

HALOCHOSCOPE

This week's question:

A *shul* has two sections on the same level, separated by a fixed *mechitza* that reaches above eye-level. It is possible to see that there are people behind it. Some *mispalelim daven* behind the *mechitza*. Can they be counted toward the *minyan*, quorum of ten?

The issues:

- A) *Minyan*
- B) *Tefilah betzibur*, congregational services
- C) *Mechitza*
- D) What is considered the same room?

Sections A reproduced from *Halochoscope XV:20*; B abridged from *XV:42*; C&D largely from *X:47*.

A) *Minyan*

For a *davar shebikedusha*, sanctification of Hashem's Name, a *minyan* is required. This is a quorum of ten adult Jewish males. Generally, this refers to those responsive prayers recited as a congregation. Almost all of these prayers are Rabbinically instituted. They include *krias hatorah*, *kaddish*, *kedusha* and *borchu*.

One Scriptural *mitzvah* applies only in the presence of a *minyan*: *kiddush Hashem*, sanctifying Hashem's Name. This is manifested in three situations: (i) One may violate any *mitzvah* if his life is threatened, except for three *mitzvos*, idolatry, adultery and murder, that are so severe that one must rather sacrifice his life than violate them; (ii) If a gentile threatens a Jew in public, saying that he will be killed unless he violates a *mitzvah*, he must also give up his life; (iii) One who is distinguished in Torah scholarship and fear of G-d may not behave in an unbecoming manner before his fellow Jews. It is with the second type that we are concerned. "in public" means in the presence of ten Jews. This is derived directly from the language used by the Torah, *besoch*, in the midst. This, in turn is compared to the spies, ten of whom who are referred to a *toch* and as *eidah*.

Another *passuk* teaches us that the divine Presence comes to rest on an *eidah*. Thus we learn that when a *minyan* is present, the divine Presence comes. In one view, the laws of *minyan* for *davar shebikedusha* are derived directly from *kiddush Hashem*, as they are similar. Others maintain that they are separate ideas derived from the same source.

The Torah uses the term *Benei Yisroel*. In the world of *derush*, this refers to males, sons rather than daughters. Minors are not considered part of a qualified group of adults. There is some question on whether women may be considered part of the quorum for *kiddush Hashem*. The view that includes them does not emphasize *benei*. Rather, the qualifying factor in a quorum is the obligation level. Since women are not obliged in time-bound *mitzvos* and in the usual *davar shebikedusha*, they cannot help form a quorum. Some add, purely in terms of the divine Presence, men women and according to one view even children, can combine for the quorum. [See Brochos 6a 21b 47b Megillah 23b

Pesachim 46a Sanhedrin 74a-b, Poskim. Tur Sh Ar OC 55 90, YD 157:1, (Pischei Teshuva, Gilyon Maharsha), commentaries. Minchas Chinuch 295 -296.]

B) Tefilah betzibur

Tefilah betzibur, communal prayer service, is highly recommended by the Talmud. However, there is a question whether it is indeed an **obligation** in its own right. Clearly, if one is unable to pray with a *minyan* he must still pray privately. The only occasion when this is even debated by the Talmud is regarding *Musaf*. However, the question is, is it a *chiyuv*, strong obligation, a *mitzvah*, or simply a *maaleh*, advantage?

Even if one is not in the *tzibur's* location, he still gains an advantage by *davening* at the time of their service. This is an *ais ratzon*, time of Divine benevolence. Hashem is positively disposed at this time. Some say this is because a large group has approached Hashem at this time, or because when a *minyan* assembles, and are qualified to say *devarim shebikedusha*, the *Shechinah*, Divine Presence, is present, or that at this time, all *tefilos* are gathered up together, including those of one was not present with the *tzibur*.

