

# HALOCHOSCOPE

**This week's question:**

**At a *sheva brochos* on *Shabbos*, they realize that the dessert was left at home. There is a controversial *eruv*, that the participants reject. May they ask a gentile waiter to bring it?**

**The issues:**

**A) *Amira le'akum*, asking a gentile to do *melacha*; exclusions and dispensations**

**B) *Sheva brochos*, *seudas mitzvah***

**A) *Amira le'akum***

Scripturally, only a gentile indentured servant of a Jew is restricted from doing *melacha* for his employer. The main reason for the Rabbinical institution forbidding *amira le'akum* is *shlichus*, agency. *Halachically*, the actions of an agent can be attributed to the person who engaged him. However, in the case of *melacha*, this does not apply Scripturally. If the agent is a Jew, he is liable for his own actions. A gentile cannot be held liable for doing something that is not forbidden to him. Nor can the Jew be held liable for the agent's activities, because such agency has no basis. However, the Rabbis introduced such agency to protect the sanctity of *Shabbos*. Otherwise, Jews could practically behave in the same way as on a weekday, having gentiles do their *melachos*.

The institution is linked to a Scriptural reference: *melacha lo yaiaseh bahem*, shall not be done, even by another person. This was strengthened by restricting benefit from *melacha* done by a gentile to directly benefit the Jew (called *maase akum*). [See Mechilta Bo 12:16 Mishpatim 23:12. Shabbos 19a 122a Eruvin 67b-68a Avoda Zara 21a-22a etc. Poskim. Tur Sh Ar OC 244247 252:2 276:2 306 307:2-5 22, commentaries.]

*Adaata denafshei* is the best known dispensation. In its most pure form it refers to a gentile doing something for his own needs, that a Jew benefits from anyhow. For example, a gentile might need to turn on the light to read his own book. The Jewish bystander may benefit from this *melacha* and use the light himself. When applied to *amira le'akum*, it means that the gentile need not do this *melacha* for the Jew on *Shabbos*. He does it of his own accord, or on his own initiative. The Jew might not ask the gentile to do the work on *Shabbos*. That is, he might ask the gentile to do a certain job involving *melacha*, without setting a time by which it should be completed. He might give a deadline, but will leave enough time for the job before or after *Shabbos*. For example, one might give clothing to a cleaner to clean by Sunday. If he really wants to, the gentile can do it after *Shabbos*. His doing it on *Shabbos* is of his own choice and for his own convenience.

The second instance of *ada'ata denafshei* is when the job must be done on *Shabbos*, but need not involve *melacha*. The gentile chooses to do it as a *melacha* for his own convenience, rather than doing it in a permissible manner. For example, he chooses to drive where he could walk. However, he was not told or asked to do so.

The Talmud discusses a gentile who makes a ramp to get off a boat. A Jew may use it afterwards. In our case, the gentile waiter might be eating food at the *seuda*. If he wishes to eat the ice cream in this location, he needs to bring it here.

However, in an instance where the Jew benefits directly from the activity of the gentile, especially if the benefit is immediate, on *Shabbos*, this exclusion does not help. Most poskim maintain that if the gentile does the activity with clear intent to benefit the Jew, it is forbidden. This could apply even when the Jew never said a word to the gentile. Clearly, the gentile chose to do it of his own accord. This is due, in part, to the same basic reason that the whole restriction on *amira le'akum* was made. In the cases cited earlier, the Jew did instruct the gentile to do a job, but not to do a *melacha*. It was the gentile's choice to do the *melacha* to save himself some effort. The cases where benefit is forbidden are such that the *melacha* is inevitable. In our case, the *melacha* is not inevitable. [See *Shabbos* 19a 121a 122a-b etc. *Avoda Zara* 21b-22a, Poskim. Tur BY Bach Sh Ar OC 244-245, commentaries.]

**Remiza** means hinting. One may not hint to a gentile to do *melacha* for him. However, if the hint is not made in the form of a request, but more of a comment in passing, it is permitted. This is only permitted if the benefit is not major. For example, let us say one asked a gentile to turn on a lamp in a room where one could see with difficulty. The gain from the gentile's *melacha* is small enough to permit it. There are other ways to mitigate the level of benefit, wherein it is considered qualitatively rather than quantitatively less. However, when relying on *remiza*, one must take care not to hint the gentile to do the *melacha* directly. Rather than making a 'suggestion', one could say something like: "We left the ice-cream at home!" The gentile must do the *melacha* voluntarily. [See Sh Ar OC 307:22 Rema, commentaries.]

