

HALOCHOSCOPE



This week's question:

At the end of *neilah* on *Yom Kippur*, a number of congregants leave immediately to eat their post *Yom Kippur* refreshments. They do not recite *havdalah* beforehand, presumably because they do not know how to. Should the congregation delay *maariv* so that someone may recite *havdalah* over wine for the early eaters? Should he drink the wine before he *davens maariv*, or should he give it to one of those planning to eat now? May the rest of the congregation rely on this for their *havdalah*, despite the fact that they will be *davening maariv* after it? Is there any issue with mentioning *havdalah* in *maariv* after fulfilling one's obligation by hearing it said over wine?

The issues:

- A) *Havdalah* – on wine and in *tefilah*
- B) Eating before *havdalah*; eating before *maariv*
- C) *Shomaia keoneh*, discharging others' obligation; *Araivus*, responsibility for others
- D) *Tosfos Yom Hakipurim*, extending the holiness of *Yom Kippur*

A) *Havdalah*

This *mitzvah* is derived from the *pesukim* that teach us the *mitzvah* of *kiddush*. 'Mention the *Shabbos* day to sanctify it' – mention the holiness of *Shabbos*, to make it holier for us than each other day of the week. Therefore, we use words – *kiddush* – to formally sanctify *Shabbos* as it begins, to distinguish it from the preceding days, and *havdalah*, distinction, at the end of *Shabbos* to distinguish it from the following days.

Despite the scarcity of references to it by the Talmud, some imply a Scriptural obligation for both *kiddush* and *havdalah*. The Talmud also refers to the Scriptural obligation applying equally to men and women. However, in another context it seems Rabbinical. If one adopts a ban on wine, can this apply to wine drunk for *mitzvos*? The Talmud asks rhetorically: 'Are people obliged to recite *kiddush* and *havdalah* from the time of the giving of the Torah at Sinai?' This implies that it is not a Scriptural obligation, but Rabbinical. One answer is that the *mitzvah* to verbalize *kiddush* and *havdalah* is Scriptural. Doing it over a cup of wine is Rabbinical. Deriving the connection to wine from Scripture is considered *asmachta*, a linkage based on the Torah's reference to things adopted by the Rabbis. A second answer is that reciting over the wine is Scriptural. Drinking the wine is Rabbinical. In a third view, the reference to Sinai is not to be taken rhetorically. Literally, there is a Scriptural obligation for both *kiddush* and *havdalah*, and to drink the wine.

However, the initial institution of formal *havdalah* was to include it in the *shemone esrai* at *maariv*. The obligation on wine was added at a later date. If the primary Scriptural obligation is over wine, how could the Sages neglect this when instituting their authorized version? Accordingly, the poskim conclude that, at least in the view of this Talmudic passage, the entire *mitzvah* of *havdalah* is Rabbinical.

The *mitzvah* is to recite the *brochos* over a cup of wine. However, to fulfill one's obligation it is not necessary to actually drink the wine. One may listen to the pronouncement of *havdalah* by another. Ultimately, the wine must be drunk by someone. The poskim debate whether it must be drunk by the person reciting, and if so, how much of it he must drink. We do not follow this view, though it is preferable to satisfy it as well. There is also an issue of the *brocha* on the wine, that is both a *bircas hanehenin*, *brocha* on benefit, and *brocha* on the *mitzvah*. As such, in order to avoid having recited the *brocha* in vain, someone who listened to the *brochos* must drink it. Usually it is the person who recites it, but in many instances it is given to another person.

The usual order is to recite *havdalah* in *tefilah* and then to recite it again over wine. As we have shown and will discuss, one should really avoid eating or drinking before *maariv* anyhow. If one forgot to include it in *tefilah*, he need not repeat *tefilah*, since he will be reciting it over wine. This is not necessarily because the main institution is on the wine. Rather, it is because either can satisfy one's obligation, in the event that he forgot, or made an unintended 'mistake'.

