

E) Shomaia Keoneh


Our questioner knows that he heard to the *chazan* count. May he consider that enough to fulfill his *mitzvah*, after the fact? The principle of *shomaia keoneh* is that for *mitzvos* that require saying something one may discharge his obligation by listening to another person saying it. Those who are unsure whether they may say the *brocha* on *sefiras haomer* rely on the *chazan* in this way. Does this work for the actual counting? The Talmud derives from the Torah terminology that each individual must count. Accordingly, some say that one may not fulfill his obligation through the counting of another. Others contend that an individual obligation applies to other *mitzvos* like *megillah* and *kid-dush*, yet one fulfills them by listening. Rather, the Talmud means other counting is done by the Rabbinical high court. Other counting does not require verbalizing. This *sefirah* is neither of those types, but one may still fulfill it by listening to another person counting.

Accordingly, the poskim debate the *chazan's* counting before the *tzibur*. By hearing his counting, they fulfill their *mitzvah*. They may no longer recite a *brocha*. This is based on the concept that *mitzvos* do not require specific intent. There is implied intent when one performs the act of a *mitzvah*. Some suggest that one make an explicit statement before *sefirah* that he does not wish to fulfill his *mitzvah* by listening to the *chazan*. Others might believe that this provision is assumed to be in the minds of the listeners. The consensus is that one could rely on the *chazan*, at least *bide'eved*, after the fact. Apparently, relying on the *chazan* does not negate the implied provision for other nights. Perhaps the reason that the *tzibur* is assumed to wish to fulfill the *mitzvah* by themselves is because they immediately do so, right after hearing the *chazan*. One who did not do this may rely on the *chazan*. Our questioner either counted or relied on the *chazan's* counting.

If he was saying something else at the time, he could not fulfill his obligation with *shomaia keoneh*. It is impossible to consider him 'saying' both things at once. [See refs as above. Brochos 13a 21b Rosh Hashanah 29a-b 32b-34b Sukah 38a-b Menachos 65b, Poskim. Tur OC 60:4 489:1 589:8-9, commentaries. Chazon Ovadiah Y'T p. 128-130.]

In conclusion, our questioner must decide whether he has regularly does things differently from the *tzibur*. If he has no such habit, he may assume that he counted.

On the Parsha ... Do not (plural) swear falsely using My Name, you will (singular) profane the Name of your G-d .. [19:12] Why does the Torah change from plural to singular? The plural is used to forbid the one who administers an oath to someone who will swear falsely. However, only the swearer profanes G-d's Name. [See Ibn Ezra, Or Hachaim] An oath is administered by stating it to the swearer who answers *amen*. Are they not both profaning Hashem's Name? The one administering hoped that the swearer would not swear. He had no intent to profane Hashem's Name. The swearer had intent to swear falsely. Though he said nothing but *amen*, his listening counts as though he actually said the Name of Hashem, through *shomaia keoneh*. His own 'saying' was with the intent to lie, and he alone profaned Hashem's Name.

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This week's question:

Someone is unsure whether he counted *sefirah* one night. He was in *shul* for *maariv*, where they counted. May he assume that he counted, since he was with everyone else counting? He might have been saying some other part of *davening* to catch up. Alternatively, may he assume that he heard the *chazan* or *Rav* count, and rely on that for himself?

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The issues:

- A) *Sefiras ha'omer*, the opinions on the nature of the *mitzvah*
- B) Doubts about saying something when not in the habit
- C) *Safeik brocha*, whether to recite a *brocha* when in doubt
- D) *Sfek sfeika*, a 'double' doubt
- E) *Shomaia keoneh*, listening is like responding

