *beracha* to show deference to the opinion of *Bahag* that one who skips a day is no

longer obligated to perform the mitzvah of *sefirat ha'omer*.

One can question whether the *Shulchan Aruch's* ruling is due to a bona fide concern for the opinion of *Bahag*, or whether it is a stringency similar to many other stringencies that we find in the area of *Hilchot Berachot*. R. Shlomo Z. Braun *She'arim Metzuyananim B'Halacha* 120:4, posits that *Shulchan Aruch's* ruling is only an added stringency. The reason why he rules this way is because one who skips a day still has the option to fulfill the mitzvah in its entirety by hearing the *beracha* from someone else, and then counting himself. R. Braun suggests that nowadays, people who skip a day assume that they are no longer obligated in the mitzvah and do not count altogether. Therefore, the losses of following this stringency outweigh the gains, and one should count with a *beracha* regardless of whether or not a day is skipped.

Despite, R. Braun's suggestion, *Mishna Berurah* 489:37, as well as contemporary Poskim (see R. Ovadia Yosef, *Yabia Omer, Orach Chaim* 3:28) assume that if one skips an entire day of counting, one can no longer recite a *beracha* on *sefirat ha'omer*. However, it should be noted that according to most Rishonim there still exists an absolute obligation to count every night, and the inability to recite a *beracha* should by no means deter one from fulfilling this mitzvah. [See also *Teshuvot Beit HaLevi* 1:39, who suggests that since there is a mitzvah to count weeks as well as days, if one skips a day of counting in the middle of a week, he may count with a *beracha* at the end of every week, as counting weeks constitutes a separate mitzvah. This suggestion was not adopted by *Mishna Berurah*.]

### Rabbi Soloveitchik's Explanation

Rabbeinu Yitzchak, op. cit., implies that the reason behind *Bahag's* opinion is that he viewed the counting of all forty nine days as one elongated mitzvah. Therefore, if one skips one day of counting, the mitzvah is no longer complete and one can

no longer fulfill the mitzvah. R. Yosef D. Soloveitchik [cited in *Eretz HaTzvi* 3:6,7 and *Mesorah* 3 (5750) 35-38] suggests a different explanation to *Bahag's* opinion. The reason why one who skips a day of counting may not continue counting with a *beracha* is because *sefirat ha'omer* requires consecutiveness. One who has skipped a day of counting cannot consider himself as part of the count as his count lacks consecutiveness. Therefore, he can no longer fulfill the mitzvah of *sefirat ha'omer*.

R. Soloveitchik adds that based on this explanation one can understand an otherwise puzzling ruling of *Bahag*. *Bahag*, cited in *Tosafot*, op. cit, rules that if one neglects to count the *omer* at nighttime, one may count during the daytime, and continue counting the next night with a *beracha*. The implication is that one cannot fulfill the mitzvah by counting during the day. If so, why may one count the following night. Shouldn't a daytime count be considered as if one did not count at all?

R. Soloveitchik explains, by counting during the daytime one cannot fulfill the mitzvah of *sefirat ha'omer*. However, one who counts during the daytime can nevertheless consider that counting as consecutive to the previous day. Therefore, one can continue counting that night as the consecutiveness remains intact, despite his non-fulfillment of the mitzvah the previous day.

Based on his explanation of *Bahag's* opinion, R. Soloveitchik resolves one of the more famous questions regarding *sefirat ha'omer*. *Minchat Chinuch* no. 306, queries regarding a minor who counts every night and then becomes a bar-mitzvah. May he continue to count with a *beracha*, or perhaps since his counting as a minor was not obligatory, it is as if he skipped those days, and he may not count with a *beracha* according to *Bahag*. R. Soloveitchik suggests that since the opinion of *Bahag* is not contingent on fulfillment of the mitzvah, but rather on consecutiveness, it should not matter that the minor is not obligated to perform the mitzvah. Since he counted in actuality, his consecutiveness remains intact, and he may continue to count with a *beracha* as a bar-mitzvah.