May one reverse the order? Moreover, if one already recited it on wine, may he still include it in *tefilah*? The question is whether the main institution is to recite it on wine, or whether the original institution including it in *tefilah* remains the principal, with wine added on as well. While the Talmud poses this question, and seems to conclude that the main institution is in *tefilah*, this is not cited by all poskim. This leads some to conclude that it is debated *halachically*, and that some follow the view that the institution on wine replaces the original institution in *tefilah*. The Talmud discusses one who ate before *kidush*. He should wait to recite it the next day, before eating. Regarding *havdalah*, this is debated. The consensus follows the view that one may still recite it that night. What if one forgot to include it in *tefilah*, then ate before reciting it on wine? In this case, one must repeat *tefilah* and include it. This is compared to forgetting both at night. One must recite both the next morning. Based in part on this, the poskim discuss whether the wine institution is now considered the primary one. Accordingly, some say that one who recited it on wine before *maariv* should not include it in *tefilah* later. However, it seems that the majority say that it should still be included in *tefilah*.

In our case, the person reciting it could, theoretically, have in mind not to discharge his personal obligation, then give the wine to a listener. As we shall see, *aravus* permits such arrangements. This way, he could recite it in *tefilah*, then fulfill his personal obligation afterwards. However, it would appear that there is no need for him to do so, since we follow the opinion that if they are reversed one still fulfills both. The question is whether one may intentionally reverse the order. There is no clear indication on this. In our case, due to the other factors, it would certainly be permissible. [See Mechilta Yisro 20:8, Brochos 20b 33a 51b-53b, Psachim 105b-107a 117b, Nazir 4a, Shvuos 18b 20b, Poskim. Ramb. Shabbos 29:1. Chinuch 31. Tur Sh Ar OC 271 293-298 esp. 294:1-2 299:1 10, commentaries. Uvacharta Bachaim 84.]

B) Eating before *havdalah* or *maariv*

Once the time for *havdalah* arrives, it is forbidden to eat anything before reciting *havdalah*. This is for a combination of reasons. Generally, a *mitzvah* that must be per-

formed at a specific time is in danger of being neglected if one occupies himself in other activities at that time. For some of these, including before *davening maariv*, beginning a set meal is forbidden even before the time for the *mitzvah* arrives. In the case of *havdalah*, even a small taste of anything but water is forbidden. In addition, to show respect for *Shabbos* by distinguishing it, one should not engage in distracting activities when *havdalah* should be on his mind. Some say that there is a point in fulfilling it at the earliest opportunity, though one should also try to delay ending *Shabbos*, somewhat. Some maintain that the idea is that the first taste after *Shabbos* is over should be the *havdalah* wine. In light of this, if one intends to eat a small amount before *maariv*, which is permissible, since it is not a set meal, he must still recite *havdalah* first. Understandably, this would apply primarily after a fast, like *Yom Kippur*, or (*Tisha B'av* Sunday).

The Talmud discusses whether one need stop eating for *havdalah*, and whether one who already ate something may still recite *havdalah* over wine. We follow the view that one need not cease a meal. [See Brochos 4b 52a Shabbos 9b Psachim 105-7, Poskim. Tur Sh Ar OC 235:2 299:1, commentaries. Moadim Uzmanim III:245. Nitei Gavriel Yamim Noraim 51:2.]

C) *Shomai'a ke'oneh; Araivus*

We mentioned that one need not drink the wine, and may fulfill his obligation by listening to the *brocha* recited by someone else. This is the rule of *shomaia ke'oneh*, one who hears is the same as one who 'responds'. *Mitzvos* that require an utterance may usually be fulfilled by listening to another person pronouncing them. There must be mutual intent of both speaker and listener to fulfill the *mitzvah* in this fashion. Every word must be sounded and heard clearly.

Birchos hanehenin, *brochos* on personal benefit, are not usually considered *brochos* on *mitzvos*. Therefore, each person benefiting must recite his own *brocha*. If two or more people are *kovai'a*, station themselves at a place and agree to join in one meal, they may have one person recite the *brocha*. Each, including the reciter, eats or drinks after the *brocha*. Thus, if one is not benefiting himself, he may not discharge the obligation of another. This implies that if the *brocha* or utterance is for a *mitzvah* purpose, even one who does not fulfill the *mitzvah* with this utterance may sound it for the sake of others who use it for their obligation.