A third dispensation is sometimes invoked when the *melacha* involved is forbidden Rabbinically: **mekom mitzvah**, if the *melacha* is needed to facilitate performance of a *mitzvah*. The Talmud permits *shevus dishevus*, a doubly Rabbinical restriction, *bimekom mitzvah*. *Amira le'akum* counts as one Rabbinical restriction. When it is coupled with the fact that the *melacha* itself is forbidden Rabbinically, it attains the level needed for this dispensation to apply. *Tzorech Shabbos*, the needs of *Shabbos*, such as kindling a lamp for the evening *seuda*, are often considered *mekom mitzvah*. Some poskim also permit *amira le'akum bimekom mitzvah* when the *melacha* is Scripturally forbidden. *Mekom mitzvah* is not always easy to apply. The needs of the *Shabbos* meal are considered *tzorech Shabbos*. In our case, dessert is not a real need, but certainly enhances the *seuda*.

If the *eruv* is controversial, this can mean a few different things. It is possible that those who criticize it believe that it is not constructed correctly. It is also possible that the area bound by it is considered the type of *reshus*, domain that requires more than the type of enclosure provided. For example, a true *reshus harabim*, public domain, cannot be enclosed with a *tzuras hapesach*, shape of a doorway. [This is the easiest, most convenient and inconspicuous way to construct the enclosure.] It requires fences and gates that can be closed. This designation is debated. Perhaps those sanctioning this *eruv* consider it a *carmelis*, Rabbinically considered public domain. The critics consider it true *reshus harabim*. Even the smaller streets could be considered connected to a *reshus harabim*. In

this case, asking the gentile to carry there could be asking him to do something Scripturally forbidden to the Jew. It could be a *carmelis*, but the critics do not approve of the way the *eruv* is constructed. In this case, asking the gentile to carry is a *shevus dishevus*. [See Sh Ar OC 266:1 276:2-3 306:9-11 307:5 22, commentaries.]

### **B) Sheva brochos and seudas mitzvah**

The poskim cite a wedding as a specific example of *tzorech mitzvah* for which one might ask a gentile to kindle lamps. This *seuda* is itself an intrinsic part of the celebration. It should be a proper bread based meal, in the company of ten male guests. The *Shechina*, Divine Presence, is also present in a sense. [There are precedents for these *seudos* in the Torah. Eliezer and his men held a *seudas erusin*. Lavan made a *seudas nisuin* for Yaakov. See *Chaye Sara* 24:54 *Malbim*, *Haamek Davar*. *Vayaitzai* 29:22.]

After the *seuda*, when *bircas hamazon* is recited, the seven *brochos* of *nisuin* recited at the *chupa* are repeated. This time *hagafen*, which is always recited when wine is used with *bircas hamazon*, is recited after the other six *brochos*. If either the *choson* or *kalah* is previously unmarried, any *seuda* during the following week is also considered a continuation of the *seudas chasanim*. The same *brochos* would be recited at *bircas hamazon*. The provision to make it the same as the original feast is to have new faces at the new meal, except at *seudos* held on a *Shabbos* or *Yomtov*. Even if there are no new faces, some of the *brochos* may be recited. If there is no *minyan*, fewer may be recited, but there is still a measure of the festivities of the wedding at the *seuda*.

There is a Scriptural precedent for the seven days of festivities, when Lavan tells Yaakov that he will not be able to marry Rachel before the seven days of festivities of his marriage to Leah are up. Though sources are cited for *bircas chasanim* in the Torah, all *brochos* are Rabbinical institutions, except *bircas hamazon* and, according to some, *bircas hatorah*. The source is *asmachta*, a link to a reference in the Torah, that is used to prove that the Torah acknowledges a precedent for it. As mentioned, there is a view that the requirement of a *minyan* is connected to a kind of special Divine Presence. Whether it is a Rabbinical or Scriptural obligation, the assembling of ten men to specifically praise Hashem this way seems to create a *davar shebikedusha*, a sanctification of Hashem's Name. The reference to the *simcha* in Hashem's 'dwelling place' also connects to that. The poskim actually forbid mentioning these words in *bircas hamazon* if the men and women mingle at the *seuda*, similar to a *shul*. [See Kesubos 7a-8b, Psachim 102b, Sukah 25b, Megilah 23b, Poskim. Kalah Rabasi 1. Pirka dR' Eliezer 12, 16. Tur, Sh Ar EH 61-62, commentaries. Halochoscope VI:13 VIII:40.]

