

# HALOCHOSCOPE <sup>TOI</sup>

In this issue we will discuss some of the problems with opening containers on Shabbos and Yomtov, and possible solutions. The timeless Torah includes rulings on any Halachic issue, regardless of modern innovations. The only issue is how to apply the Halacha, and determining which Halachos apply. In modern times almost all containers to be opened are disposable, an innovation that was quite rare in Talmudic times. The very disposability varies from place to place, such that what was written and ruled on in another location in relatively recent times, has since been overruled by more recent authorities. Accordingly, some of the information presented here is culled from oral conversations with Poskim, whose words are not in print for use as a reference. Due to more recent developments, some of this might also be outdated. Consequently, besides the usual caution against using this information for practical purposes, discretion must be exercised when using it for reference material. It is primarily for informational purposes and, as always, the advice of a qualified Rav must be sought for any practical rulings. Hopefully, the information presented will at least arouse readers to the complexities of this issue. These are the main issues of concern and the sources used to resolve them. How they are applied here gives an inkling on how they could be applied in other instances.

The issues related to opening containers:

- (A) *Boneh* and *Sosair*, building and demolishing, in relation to *Keilim*, portable utensils; *Makeh Bepatish*, completing a process or applying finishing touches; *Tikun Kli*, mending a utensil; Examples of disposable receptacles in the Talmud.
- (B) *Koshair* and *Matir*, tying and untying; *Toveh*, spinning or twisting a thread; *Korei'a*, tearing; *Mechatech*, cutting to size; *Mochek*, erasing letters.
- (C) The importance of *Kavanah*, intent, when forming a Kli.

## **(A) Boneh and Sosair on Keilim; Makeh Bepatish; Tikun Kli**

The main two Melachos associated with forming a Kli are *Boneh*, building and *Makeh Bepatish*, finishing it. *Boneh* as a Melacha is forbidden even in the smallest amount. Digging a small amount for a foundation or adding a small amount of cement to a structure is sufficient to be considered a Scriptural violation. All activities usually involved in building are included in the Melacha, such as screwing in a hinge, knocking a nail into a wall, or boring a small hole.

*Sosair*, the Melacha of demolishing, is forbidden when it is done for constructive purposes, such as to rebuild in the same site. Otherwise it is considered *Mekalkel*, destructive activity, which is forbidden only Rabbinically.

The primary application of this Melacha is to structures built on the ground. Large Keilim (holding the volume of forty *Se'ah*, an area of about 21 in. by 21in. by

63 in.) are sometimes considered part of the ground, particularly if they are not meant to be moved around. Small adjustments to these Keilim are therefore included in Boneh. However, the construction of regular Keilim, not attached to the ground, are not included in the general laws of Boneh. An exception to this appears to be joining wood, which, when done to wedge the wood together even before it is attached to the ground, seems to be forbidden under Boneh. Similarly, demolishing a Kli is normally considered Mekalkel rather than Sosair.

Fashioning a Kli is definitely constructive activity and would come under the category of a Melacha of some sort. Usually there are many other Melachos one must do along the way to making a Kli. For example, making an iron pot involves melting the iron or cutting it to size, welding it etc. However, the activities leading to its completion are not forbidden for the additional reason of Boneh. Nonetheless, according to many Poskim, completing an entire Kli does come into the category of Boneh. Others forbid it too, but as a type of Makeh Bepatish. This is often referred to as *Tikun Kli*, or *Tikun Mana*. Thus, applying the final touch to make a Kli usable is forbidden, according to some because of Boneh, and according to others as Makeh Bepatish. Actually, almost all agree that Makeh Bepatish could apply, and one could therefore be in violation of both Boneh and Makeh Bepatish. Mending a Kli also involves Tikun Kli, along with any other Melachos that the activity might involve. This is true no matter how small the repair, such as straightening a needle or tuning a violin. The term Tikun Kli is sometimes also used to define a Rabbinic prohibition related to making or mending a utensil.

At this point it is worth citing some of the sources of this Halacha from the Talmud. The Talmud permits returning removable shutters of a cupboard in certain instances, citing the dictum that there is no concept of Boneh for Keilim. [Though this is itself debated, we follow the lenient ruling.] Assembling a lamp made of pieces is also permitted, for the same reason.

