

HALOCHOSCOPE

This week's question:

Someone made an early *Shabbos*. He passed by another Jew who had not yet accepted *Shabbos* and who was picking tomatoes. He offered the first person some tomatoes. Is there any problem with the first Jew accepting and eating these tomatoes on *Shabbos*?

The issues:

- A) *Tosfos Shabbos*, bringing *Shabbos* in early
- B) *Peiros shenitleshu beshabbos*, fruits picked on *Shabbos*; *nolad* and *muktzeh*
- C) *Maase Shabbos*, benefiting from activities forbidden on *Shabbos*
- D) When the one doing *melacha* did not accept *Shabbos*

A) *Tosfos Shabbos* [Mostly excerpted from Halochoscope XV:29 and XI:44]

Halachic day begins at night. The exact timing of 'nightfall' is unclear. Sunset would seem to be easy to determine visually. Yet, *halachic* sunset is also controversial. From the beginning of the concealment of the sun below the horizon until the afterglow is no longer evident, is all part of *shkia*, the sinking of the sun. Some say the *rakia*, sky or firmament, is viewed as a mass. The sun is viewed as going through this mass. Its entry into it, its being considered inside it, and its exiting the other side are all part of the process. Thus there is a beginning and an end of *shkia*. After *shkia* is over, the sky gets progressively darker. Eventually it is dark enough for three average stars to be seen in average conditions, *tzais hakochavim*. The time lag between *shkia* and *tzais* is called *bain hashmoshos*. Does *halachic* day begin at *shkia*, *tzais*, or sometime in-between? Is *bain hashmoshos* part of the preceding day, the following night, half-half, or in doubt? The Talmud debates these issues, concluding that the entire period is to be considered in doubt.

The time lag is also debated. In one view it is as short as the blink of an eye. The conclusive opinion (R. Yehuda) is somewhat contradictory. In one context, he gives this time as three quarters of a *mil*, and in another, four *mil*. A *mil* is a linear distance. The Talmud uses the time taken to walk such linear distances to measure time. The day can be divided based on the distance expected to be traveled by the average walker. Most commentaries calculate a *mil* as eighteen minutes. Three quarters is thirteen and a half minutes. Four *mil* is seventy-two minutes. Why not test *tzais hakochavim* visually? What about astronomical variations? Evidently, the visual aspect of darkness is really a sign by which one can determine true *halachic* timing.

Interpreting all this is further debated by the poskim. The best known reconciliations of R. Yehuda are the *GRA*, *Rabeinu Tam* and the *Yereim*. *Rabeinu Tam* says that between the beginning of *shkia* and *tzais* is seventy two minutes. The first fifty-eight and a half minutes of this time is not considered *bain hashmoshos*. The sun has dropped below the horizon, but lingers out of view. When it disappears totally for the day, *bain hashmoshos*

begins, and lasts thirteen and a half minutes. According to the *GRA*, *bain hashmoshos* begins when *shkia* begins, and lasts thirteen and a half minutes. Though it is still getting darker, it is fully night after this. *Tzais hakochavim* means that all stars can be seen. The smallest stars can not be seen until seventy two minutes after *shkia*. The opinion of the *Yereim* is generally interpreted as sundown being considered full night. *Bain hashmoshos* begins thirteen and a half minutes before then. Due to the doubts, *Shabbos* is presumed to begin at *bain hashmoshos*, with each community following one of the views.

While the advent of the new day is in Hashem's hands, we have a *mitzvah* to sanctify *Shabbos* and declare its holiness. This applies during the day and at the onset. During *Shabbos*, close to the beginning, we need to recite *kiddush*, and *havdalah* at the end. We also need to 'accept' *Shabbos* at the beginning. This can be done by candle-lighting, saying *kiddush*, *lecha dodi*, *mizmor shir*, *borchu*, *maariv*, or even 'good *shabbos*' with the correct intent at, or before, the beginning. If one did not accept it before *Shabbos*, he still does so during *Shabbos*. *Shabbos*, for him, began at *bain hashmoshos*. If one accepts it early, *Shabbos* begins for him, even if it is still light. He has extended *Shabbos*.