According to the prevailing *minhag*, the recitation of these *brochos* is connected specifically to the *bircas hamazon* of the *seuda*, rather than generally to the seven days of feasting. Accordingly, they may only be recited at a *seuda* that is made specifically in honor of the couple, and in their presence. As mentioned, the *seuda* should be a bread based meal, in the company of guests, with at least ten men. Some of the *brochos* may be recited in the presence of less than ten men, and at a meal at which only three people are saying *bircas hamazon*. For the full seven *brochos*, seven of the ten must have eaten bread, requiring *bircas hamazon*.

Actually, the poskim debate whether these *brochos* are indeed connected to the *seu-*

*da* and *bircas hamazon*. In one view, they may be recited at any time there is a gathering in honor of the couple. While we do not follow this view, there is a remnant of this debate in the variant practices. Ashkenazim use two separate cups of wine, one for *bircas hamazon* and one for *sheva brochos*. Sephardim use one cup, although nowadays, many have opted to use two. According to some, this is based on whether the two are really connected. Another possible difference surfaces when the poskim debate whether the requirement of a new guest means that he must partake of the *seuda*, or whether it is sufficient for him to be present. Some hold that if three guests eat the meal and the remaining seven eat no bread, or do not eat at all, *sheva brochos* may still be recited. Apparently, it is possible to consider the gathering in their honor, even if it is not part of a larger meal.

To make the meal in honor of the *choson* and *kallah*, the guests must gather for this purpose alone. Thus, if they are gathered anyhow for a communal *Shabbos* meal, something extra must be added to make it into a *seudas chasan*. [In general, the poskim debate whether this helps to make a regularly scheduled *seuda* into a 'specially convened' *seudas chasan*. On *Shabbos* we rely on the lenient view.] Could *kinuach seuda*, dessert, be considered special enough? This would help in our case. We could say that although the ice-cream is not absolutely necessary for the *seuda*, it serves as a critical part of it. The proof would be that it could be counted to make it into a *seudas chasan*. It has become customary to invite new faces for dessert. Evidently, this is considered a part of the meal. Otherwise, we do not gain by inviting them for this 'afterthought'. Accordingly, we must say that adding *kinuach seuda* in honor of the couple is enough to render the *seuda* in their honor. If that is the case, we could argue that based on common practice, the *kinuach seudah* is indeed a *tzorech* of *seudas chasunah*. [See Megilah 23b, Poskim. Tur, Sh Ar OC 196:3, EH 62:6-12, commentaries. Tzitz Eliezer XIII:99. Yabia Omer III:EH:11:9, VI:EH:9. Hanisuin Bahalacha 14:23 70-73, notes.]

In conclusion, we may consider the need for the *kinuach seuda* a *tzorech mitzvah*. Assuming that the *eruv* is controversial for Rabbinical reasons, one may ask a gentile to carry for a *mitzvah*. Assuming it involves a possible Scriptural *melacha*, some poskim allow *amira le'akum* for the sake of a *mitzvah*. The poskim suggest that this should only be relied on when there is a *tzorech gadol*, major need. This is debatable in our case.

**On the parsha ...** .. You will rejoice with all the goodness that Hashem has granted to you and to your house (wife – Gitin 47b); you and the Levite and the stranger in your midst .. [26:11] Why is the word 'you' repeated? Perhaps the Torah refers to the makeup of this *simcha*. In order to have true *simcha*, one must have his house (wife) with him. Perhaps this hints to the wedding celebration as well. The goodness mentioned in the preceding verses refers to the *bikurim*, first fruits. These include fruits that are usually eaten for *kinuach seuda*. Clearly, these contribute to the *simcha*, indicated in the first half of the *passuk*. This is where the house or wife is mentioned, and refers to the menu. Then, the *passuk* spells out who to include with 'you' in the *seuda*, including the presence of 'strangers' or guests who are 'new faces'!!

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