While filling a pillow or threading laces in shoes poses a problem of Makeh Bepatish, if these fell out they may be put back on Shabbos.

Three cases are discussed where the Melacha category is a matter of Talmudic debate: smoothing a stone for use in construction; securing a handle to a spade or hammer by putting a peg through a hole in both; making an opening in a chicken coop. All three are acknowledged as a Melacha, the question is under which category. One view is that all three are considered Boneh, the other view is that they are all Makeh Bepatish. In reconciling a contradictory ruling of one Posek, an explanation is offered saying that the one view considers them both Boneh and Makeh Bepatish, while the other limits them to Makeh Bepatish.

Making a *Pesach*, opening, is forbidden since it usually makes the item usable. In the case of an attached structure, it is a question of Boneh, in a utensil, Tikun Kli. Enlarging a certain type of existing hole is the subject of Talmudic debate, with the ruling of the Poskim generally forbidding it. To be fully classified as a Pesach, it must be made *Lehachnis Ulehotzie*, to be used in both directions, to put something in through it and to take something out through it. If it only meant to be used in one direction, it is not strictly a Pesach. However, in many cases, the Rabbis restricted making any opening. This is mainly due to confusion about a hole drilled in a chicken coop.

This hole is thought of as serving to allow fresh air in, but really serves to allow stale air to escape as well. To avoid this confusion, all holes are equally forbidden. The debate on enlarging a hole refers to a hole made to be used in one direction. The issue is whether the Rabbis were concerned about someone possibly being led to enlarge an air hole in a chicken coop.

The Talmud discusses breaking open a sealed container to get the food or drink out of it. While it is sealed it can not serve its function. A utensil, by definition, is to be used. By opening it one makes it usable, thereby forming a Kli. In fact, the very same act of opening it also usually makes it into a storage or serving vessel for the food inside. It was specially placed in the container for this reason. It may be smashed open with no intent to make it into a Kli (the meaning of which will be discussed later) so that no Melacha is violated. The reason for this is itself a matter of debate between the Poskim. According to one view it is considered Mekalkel. Normally, this is still forbidden Rabbinically, but one view maintains that this is suspended when the food is needed for Shabbos. Another view is that this is only permitted because it is not the normal way to open a container. A third view is that the Kli referred to is made up of broken pieces patched together — not much of a Kli. A fourth view is that the Talmud really permits smashing the clay seal or plug, which is not part of the Kli itself, but a separate piece. Thus, removing it does not constitute making the rest of the Kli.

Making a hole, no matter how crude, is always considered a Pesach. The only factor that plays a role is whether it is meant to be used in both directions, which determines whether it is Scripturally or Rabbinically forbidden. For the majority of modern applications this is not relevant, since the act is forbidden either way. There is a way to make a hole that would not be forbidden, because it is unusual: Making it in the top of a stopper, which leaves the contents of the container vulnerable. One who wishes to open a container he would rather remove the stopper. If he wishes to retain the extra protection of the stopper, he pierces it on its side, maintaining the protection from the top.

The Talmud discusses assembling a Kli that can be dismantled and reassembled, such as a travelling cot, or a Menorah made of screw-together parts (possibly a travelling lamp). If the parts are loosely joined it is totally permitted, but if they are joined tightly, it is Scripturally forbidden. Therefore, a utensil, the parts of which are not usually tightened may be assembled on Shabbos or Yomtov. Some Poskim interpret this to permit assembling a utensil loosely even if it could also be assembled tightly, provided that to do it loosely requires less skill than to do it tightly. The majority take it to mean that a utensil never assembled tightly may be assembled on Shabbos, but if the utensil could be assembled tightly one may not even assemble it loosely. The Talmud discusses the possibility that in some cases doing something loosely is forbidden as a precaution against doing it tightly. Returning a loose screw or nail always raises this issue. Screw caps on bottles or jars are specifically permitted by the Poskim, since they are made to be screwed on and off. The problem with tightening a screw being Boneh is that the screw will then be left in place.