A) Sefiras Ha'omer

Every Jew must count forty-nine days from the offering of the *korban omer*, on the sixteenth of *Nissan*. On the fiftieth day, *Shavuos*, the two-loaf offering is made. In a minority view, this *mitzvah* is independent of the offerings. The majority consider them interdependent. Nowadays no offerings are made. It is a Rabbinical *mitzvah* in memory of the *Bais Hamikdash*. The *omer* is a two step process. An *omer* measure of the fresh barley crop is offered. At night the grain is reaped and prepared. The next day the offering is made. If the reaping was not done by night, there is a Talmudic debate whether it may be done by day. The *mitzvah* to count is connected to the beginning of the process. Accordingly, the same debate applies to counting by day. The poskim are divided on which opinion to follow. In addition, the Torah says that the counting should be *temimos*, complete weeks. Some maintain that regardless of the *omer* offering, counting must be done by night to count the complete Jewish day, which begins at night. There is a view that the *omer* is dependent on the *sefira*, which is why it must be cut by night. Some say one may count by day with a *brocha*. Others say that only the first day must be counted by night. The consensus is that one who did not count by night should count by day. However, due to the view that there is no *mitzvah* to count by day, he should not recite the *brocha*.

What is counted, the total of the forty-nine days, or each day to reach that total? On the one hand, each day is counted as a separate act, with its own *brocha*. On the other hand, each day alone accomplishes nothing. The poskim debate this issue, resulting in an interesting point of difference. If one missed one day entirely, if the entire counting is one long *mitzvah*, he can no longer keep going. If each day is separate, he can continue with the other days. As a result, when this occurs, the ruling is to continue counting, but without reciting a *brocha*. [See Menachos 65b-66a, Megilah 20b-21a, Rif & Rosh, end

Psachim, Poskim. Tur, B.Y. Sh. Ar. OC 489, commentaries.]

B) Doubt about saying something when not in the habit

Doubts in *halacha*, known as *sefaikos*, are resolved in various ways. An evenly balanced doubt is judged stringently for Scriptural applications and leniently for Rabbinical applications. For uneven doubts, we apply a statistical or probabilistic majority, or a procedural rule that gives one side more validity. An example is *chazakah*, roughly defined as a presumption based on history, circumstances or the absence of evidence.

One might be unsure whether he recited an inclusion in *tefilah*. Sometimes, he may assume that he followed his habit. In the middle of a season when this insertion is always included, he is most likely to have included it. At the beginning of the season, or when any insertion is a change from the habit, the assumption is that he omitted it. In cases where the insertion is essential to the entire *tefilah*, this means that he would need to repeat the *tefilah*. The time taken to settle into the habit is thirty days. [Many say that one can 'practice' repeating the excerpt of *tefilah* including it one hundred times. This also makes the phrase sufficiently fluent to assume that one said it out of habit.] Before this habit has formed the assumption is that one did not say it.

We could explain the *tefilah*-insertion phenomenon two ways: (a) The 'old' habit had been in place, and (b) the 'new' habit did not yet settle in. Following the first line of reasoning, in the case of *sefiras ha'omer*, there is no old habit. This means that it is an even doubt. Following the other line of reasoning, could counting after *shemone esrai* of *maariv* be considered a new habit? If so, for the first thirty days of *sefira* a new habit has not yet formed. Should we assume after the first thirty days that a new habit had formed?

In our case, an additional 'habit' should apply. The concept of habit is that one probably did what he was used to doing without thinking. This is why he does not recall what happened. In the same way, when the congregation does something, one probably participates with them, without thinking. This should also count as a *chazakah*. While this idea is not suggested directly, the poskim discuss one who thinks he might have counted the wrong number. If he was in *shul* and listened to the *chazan*, he is assumed to have said the same as the *chazan*, unless he is sure that he said otherwise.