This extension, accepted by most poskim, is called *tosfos Shabbos*. It is derived from a Scriptural *mitzvah* to extend *Yom Kippur*, beginning and end. *Shabbos* may be extended to as early as *plag hamincha*, a seasonal hour and a quarter before 'night'. Thus, a part of an earlier day that could be considered attached to the next day is sanctified with the holiness of *Shabbos* for this person. Negative *Shabbos* commandments are enforced by severe penalties. *Tosfos Shabbos* is based on a positive *mitzvah* and does not carry the penalties. One does not have the ability to impose the stringency of *Shabbos* that Hashem imposes. However, *tosfos Shabbos* is Scripturally binding. There is a view that only the last moments are included in the Scriptural aspect. Any earlier self-imposed time is Rabbinically *Shabbos*. In one respect, *tosfos Shabbos* is more stringent than *bain hashmoshos*. *Bain hashmoshos* is treated as a *safeik*, doubt of the more severe *Shabbos*. *Tosfos Shabbos* is definite *Shabbos* for the person who accepted it early.

As it depends on the individual, *tosfos Shabbos* is subjective. Acceptance by a community binds all individuals by *minhag makom*. It is often customary to begin fifteen or eighteen minutes before sunset. This guarantees that one is adding on time even according to the opinion of the *Yereim*. In communities where there is no single authority, some people do *melacha* after this time. When self-imposed, *tosfos Shabbos* is viewed by some poskim as a relative and subjective 'vow'. Normally, one give little thought to how much he accepts. He accepts the concept of *Shabbos*, including its restrictions and stringencies. It is possible to exclude certain matters, such as the option to make a *kidushin*, and even certain Rabbinical prohibitions, including some that are permitted during *bain hashmoshos*. It is also possible to make a rule based on what the normal person would have in mind. Thus, it is normal to have in mind to accept it for himself, but to benefit from the *melacha* of another person who did not accept it yet. This affects our case. [See Brochos 2b, Shabbos 35a 118b, Psachim 94a, Rosh Hashana 9a Kesubos 50a, etc. Poskim. Tur Sh Ar OC 89 261 262:3 263:4 10 11 15 16, etc., commentaries.]

B) *Nolad and mukzeh of the fruits*

Fruit picked on *Shabbos*, even in permissible circumstances, such as by a gentile, is

forbidden. This also includes fruit that falls by itself. The Talmud debates the reasons.

Picking fruits is known as *tolaish* a sub-category of the *melacha* of *kotzair*, reaping. To prevent violation of this *melacha*, various Rabbinical decrees were instituted, including the prohibitions of climbing or using trees and of riding animals. One Rabbinical extension could apply to windfalls that fell on *Shabbos*. They may not be eaten, due to the concern that one might be tempted to pick them as well. By definition, since they serve no useful purpose on *Shabbos*, they are *muktzeh* as well.

Anything not intended for use on *shabbos* when *shabbos* began, for a variety of reasons, can be *muktzeh*. *Nolad* is essentially a type of *muktzeh*. It was 'born' on *shabbos* or *yomtov*. Nobody could have it in mind before *shabbos* since it did not exist. Therefore, it is *muktzeh*. Cases of *nolad* can include newly born animals, freshly laid eggs, milk milked on *shabbos*, ashes from a fire that was kindled on *shabbos* and windfalls.

The Talmud debates whether *muktzeh* can take effect automatically in cases where the owner of an item had no intended use for it over *Shabbos*. One can certainly 'push it out of mind intentionally.' The question is whether *nolad* fits this definition. Assuming it does not, the only reason to forbid windfalls is the decree to prevent picking.

Fruit picked by a gentile is forbidden to a Jew. The gentile had no *muktzeh* intent, since it was never forbidden to him, but the Jew's intent makes it *muktzeh*. A Jew who has not accepted *Shabbos* has not rendered his tomatoes *muktzeh*. Could the recipient have made them *muktzeh* in *tosfos Shabbos*?

Muktzeh must be out of one's mind at *bain hashmoshos*. Our question is whether this would also apply at *tosfos Shabbos*. Assuming that one needs to voluntarily put it out of mind, one might not adopt *tosfos Shabbos* for this. Furthermore, the term used is *bain hashmoshos*. This is always after the individual *tosfos Shabbos* has been accepted. [See *Shabbos* 44a-45b 156b *Eruvin* 39b-40a *Psachim* 45a-b *Beitza* 2a-4b 24b etc. *Chulin* 14a-15a, *Poskim*. *Tur Sh Ar OC* 310:2-5 322:1-3 324:6 336 515:1-3, commentaries.]