The Talmud also discusses which Melacha is violated when a hole is made in wood

with the intention of filling it. Boneh seems to make more sense than Makeh Bepatish, since the process is incomplete. However, a hole is made with a nail which is then left in the hole to be used as a hook accomplishes a complete process. This raises a question about the use of corkscrews. Removal of a cork is permitted by the Poskim, even using the special tool needed. Thus, it appears from the Poskim that using a corkscrew is permitted. The reason seems to be that the corkscrew is not left inside the cork, but is removed to be used again later. Though, theocratically, it should not be any different based on the shorter time span, in the case of Keilim this is important. The hole is not there to be filled, nor is the screw put in there to be used together with the cork. The hole is made for a short time to facilitate removing the stopper. [It is also possible that they refer to a cork-remover that is not screwed in to the cork but wedged between it and the bottleneck, to pull it out.]

Fashioning a toothpick from a splinter of wood is a matter of Talmudic debate: Making the toothpick with intent is forbidden, according to one view Scripturally, and according to the majority opinion, Rabbinically. Making the same thing, but with intent to use it as a smelling spice, is permitted according to the latter opinion, and forbidden Rabbinically according to the former. According to some Poskim this debate only applies when the toothpick is fashioned by hand, but not when it is whittled with a tool.

In Talmudic times, a shirt was made by folding cloth, sewing up the sides leaving space for the arms, then cutting a hole for the neck. This last step in the process is forbidden Scripturally; it forms the Kli. This is questioned by comparing it to smashing the barrel open to get the food, which is totally permitted. [One explanation of the question is that the barrel is also turned into a Kli after all. Another view is that it is compared to the permissible type hole made in the top of the stopper.] The distinction drawn by the Talmud is that in one case it is connected to, or is part of the main item, i.e., the cloth is all one piece. In the other case the stopper is attached to, but not a part of the barrel.

On Shabbos or Yomtov it is forbidden to walk out of the *Techum*, two thousand cubits in any direction from one's base of activities. If one wishes to, he may place an *Eruv Techumin*, some food, at a spot within the *Techum*, and call that spot his base. He may then walk two thousand cubits from there, gaining some distance in that direction but losing the equivalent distance in the other direction. At the onset of Shabbos, he must have access to his *Eruv*. If it was placed in a locked cabinet and the key was lost, he has no access to it, yet the Talmud, at least according to one opinion, permits it. The rationale is that it could be broken in to. Assuming the cabinet is big enough to be considered a structure, it would certainly pose a problem. Even if it is a small cabinet the problem would be that by breaking in to it it becomes a usable Kli.

The Talmud offers two resolutions to this. If it is made of loose bricks, one opinion permits removing the bricks to get the food. The other resolution is that it is a wooden cabinet, tied with a rope. [The two opinions on whether one may rely on the *Eruv* depend on whether the cabinet is a Kli or an *Ohel*, structure.] Untying the knot is forbidden, but cutting it is permitted. The simple meaning of this is that if it were an

*Ohel* Boneh would be an issue, but this does not apply to Keilim. The opinion that includes Keilim in Boneh when a complete Kli is made, disagrees. If Boneh is an issue for a large Kli it applies equally to a small Kli. However, since the rope is not a very permanent way to seal a container, cutting it is not like rendering the Kli usable. If it were a padlock made of wood or metal, it would indeed be forbidden to break. In addition to making the Kli usable, there is the issue of *Sosair* on the lock, since it is being destroyed in order to "build". This ruling is a major factor in approaching the issue of modern sealed containers, since metal is used often. Even if the seal is not a part of the container, but a separate piece, if it is a Kli in its own right, it may not be destroyed.

Fashioning a spout for a barrel of wine is also discussed. If the piece of tubing to be used was already placed in the hole in the barrel before Shabbos, it may be put back in on Shabbos. Cutting it from scratch is Scripturally forbidden. The Talmud debates a case where it was cut to size, but has not yet been put into the barrel. The issue is whether it is Rabbinically forbidden, as a precaution against forming a spout from scratch. Another case is discussed where *Hadasim* leaves are used to direct the flow of wine from a hole in a barrel. Having cited a ruling forbidding it, the Talmud debates the reason for this. One view is that it can be confused with forming a spout, and if permitted will be misinterpreted as permitting a spout to be made. The other view is that this is not a matter of concern, but the issue is that one might come to pluck a fresh leaf. Thus, if other plucked leaves are available using one as a spout is permitted. The Poskim differ on which opinion to follow. Accordingly, making a makeshift spout could be permitted. A similar case, according to some interpretations, is when a leather cover on a barrel is torn to pour the wine through. Caution is advised not to form a spout in the leather cover. This should not be an issue according to the lenient view.