Our questioner only began having doubts the next evening. The poskim discuss one who is unsure about having inserted the correct phrase. If he thought about the insertion beforehand, then was unsure immediately afterwards, many poskim maintain that he must assume that he omitted it. He must repeat the *tefilah*. If, however, he began having doubts later on, he need not repeat. We assume that he did not omit it. This applies to an insertion in *tefilah*, when one is conscious of the obligation to insert it. In our case, the questioner has doubts about his participation in the congregational counting at *maariv*. However, if the principle distinguishing between an immediate doubt and a delayed doubt could be applied, he could assume that he did in fact remember to count at the time. [See Yerushalmi Brochos 7:4, Taanis 1:1, Tur, Sh. Ar. OC 114, Mor Uktzia, MB 38. 422:1, commentaries. Shoel Umaishiv IV:EH:127.]

C) Safeik Brocha

Reciting a *brocha* involves using the Name of Hashem. This may not be uttered in

vain. The Rabbis are authorized to obligate us in the *brochos*. Some consider the *birchos hatorah* Scriptural obligations. The *birchos hamitzvos*, including the *brocha* on *sefiras ha'omer*, are patterned on it. If the Rabbis did not obligate a certain *brocha*, and deemed it unnecessary, it involves an unnecessary pronouncement of Hashem's Name. Some consider it a violation of the negative *mitzvah*, *lo sisa*. Others maintain that this could not apply to a *brocha*. Rather, it is a violation of the *mitzvah* to fear Hashem. Yet others maintain that when used in praise, albeit unwarranted, it could not be forbidden Scripturally, but Rabbinically. If there is a doubt about the obligation for a *brocha*, reciting it touches on a possible Scriptural violation. Not reciting it possibly violates a Rabbinical obligation. When in doubt about a Scriptural law one tends to stringency. Therefore, one should rather not mention the Name of Hashem in this situation. When in doubt about a Rabbinical law one tends to leniency. One would not recite a *brocha*. One might otherwise try anyhow to practice stringency and fulfill the Rabbinical obligation. In this case, stringency on the Rabbinical law leads to leniency on the Scriptural law. [See E.g, Brochos 33a 39a, Temura 4a, Poskim. Tur, Sh. Ar. OC 206:6. Halochoscope I:9 II:13 IV:14.]

D) Sfek Sfeika

Sometimes, rather than 'resolving' based on procedural rules, a *safeik* is preserved. A temporary ruling is issued, tending to either stringency or leniency. One can introduce more factors later on, that could reduce the *safeik*. If one ruled strictly, but still considered it a doubt, then found evidence casting more doubt from another perspective, he could combine the doubts to rule leniently. This is called a *sfek sfeika*.

Two instances arise in which one may recite the *brocha* despite a doubt. The first occurs when one missed counting by night. He then counted by day without a *brocha*. This was due to the question whether the *mitzvah* applies by night only or also by day. The following night he is faced with a new issue. If the *mitzvah* only applies by night, he has missed one night. If the entire counting is part of one long *mitzvah*, he has now lost his 'continuity'. He should still continue counting, because the *halacha* might follow the other views. Should he say a *brocha*? According to some, he is not fulfilling the *mitzvah*, so his *brocha* is in vain. Therefore, this is a *safeik brocha*. In such situations, we follow the rule that two *sfeikos* may be combined to mitigate the doubt. Some explain this as a way of making a fifty-fifty doubt into a two to one doubt. If the *mitzvah* is to count each day separately, he may continue with a *brocha*. Even if it is one long *mitzvah*, maybe it applies by day, in which case he is still eligible to count with a *brocha*. The second such situation occurs when one is unsure whether he counted at all the previous night, or he is unsure whether he counted the correct number the preceding night. If each night is a separate *mitzvah*, he may continue. Even if they are part of one continuous *mitzvah*, he might have counted correctly the night before, making him eligible to continue counting. Here, too, the possibility of violation is more remote than a simple *safeik*.

Really, our case should be resolved simply, based on *sfek sfeika*. However, we need to address the additional issue of whether the questioner was busy doing something else when the congregation counted. Unless he has grounds to assume this, he may assume that he was doing what everybody else was doing. If he always catches up, ignoring the congregation, he might have an additional *safeik*. [See Psachim 21b, (Rosh) 45b, Poskim.