R. Soloveitchik's explanation provides a resolution with regards to an *onen* (one who has lost an immediate relative that has not yet been buried). An *onen* is not only exempt from performing mitzvot, but he is prohibited from performing mitzvot in

order that he should be able to focus his attention on the burial of his relative. The question arises regarding an *onen* who will be exempt from mitzvot for one entire day during the period of *sefirat ha'omer*. Ostensibly, since he may not perform mitzvot, he may not count the *omer* and therefore, may not continue counting with a *beracha* even after the burial. This view is espoused by *Nahar Shalom* as cited by *Mishna Berurah*, *Bi'ur Halacha* 489:8 s.v. *B'lo*. R. Yechezkel Landau, *Teshuvot Noda B'Yehudah*, *Orach Chaim* 1:27, addresses this issue, and posits that with regard to the prohibition of the *onen* to perform mitzvot, one may rely on the opinion of R. Shlomo Luria, *Teshuvot Maharshal* no. 70 that an *onen* may perform certain mitzvot. Therefore, he may count as an *onen* without reciting a *beracha*. After the burial, he may continue counting with a *beracha*.

However, R. Landau notes that R. Luria's opinion is not universally accepted. Therefore, although there is room to permit relying on the opinion of R. Luria to count the *omer* as an *onen*, nevertheless, according to those who dissent, there is no fulfillment of the mitzvah altogether. One can then question whether counting as an *onen* will justify counting with a *beracha* after the burial. Nevertheless, according to R. Soloveitchik's opinion, even if there is no fulfillment of the mitzvah, one would be entitled to count the subsequent nights with a *beracha* as the *onen's* count would certainly satisfy the requirement for consecutiveness. Furthermore, one does not need to rely on the opinion of R. Luria, in order to continue counting with a *beracha* subsequent to the burial. One can simply count for non-mitzvah purposes, and this too will maintain the consecutiveness of the count

## Writing on *Chol HaMoed*

*Chol HaMoed* is a hybrid of *chol* (ordinary weekday) and *moed* (holiday). Thus, *Shulchan Aruch, Orach Chaim* 330:1, begins the laws of *Chol HaMoed* by stating that on *Chol HaMoed* some *melachot* (actions prohibited on Shabbat and Yom Tov) are permitted and some *melachot* are prohibited. *Mishna Berurah* 330:1, notes that it is not the type of action that is performed that defines its permissibility. Rather, the context in which the *melacha* is performed defines whether it is permitted or prohibited. The act of writing is one of the prohibited *melachot* on Shabbat and Yom Tov, and therefore, is only permitted in those contexts where *melacha* is permitted.

### Davar Ha'Aved

The Gemara, *Moed Katan* 12b, states that one may perform a *melacha* on *Chol HaMoed* if failure to perform the *melacha* will cause a loss. This principle is known as *davar ha'aved*. The Gemara states that a *melacha* performed to prevent a loss does not have to be performed in an unusual manner (*shinui*). Based on this principle, *Teshuvot HaRashba* 3:273, permits writing items that one may forget if he waits to record them until after Yom Tov. This leniency is cited as normative by *Mishna Berurah* 545:18.

Rashba limits this leniency to business transactions or mundane matters. He does not allow writing notes of *divrei Torah* that one heard over the course of *Chol HaMoed*. He claims that one should commit *divrei Torah* to memory, and therefore there is no need to write anything. Rabbeinu Yerucham 4:4, permits writing *divrei Torah* that one is concerned about forgetting "for there is no greater loss than this." *Shulchan Aruch, Orach Chaim* 545:9, codifies Rabbeinu Yerucham's opinion as normative. *Taz*, ad loc., adds that one should not hesitate to write *chidushei Torah* (Torah novellae) on *Chol HaMoed*, for even if he will be able to remember the ideas after Yom Tov, it will inevitably cause him a loss of time from his Torah learning.

Loss of time from Torah learning is also included in the principle of *davar ha'aved*.

### Tzorech HaMoed

The Mishna, *Moed Katan* 11a, states that one may perform *melachot* that are *ma'aseh bedyot* (the work of an ordinary person) but not *ma'aseh uman* (the work of a craftsman). Rabbeinu Asher, *Moed Katan* 1:6, writes that *ma'aseh bedyot* is permitted for any private use as long as it is *tzorech hamoed*, for the purpose of the festival (*Chol HaMoed* or Yom Tov). If the *melacha* is performed for public use, if it is *tzorech hamoed*, a *ma'aseh uman* is permitted. If the *melacha* is being performed for public use after Yom Tov, only a *ma'aseh bedyot* is permitted.