The Talmud addresses three categories that are similar to disposable items. The Kli made of a patchwork is the closest to a true receptacle which is disposable. There are three explanations given for the permissibility of opening such a Kli, even according to the view forbidding opening without intent for a Kli. It is so unstable that one would not normally have such intent. Therefore, one need not be concerned that the act might turn into a Kli-making act. According to this, if one has specific intent, even opening this Kli is forbidden. Secondly, the Kli is too flimsy to be considered a true Kli. According to this, even with intent, no Kli is made. Also, some contemporary Poskim consider any receptacle that is not normally used after its contents are removed, in this category. Third, due to the frailty of the Kli, no-one would make a good hole. Therefore, there is no need for precautionary ordinances forbidding any type of hole. These explanations would all apply to some modern disposable containers. Others might be considered more substantial.

Another type of receptacle was a woven palm container meant to help ripen dates inside it. When one is ready to, he may open the container in a number of ways. There is no concern with making a Kli, since the container was never intended as a Kli, but as a ripening tool. It is doubtful whether this could be applied to food containers today.

Other temporary measures include the example of using *Hadasim* leaves for a spout, which is an unusual thing to use. Clothing were sown together loosely when washed,

and the neck hole was also sewn up. This may be unstitched on Shabbos because it is a temporary measure. The same is true when an oven is sealed shut for part of Shabbos with a plaster seal. The only comparison to this would be when a container is taped shut, or even stapled temporarily.

The problems arising with modern Keilim range from Scripturally to possibly totally permissible. Some ideas presented by some Poskim are rejected as problems by others. To begin with, opening a metal can involves making it into a Kli. There is a question whether it could be considered the type of unstable Kli that a patchwork Kli is. Some are certainly not so disposable, such as a cigar box, or in earlier times even a tin can, (and today some larger cans). Some suggest that it should not be opened fully but half the lid prised up, then the contents emptied out, then it is disposed of. Thus, one has not had intent to make a Kli, and it has been shown to be worthless. The same suggestion is made for soda cans, which should not be opened in the normal way. Others say that a hole should be made on the bottom before opening the top. This way the can will not become a Kli when it is opened properly. It may then be opened in the usual manner. The problem with this is that making the first hole allows air in, and must be considered a hole. Furthermore, there is no real difference between the bottom and the top of a can. A hole always raises the possibility of making a Pesach. Therefore, some suggest that a hole be made in the side of the can, which is not the normal thing to do.

The idea of puncturing a hole is useful with regard to bottle caps. A sealed bottle has two problems: the bottle will become usable and the cap will also. If both bottle and cap were already Keilim when they were joined, many Poskim maintain that they are separate entities, and may be separated. However, some care must be taken not to tear the perforations, as will be discussed. This is doubly problematic if the date is stamped along the perforations. Some metal bottle caps are crimped on to the bottle. In these cases they fall into two groups: some are meant to be removed and thrown away. These are flimsy enough that many Poskim maintain that when no intent for a Kli is present it is not forbidden. Others are meant to be used to close the bottle afterwards. These will indeed become a usable Kli as a result of opening them. Some Poskim maintain that they are already considered a Kli when attached to the bottle, since the two are separate entities. Others suggest piercing a hole in the cap first. Since the hole is made in the top, it is like the hole made in the stopper of a container and is permissible. Now that the hole is made the drink need not be poured through it, but the cap may be removed without making a Kli out of it. (Some question this, since it is still usable as a cap.) A further distinction is drawn between a metal cap and a plastic cap. the plastic is compared to the rope or string, which may be destroyed. The Metal is stronger, and, according to those who consider the cap a Kli as soon as it is crimped on the bottle, making a hole in it to get the drink out is destroying it, like destroying a padlock. In addition, plastic caps are not crimped on, but screwed on with tabs to hold the lower portion down when they are screwed off. Therefore, they were certainly a Kli beforehand.