If ten are needed for reciting *devarim shebikedusha*, they must have the secret of the sanctity of Hashem. When a group does a *mitzvah* together the combined efforts add up to more than the sum of the parts. In the blend of incense in the *bais hamikdash*, one ingredient had a natural bad odor. It was included, according to some, because when combined with the others, it brought forth hidden qualities in them, and they brought out hidden benefits in it. The *tzibur* has a special quality of its own. If individuals are unable to focus and concentrate on their personal *tefilos*, as a group, their *tefilah* is accepted. Often a group includes some who are not deserving. Yet, in general, it is judged by its majority.

With a *tzibur* there is a **guarantee** that *tefilah* will be 'heard by Hashem'. Thus, the Talmud does not specify an obligation, but highlights advantages. Furthermore, since one fulfills a *mitzvah* when *davening* alone, the Talmud and poskim avoid terminology that implies that there is something wrong with *davening* without a *minyan*.

Tefilah is *rachamei*, to plead one's cause, or *avoda*, service of Hashem with the heart, or both. There is a big difference between one presenting it as an individual and a group presenting the *rachamei* of the entire Israel. There is a difference between individual *avoda*, such as an individual's offering in the *bais hamikdash*, and the *avoda* of the *tzibur*. Therefore, there is an additional obligation on anyone who is part of the *tzibur*.

When traveling, one is obliged to go a certain distance out of his way in order to catch a *minyan*, but no further. As a *maaleh*, it would not make sense to oblige one to make accommodations for it. Furthermore, how could one be 'exempted' if the *minyan* is past than the limit? In summary, it is certainly an advantage, apparently a *mitzvah*, and possibly an obligation to participate in *tefilah betzibur*. [See Brochos 6a-b 7b-8a 21a-b 30a-b Megillah 19b, Poskim. Tur BY Sh Ar OC 55:22 (Rema) 90:9 etc., commentaries. Bais Elokim II:11. Igros Moshe OC I:28-30 II:27 III:4 7.]

C) Mechitza

Scripture refers to segregating men from women. The Temple had a women's section. When Avraham entertained his 'guests' the women segregated themselves. There was a separate announcement of giving the Torah for women, because special language was used to address women. During construction of the Tabernacle, men and women

worked separately. Later Scriptures refer to separate dancing etc.

At a formal gathering, especially a religious or ritual occasion, segregation is *halachically* required. These include a eulogy and the ceremonial dancing on *Sukos*, when multitudes attend. Attempts made to accommodate both groups within the existing structure of the *bais hamikdash* failed to prevent levity and flirtation. Eventually, a new structure was erected annually, raising the women above the men. Everyone could watch, but the two could not converse. Since changes to the structure are only permitted by prophetic mandate, segregation must be Scripturally mandated. Some maintain the purpose was to prevent communication, others say it prevented the men from looking at the women, and a minority say it prevented *yichud*, seclusion together.

The basic reason for this is the Scriptural *mitzvah* to hold the *bais hamikdash* in awe, that also applies to a *bais haknessess*. Accordingly, *shuls* have a barrier to segregate men and women. Nowadays, it is common for the women's section to be in the same room as the men, with a barrier high enough to prevent lightheaded communication, or according to the stringent view, to prevent gazing. [See Sukah 51b-52a (Yerushalmi), Kidushin 51a, Midos 2:5, Poskim. Sh. Ar. OC339:3 529:4.]

D) The location of the Minyan

Ideally, a group defined as a quorum is in a confined area. Based on Talmudic passages, people outside a confined area can often be included in the group inside it. The *Korban Pesach* may not be removed from the confines of *Yerushalayim*. In the gateway itself, the boundary is considered the part of the door-frame that the door bangs against. The Talmud debates the application of this to *tefilah*. In one view, the debate is whether one in the doorway, or even outside, could be counted towards the ten. Others maintain that there is a requirement for ten inside. The debate is whether one outside may be added to the quorum and answer as though he were inside.

