

# HALOCHOSCOPE

**This week's question:**

A *mikvah*, ritual immersion pool, is usually connected to a reservoir of rainwater through a hole. This is plugged while the *mikvah* is filtered and refilled. The plug is removed to allow them to be connected. Some keep open the connection for the duration of the *tevilah*, immersion. May this plug be removed and replaced on *Shabbos*?

Foam boards cover the *mikvah*. May they be moved on and off on *Shabbos*?

**The issues:**

- A) The *halachic* requirements of a *mikvah*
- B) *Hashakah*, the connection to the rainwater reservoir
- C) *Boneh*, the *melacha* of building on *Shabbos*

## A) *Mikvah*

There are primarily two types of kosher immersion pools: *maayan* and *mikvah*. *Maayan* means a spring. The water flows from the ground by itself and need not be collected. Anything connected to the groundwater is considered a *maayan*. *Mikvah* means a collection of water, gathered in a pool. It is either rainwater or river or well water directed here and disconnected from its source. A *mikvah* is only kosher if the water is still.

There are primarily three types of non-kosher *mikvah* (besides a flowing or leaking pool): *She'uvim* means water that has been collected in a receptacle not connected to the ground and then poured into the pool. Thus, rainwater may not pass through a tank. Even certain types of piping disqualify the rainwater. *Havayah shelo al yedai taharah* means that any item used to guide the water into the pool must be made in a way, or of material, that would not be susceptible to becoming *tamei*, ritually unclean. *Tovel bakeli* means that one may not immerse inside a utensil, such as a regular bathtub, even if it is made of material that is not *mekabel tumah*, and it is now fully attached to the ground.

The first two requirements disqualify using the standard water supply to fill a *mikvah*. To make a kosher *mikvah*, the rainwater is collected in a *halachically* acceptable way and guided to the pool. However, this water can quickly become dirty. Furthermore, there is a minimum requirement of 40 *se'ah* of water. The exact amount of this measurement in modern times is debated. Basically, we try to make it at least 24 cubic feet, to satisfy all opinions. After each use, some water is depleted. Thus, one would need to refill the pool periodically, and wait for a rainy day. In addition, nowadays, we like to keep the water warm. This can cause evaporation and contamination. Filtering it will generally cause it to become *she'uvim*.

To resolve these issues, two separate pools are made. The first is the *otzar*, collection of rainwater. This is kept, as much as possible, intact and covered. The second is the *mikvah*, the immersion pool. This is filled with regular water, filtered and heated. The

two pools are then connected in a way that they may be considered one pool. This is called *chibur*. This is based on a number of principles. Once the required minimum of water is collected, the *mikvah* is kosher. It remains this way, unless it is depleted. Thus, *she'uvim* may be added all day, directly to the pool. The *mikvah* retains its kosher status, and the fresh water 'becomes' kosher. Just as one may add water on top of the existing pool, one may attach a pool to the side, connecting the two. The kosher pool remains kosher, while the *she'uvim* pool at its side is considered as though it was added to the existing kosher pool. It, too, becomes kosher. [See Mishnah Mikvaos, esp. 1:7 4 5 6:1-7 Parah 6:4 zevachim 25b, Poskim. Tur Sh Ar YD 201:1 2 3 7 10 13 etc., commentaries.]

### **B) Hashakah**

One of the *halachic* precedents to turn unfit water into good water comes from the concept of *zeria*, sowing seeds into the ground. When a plant is attached to the ground, it is not susceptible to *tumah*. If grains have become *tamei*, they may be sown in the ground. When they start growing, they become one with the ground. They lose their *tumah*. If water has become *tamei*, it may be placed in a kosher *mikvah* and it loses its *tumah* in a similar way. Many poskim explain the principle of *chibur* in the same way. The *she'uvim* water becomes attached to the kosher *mikvah*. Simply placing the water in the ground will not help, but attaching it to a kosher *mikvah* will help.