C) *Maase Shabbos*

One may not benefit from *melachos* done on *Shabbos*. This applies primarily to those who did the *melacha* or those for whom it was done. Others may benefit although often in a reduced manner. The Talmud debates whether this is a Scriptural or a Rabbinical issue, and on differences between an intentional and unintentional violator. We follow the view that it is Rabbinical, as a penalty. If one is not the violator or his intended beneficiary, he may benefit from an intentional *melacha* right after *Shabbos* is over, and according to some, right away. Regarding the violator or his intended beneficiary, some *poskim* permit their benefit after *Shabbos*, while others forbid it.

In our case, the 'violator' did nothing wrong. The 'beneficiary' was not prearranged. He happened to pass by after the picker had already picked the ripe tomatoes, because they would otherwise have gone bad. The only issue to consider is that the purpose of the penalty could still apply. The provision prohibiting benefit from some *maase Shabbos* is a deterrent on the beneficiaries. They should not intentionally ask others to do forbidden *melacha*. If the actor is a gentile, this is a reasonable concern. If the actor is Jewish, one does not expect him to violate *Shabbos*. Rather, the institution is to deter a Jew from doing *melacha* with intent and pretending that it was unintentional. In our case, that does

not apply either. However, since the Jew is permitted to do the *melacha*, the view that forbids the other Jew from asking him to do it could forbid the results of it, for the same reason that the results of a gentile agent's activities are forbidden. [See Chulin 14a-15b etc. Poskim. Tur Sh Ar OC 318:1, commentaries.]

D) 'Agency' of one who did not accept Shabbos

When one has another do something on his behalf, the act can be attributed to him or to the agent. In general, *shlucho shel adam kemoso*, one's agent is like himself. A *mitzvah* performed by one's agent is attributed to the appointer. A gentile is not considered an agent. However, for the purposes of *amira le'akum*, the Rabbinical prohibition against asking a gentile to do something forbidden to Jews, we apply *shlichus lechumra*, to be stringent, to the gentile. The act is attributed to the appointer. In this case, the gentile is not in violation of anything. *Ain shliach lidevar avairah*, a Jew can not be considered an agent to violate a *mitzvah* on behalf of an appointer. 'Rather than listening to the mortal subject who sent you on this mission, you should have followed the instructions of his Master!' The transgression is attributed to the agent rather than the appointer. If one Jew asks another to violate *Shabbos* for him, the transgression is attributed to the second Jew. In our case, the 'agent' could not be in violation. In this way he is similar to a gentile.

Can a Jew who did not yet accept *Shabbos* do something on behalf of one who accepted *Shabbos* early? The poskim debate this case. One view permits the first Jew to actually ask the second Jew to do *melacha* on his behalf. The other view forbids asking him to do it, but permits benefiting from it if the second Jew did it of his own accord.

The poskim debate the reasoning of the lenient view. In one view, asking is only forbidden when the requested activity is forbidden to all Israel. Another view is that *amira* is not forbidden when the request is for something that the requester had the choice not to forbid to himself. Some say it all depends on whether *ain shliach lidevar aveira* requires the agent to be culpable or not. Others say, one is not in violation through *shlichus* until the *shliach* acts. When addressing a gentile, instructions are an issue, because the speech itself is forbidden. Here, the instructions are not a violation. The later acts of the *shliach* are not attributed to the appointer. *Tosfos Shabbos* depends on what he had in mind. He did not have in mind to forbid himself from asking another person to do things for him.

From all of the above, it appears that the stringent view forbids asking because of *shlichus*. Without asking, there is no *shlichus*. The consensus is that one may rely on the lenient view, and ask another to do the *melacha*. [See Tur Sh Ar OC 263:17, commentaries, Shaarei Teshuva 5 6, Rav's Sh Ar, Kuntres Acharon 8.]

In conclusion, the tomatoes are permissible to the Jew who accepted *tosfos Shabbos*. **On the Parsha ...** [Hashem] of the spirits of each .. [27:16] Who knows that the spirit of each is different [see Rashi] Let not the congregation of Hashem be like sheep with no shepherd [27:17]. Perhaps there is a hint here to the concept of individual or communal acceptance. If each is left to his own spirit, some will surely adopt things like *tosfos Shabbos*, with varying stringencies. Others will not. Better that they, as a congregation, should have one shepherd.

Sponsored by Lenny and Erel Plotkin to honor the birthday of their daughter Miriam Bechora. Mazal tov.

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