This last idea is called *arvus* or *araivus*, literally responsibility. All Jews are responsible for one another. This is derived from a verse and is considered Scriptural. [Although most *brochos* are not Scripturally formulated, the concept of a *brocha*, and of other utterance requirements, is Scriptural.] As each Jew is responsible for his fellow, they may all be considered part of the same 'body'. One may speak for his fellow even when the speaker is not involved in the performance of the *mitzvah* himself. However, the speaker must be a *bar chiyuva*, one obligated in the *mitzvah*, to be considered responsible for his fellow *bar chiyuva*. A minor or one otherwise exempt may not act as *araiv*.

This is why the person reciting *havdalah* need not drink the wine. He may even recite it after he has already fulfilled the *mitzvah* himself. He has no current obligation, but is a person with an obligation of his own. He simply discharged it beforehand.

If the person obligated is able to do the *mitzvah* by himself, it preferable that he not

rely on *araivus*. However, if he did rely on it, he fulfills his obligation and need not repeat it. In our case, it seems obvious that the congregants eating right away have limited ability to say *havdalah* themselves. Furthermore, some maintain that fulfilling it in a group is preferred. In addition, the entire concept of *araivus* seems to have stronger implications here. The congregants would otherwise not fulfill *havdalah*, or at least, would violate the precept forbidding eating beforehand. Therefore, it is incumbent on one who is able to, to do it for them. Furthermore, as we have already mentioned, he may really fulfill the *mitzvah* himself at that time. He might wish to refrain from drinking the wine himself before *maariv*. [See Sukah 38b, Rosh Hashana 29a-b, Sanhedrin 27b Shavuot 29a, Psachim 101a, Poskim. Rambam, Brochos 1:10 (Kiryas Sefer) Shabbos 29:10. Chinchuch 31. Tur Sh. Ar. OC 167:19-20 213:1-3 219:5 (RAE) 273:4, commentaries.]

D) Tosfos Yom Hakipurim

There is one additional factor that comes into consideration here. One must add to the holiness of the day of *Yom Kippur*, both at the beginning and at the end. One begins before the Jewish date begins *halachically*, and ends after the *halachic* end of the day. Thus, one adds *chol*, mundane weekday, to the *kodesh*, holy day. This is considered a Scriptural requirement for *Yom Kippur*, and the concept is applied to other holy days as well. There is some debate on whether it is considered Scriptural for the other days.

Sanctity is extended by accepting the day early. Ideally, one should make *kiddush* early. At the very least, one should refrain from *melacha* early. One could make a verbal acceptance early even if he does not make full *kiddush* then. For *Yom Kippur*, one refrains from eating or drinking early as well. At the end of the day, one extends it in the same way. During twilight, it is forbidden to do any of this anyhow, due to the doubt about the status of the period. Therefore, to properly fulfill this, one must add before sunset on *Erev Yom Kippur* and after nightfall on *Motzai Yom Kippur*. There is no prescribed amount of time that one must add. Some say that the absolute minimum, which is a moment, is the Scripturally required amount. Any additional amount is Rabbinical.

Accordingly, in our case, the person reciting *havdalah* would want to delay it as long as possible. Since he does not intend to eat now, he would like to wait with *havdalah* as well. Nonetheless, he has some responsibility to help the unlearned congregants. This probably supersedes his personal obligations, since it applies to a large group. In addition, by *davening maariv* later, one also extends the day somewhat. Therefore, it is probably better to have intent to satisfy his personal obligation at the same time. [See Brochos 52a Shabbos 118b Rosh Hashanah 9a Yuma 81b Beitza 30a, Poskim. Tur Sh Ar OC 261:2 293:1 608:1 624:2, commentaries.]

In conclusion, one may recite *havdalah* before *maariv*. He may also drink the wine if he has intent to fulfill it then. It is preferred to give the wine to a listener. The rest of the congregation should rather wait until after *maariv*.

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