Another application of this is when one does not wish to spill the *tamei* water into the pool. One may lower the water into the *mikvah* until the two bodies of water touch over the top of the utensil holding the water. This touching is called *hashakah*, causing them to 'kiss' each other. Then the *tamei* water becomes *tahor* and it may be removed. In a similar way, one may touch the *she'uvim* to the kosher *mikvah*. Then it becomes kosher. It need not remain attached. Thus, most poskim maintain that in order to make the *she'uvim* kosher, the *chibur* need only be made for a second.

This way, one can keep the *otzar* intact, more or less. The *otzar* is collected with enough kosher water. If the connection were left open, there would be an exchange of the waters. Eventually, the original *otzar* will be depleted. Some maintain that this does not present a problem. Once kosher, the *mikvah* will not lose this status. Others are indeed concerned about this. Once the majority is *she'uvim*, the original amount loses its status as kosher water. Therefore, they try to minimize the depletion by keeping the hole shut tightly. When the *mikvah* is filtered, all its water becomes *she'uvim*. It must be reconnected, for a moment. There is also a minority view that the two waters must be connected when immersion takes place. This view requires the plug to be removed for the duration of the immersion. [See refs to section A, Tur Sh Ar YD 201:52-53, commentaries.]

### **C) Boneh**

This Scriptural *melacha* forbids building or adding to a structure attached to the ground. The same is true of *sosair*, demolishing to facilitate further building. Destructive demolition is not forbidden Scripturally. The smallest improvement or demolition that allows for building on a site is forbidden Scripturally. Building a utensil is generally not included in *boneh*. However, many poskim maintain that this exclusion applies only in the early stages of its construction. Completing a *kli* is forbidden Scripturally. Others consider this *makeh bepatish*, finishing touches, rather than *boneh*. The difference between the

two opinions lies in *sosair*. The first view considers demolishing a utensil *sosair*. Note that *mekalkel*, destructive activity, is forbidden Rabbinically where the same activity would be a *melacha* when done constructively.

What about temporary minor repairs, such as returning a door handle to its spindle, or returning its screw (permanently)? Tightening either of these involves a *melacha*. On a structure, it is unquestionably forbidden Scripturally. On a complete utensil it is either *makeh bepatish* or *boneh* (or both). Putting them back loosely is forbidden Rabbinically, as a precaution against tightening them. Where there could be no possible Scriptural violation, such as when the utensil will remain incomplete, they may be repaired loosely.

Rabbinically, building an *ohel arai*, temporary structure, is forbidden, as a precaution against *ohel kavua*, a permanent structure. The Rabbinical prohibition does not apply to minor construction. The *ohel* must have characteristics of *mechitza*, partition, and according to many poskim *gag*, a roof. These must also confer new status on the spaces behind or under them. Thus, the third wall of a *sukah*, which validates it *halachically*, may not be erected. A single wind shield on a beach may be erected. Opening a folding chair does not 'create' a new usable space underneath. However, adding a *gag* on top of existing *mechitzos* is forbidden even when the space underneath is not needed.

Another difference between *ohel arai* and Scriptural *boneh* is that adding to an existing structure is *boneh*. Adding to an existing *ohel arai* is permitted. If one covers a *sukah* with one *tefach*, hand-breadth, of tarpaulin [excluding the rolled up part] before *Shabbos*, he may roll the rest over on *Shabbos*. The first *tefach* constitutes a *gag*, and *mosif*, adding to *ohel arai* is permitted. Some things only give the appearance of adding to a structure. They are forbidden as *nireh kemosif al habinyan*. This is not an issue with *ohel arai*.