Accordingly, *Shulchan Aruch, Orach Chaim* 545:1-2, writes that repair of the letters of a *sefer Torah* is prohibited as it is a *ma'aseh uman*. However, if there is no other *sefer Torah* available, it is permitted. This is because *ma'aseh uman* is permitted for public use on the festival. Rama, ad loc., adds that there is a dispute whether one may write for the purpose of public uses after Yom Tov. Rama concludes that it is permitted "in our handwriting that is not *ma'aseh uman*." *Mishna Berurah, Sha'ar HaTziun* 545:8, explains that Rama's leniency extends to cursive script (his example is Rashi script) as opposed to block letters.

Rama's leniency is also applied to writing for private use if it is *tzorech hamoed*. Rambam, *Hilchot Yom Tov* 7:14, writes that one may write personal letters on *Chol HaMoed* because these letters are generally written informally and are therefore considered *ma'aseh bedyot*. Rama, *Orach Chaim* 545:5, writes that although there are those who dispute Rambam's position, one may be lenient with our handwriting, as long as it is written in an unusual manner. *Magen Avraham* ad loc., writes that one should write the first line of the page on an angle and that would constitute writing in an unusual manner. [See *Mishna Berurah, Bi'ur Halacha* ad loc.,

who is reluctant to rely on Rama's leniency and suggests that one should refrain from writing unless there is a pressing need to do so (or it is a matter of *davar ha'aved*).]

### Computers, Printers and Typewriters

Are computer printouts and typewritten material considered *ma'aseh uman* or *ma'aseh bedyot*? R. Yekutiel Farkas, *Chol Hamoed K'Hilchato* 6:89, notes that the action involved in producing a computer printout certainly requires less skill than handwriting. Yet, the result is more professional than an ordinary handwritten document. He suggests that the question of whether one follows the action or the result is the subject of a dispute between two Poskim. *Eshel Avraham* (Butchatch), *Tinyana* 545, writes that it is permitted to use a stamper on *Chol HaMoed* for *tzorech hamoed*. It is considered *ma'aseh bedyot* since any ordinary individual can operate a stamper. *Elijah Rabbah* 460:6, cites *Sefer Amrakel* that a stamp is considered *ma'aseh uman*. Ostensibly, *Sefer Amrakel* defines the level of craftsmanship by the finished product. R. Shlomo Z. Auerbach (cited in *Shemirat Shabbat K'Hilchata* ch. 66, note 209) permits computer printing when it is *tzorech hamoed*, and compares it to *Eshel Avraham's* leniency regarding stampers. R. Moshe Shternbuch, *Mo'adim UZemanim* 4:301, prohibits computer printing as it is considered *ma'aseh uman*.

Even according to those who prohibit computer printouts, there is room for leniency regarding producing images on the computer screen. Rama, *Orach Chaim* 545:7, writes that it is permitted to write in a manner that the writing will only last temporarily. For this reason, *Shemirat Shabbat K'Hilchata* 66:55, permits the use of a calculator on *Chol HaMoed*. The same logic should apply to computer screens and cellular phones.

R. Shlomo Z. Auerbach (cited in *Shemirat Shabbat K'Hilchata* ch. 66, note 211), adds that regarding computers there is an additional concern if one wants to save the information onto the computer. He claims that by adding information to the disk (or hard drive) one is improving the status of the disk, and this constitutes the *melacha* of *boneh*, building. However, he does permit saving the information in the case of *tzorech hamoed* or *davar ha'aved*. [One can then question the application of this ruling. If the computer is being used for non-*tzorech hamoed* purposes, not only saving the information is prohibited, but any use of the computer should be prohibited as well? Perhaps R. Auerbach distinguishes between activities that constitute *melacha de'oraita* on Shabbat, and those that don't. It is arguable that using a computer without saving the information does not constitute a *melacha de'oraita* on Shabbat, see R. Auerbach's *Minchat Shlomo* no. 9. Therefore, one may use the computer for non-*tzorech hamoed* purposes. Saving information to a disk, which constitutes a *melacha de'oraita* according to R. Auerbach, is prohibited for non-*tzorech hamoed* purposes.]

### Minimizing the Labor Involved

Rama, *Orach Chaim* 534:1, writes that although one may perform *melacha* in the case of *davar ha'aved* in the usual manner, one should try to minimize the amount of labor involved in that activity. Therefore, it would seem that in cases of *davar ha'aved*, regardless of what position one takes on whether computers are better or worse than handwriting, one should seek out a medium that is the least labor intensive. This will usually be the medium which one normally uses in such a situation.