In another passage, a small court has no wall separating it from an adjacent larger one, making it like a corner of the big court. Viewed from the larger court, there is a wall with a wide entrance into the smaller one. An individual in the smaller one may be counted with others in the larger one. One application is a *chazan* in one while the *tzibbur* is in the other. Another application is where nine men are in one and the tenth man in the other. A third passage discusses hearing *shofar* from outside the *shul* where it is blown. A fourth passage states that congregants behind the backs of the *kohanim* when they bless are not included in the blessings. People outside who are unable to be there are included. The Talmud cites a view that if a partition separates the listeners, they are included.

The Talmud describes the huge *shul* in Alexandria. The *chazan* stood on a high platform visible to the entire congregation, but not audible. At a juncture requiring a congregational response, a *shamash* waved a flag. We learn that the *chazan* may be on a different floor than the *minyan*. The Talmud discusses the addition of the Name of Hashem in *bircas hazimun* if ten men ate together. If all ten can see each other, even in different rooms or floors in the same building, they may combine. Yerushalmi adds a condition: they may combine in two rooms within sight of each other if they intended to be one group. Two groups that mingle may also combine. If the groups can not see each other, but a person positions himself so he can see both, he may be *mezamen* for all together.

Accordingly, some allow combination from a second room in sight of the main room. Others only permit it for *bircas hazimun*, and only if they could each say the Name independently anyhow. Some permit responding *kaddish* if a full *minyan* is in the main room, but to actually participate, it is possible that this changes. The poskim permit leniency in emergencies. They allow a side room in sight used for overflow, because it serves the main *shul*. However, it should be considered an emergency measure. Habitual reliance will lead to convening less than the ideal ten in one room.

A common practice is discussed. The *chazan* stands on a *bima*, platform with rails around it. To be considered another domain, ten hand-breadths of separation is enough. This may be combined including the railing and the raised floor. Could the *chazan* be part of the *minyan*, since they are not in his 'room'? Two factors are cited to permit it. The purpose of the platform is to serve the needs of the larger *shul*, so it is a part of it. Second, since some participants always see some others, the group is unified.

The Talmud compares *minyan* location to delineating groups of residents in regard to *eruv chatzeros*. This permits carrying on *Shabbos* within an enclosed common domain. With no *eruv*, each group of resident's rights of usage interfere with each others right to carry there. Which partitions separate groups? In another passage, five parties camp in a large auditorium with a common court in the front. If they are separated by partitions, they count as separate groups, each of which must participate separately in the *eruv* to permit carrying in common areas. The Talmud debates what constitutes a valid partition. The conclusion is that if it reaches the ceiling, even if it is just a curtain, it counts as a separation between residences. Most poskim maintain that if it does not reach the ceiling, even a permanent structure does not separate the residences. Some maintain that a fixed partition does separate. Based on this, a *chazan* on a *bimah* with a fixed railing could be considered in a separate room. Yet we find no stringent ruling on the *chazan*. This is likely because of the other factors. He is serving the *shul*, and people are able to see each other. In our case, the *mechitza* is fixed. People can see and be seen by others in the room, both at the sides and over the top of the *mechitza*, and, vaguely, through it.

To further mitigate our case, the poskim say that if a tenth man is behind a curtain hung for *tznius*, modesty or privacy, he may count toward the *minyan*. It is one room. The curtain is merely for privacy. If it was hung there to separate the area for *halachic* purposes, such as to perform activities that should not be performed in a *shul*, it is like a wall between rooms. In our case, the *mechitza* is not intended as a *halachic* separation. The room is one big *shul*, with a *mechitza* for *tznius*. [See Brochos 52a (Yerushalmi) Eruvin 72a-b 79a 92b Pesachim 85b Rosh Hashana 27b 28b-29a 35a Sukah 51b Sotah 38b, Poskim. S'T Rashba I:96. Tur Sh Ar OC 55:13 16 18 19 (Pri Chadash) 370:3, commentaries. Mishkenos Yaakov 74-5. Chazon Ish OC 93:8. Teshuvos Vehanhagos I:163.]

In conclusion, the people behind this *mechitza* may be counted toward the *minyan*.

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