In our case, the structure of the *mikveh* is permanent. The plug is meant to be removed, totally. When it is plugged, it is not permanently placed. However, it is wedged tightly. [With a cloth plug, issues of squeezing could arise.] There are a number of Talmudic precedents for this. This could be compared to a window shutter. It could also resemble a bolt. This could be a loose rod, placed in a hole in the ground. It could be a rod fashioned into a *kli*, utensil that can be used for other uses, when not in place as a bolt. It could also be compared to something placed in an opening to prevent the passage of *tumah ohel*, the ritual contamination of a corpse in a continuous canopy. This *tumah* would otherwise pass through the opening, and connect two canopies. The blockage would prevent this passage. It could be compared to a covering. Indeed, the foam boards are a real covering. Coverings that are hinged may be opened and closed [see below]. Unhinged coverings of *kailim* may be moved on and off. Coverings of the ground, such as a lid on a well, may only be moved on and off if they have a handle. This renders them an independent *kli*, and also removes the appearances of it being an addition to the building.

Doors and windows made to open and close do not involve *boneh* and *sosair*, though they fill spaces in the structure. However, if a door is not permanently attached but is moved in and out of its space, it presents a problem. One may not attach it, even temporarily. It may not be placed in a track, top or bottom. Talmudic doors worked like our swing doors, with a pin that fit in a hole at the top and bottom of the frame. If the top pin came out, some forbid returning it Scripturally. Wedging the bottom back in is defi-

nately forbidden Scripturally. Therefore, if it did not fall all the way out it may be eased back in loosely. If it fell out, it may not be eased back, lest one tightens it.

The Talmud discusses filling a space quasi-permanently with something that is not a real door. This could occur in a storage area, where the 'door' is used only occasionally. Putting this 'door' in place is forbidden as *nireh kemosif al habinyan*. If it is already tied to the wall, but must be lifted into place, it still gives this appearance. This applies if it lies on the ground, at the end of its string. If it is hanging off the wall, has a hinge, or has the semblance of a proper door, it does not give the appearance of *boneh*. Some consider this passage to be following a minority stringent view, while others follow it fully. A third view maintains that it refers to an infrequently used doorway. If it is used frequently, it may be 'opened and shut'. This view is followed in practice.

The Talmud then discusses *deless almanah*, a 'widowed' door. This is explained in two ways. (i) There is no door frame and the gap in the wall is filled with a plain board. Shutting this gives a very clear appearance of building to fill the space. (ii) The space is filled with unconnected boards. A variation of this is the absence of a threshold in the doorway, leaving no indication that this is a door. For a frequently used entranceway tying the 'door' to the wall beforehand permits its use. Window shutters need not be tied, provided this was the use one had in mind before *Shabbos*. Modern applications of this include the adjustable type of mosquito screen, and child safety gates on hook hinges.

Closing an opening temporarily is permitted under the category of *mosif al ohel arai*. Some only permit using an item set aside for this purpose (placing and removing it) before *Shabbos*. Some add, it must be designated as a utensil for other uses as well. Thus, it is an independent item. Otherwise, it is considered building with building material. The poskim address the case of a chimney, both in the ceiling and on a wall. Plugging a vent in the wall, using a straw 'pillow', is permitted. The plug is not placed there permanently. Rather, the vent is permanent, and is plugged short term. This resembles our case. [See *Shabbos* 31b 47a-b 102b 122b 124b-126b 146a *Eruvin* 34b-35a 101a-102b *Tosefta* 8:5 etc., *Poskim*. *Tur Sh Ar OC* 308:8-10 22, 313:1 3-5 9, 315:1 3, etc. 320:MA 23, commentaries. *Chayei Adam* 39:9. *Ch Ish* 42 52:13-14 *Sh Sh Kehil.* 23:37 24:24.]

In conclusion, the boards may not be placed on the *mikvah*. They are a lid and they have no handles. One could cover it if it was partially covered all the time. The plug is not a roof. It is purpose-made to plug the hole. It is like a window screen. Furthermore, it has a handle, in the form of a bow-tie bolt used to tighten the plug into the hole. However, when removing the plug, one sometimes needs to pry the sides off. This makes the handle seem less functional. To resolve this, it should be attached by a string to the wall.

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**a"h, whose *shloshim* is on the 28<sup>th</sup> of Av. ☁**

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