Opening bags or cardboard boxes does not pose such a problem, since they are

truly disposable. However, if one opens it carefully, he has demonstrated his intent to use it as a Kli. Therefore, they should be pulled open indiscriminately. Care should be taken to open it in places where there are no words or perforations.

Drink cartons present the added problem of forming a spout, though they have the advantage of being truly disposable. The spout is scored or pressed, but not shaped, so it should not be allowed on Shabbos. However, the container may be opened without forming the spout, such as by opening the entire top, according to some Poskim. Then, care should be taken not to form a spout intentionally when pouring it out. [See Shabbos 31b 41b 47a-b 48a-b 74b 102b-103a 122b 146a-b Eruvin 35b-36a Beitza 10a 11b 22a 33b, commentaries Poskim. Tur, Bais Yosef, Shulchan Aruch Orach Chaim 314 317:(end) commentaries Chazon Ish 51 Igros Moshe O.C. I:93 Tzitz Eliezer VI:35.]

### *(B) Koshair, Matir, Toveh, etc.*

Other Melachos could be involved when opening or closing modern disposable receptacles. There are basically three types of knot discussed by the Talmud and Poskim. A permanent knot, defined as one meant to last for at least seven days, is forbidden Scripturally. For example tying the end of a thread on a piece of cloth to prevent its unraveling. A temporary knot, meant to last more than one day but not necessarily seven, is forbidden Rabbinically. A knot meant to last less than one day is permitted. The Talmud discusses many details and examples of types of knot, which must be studied well to be properly understood.

These rules apply to the type of knot tied without regard for the intention of the person tying them at the time. Thus, if one tied a permanent knot with the intent of keeping it tied for less than a day, he has violated the Melacha. Modern types of knot are discussed, mainly to determine whether they are permanent or semi-permanent, depending on how they are normally used.

*Matir*, untying, applies to any knot to which the Melacha of Koshair applies. Many Melachos of this type, which are primarily destructive rather than constructive, are considered Mekalkel unless done to allow for a constructive Melacha. Accordingly, some Poskim ponder the issue with regard to *Matir*. Must it be done for the purpose of later tying in order to be forbidden Scripturally? In our case this would mean that untying a package, such as a cake, with the intent of tying it again, possibly better than it was tied before, would raise a question of the Scriptural prohibition. This would depend on the type of knot tied originally. However, if there is no intent to retie it, it might be considered Mekalkel, which, according to some Poskim is permitted for the needs of Shabbos.

*Toveh*, spinning a thread is a Scriptural Melacha. Twisting a rope is either considered Koshair or *Toveh*. Unspinning it is also forbidden, at least if it is intended to be spun again. If it is not intended to be respun, it is still forbidden Rabbinically as Mekalkel. However, to get food for Shabbos, this, too, would be suspended. Thus untwisting a wire twist-tie raises this issue. This is considered a very temporary knot, if at all, by some contemporary Poskim. It is clearly meant only as a short term closure. An opinion in the Talmud permits any knot that can be opened with one hand. Though there is some question as to whether we follow this view, it is cited as an example of what

defines a knot. Twist-ties on food packages are certainly very low on the list of knots or ropes. However, using the same wire ties for a different purpose could be considered permanent. This raises the question of which of their uses should be taken into consideration when determining their status as knots or ropes.

Tearing cloth to be sewn as clothing is forbidden Scripturally. Tearing in frustration, or for no purpose is Rabbinically forbidden, as Mekalkel. Undoing the weave raises similar issues. Accordingly, ripping open packages on Shabbos is problematic. Once again, to get the food out it is permitted, but some Poskim insist on doing it unusually, and taking care not to form a Kli in the process.

Another issue to beware of is *Mochek*, erasing. Though Scripturally only forbidden when done to write in the space of the erasure, it is forbidden Rabbinically in all cases. This includes ripping through words, dividing a letter or word in two. If there is enough chance that no words will be ripped when the paper is torn, one need not be concerned that it might happen anyhow. Since this is not his intent, nor is it inevitable, it is permitted as a Davar She'aino Miskaven. However, some wrappers are very difficult to rip like this. It might be necessary to unstick them at their seams. Unsticking it is normally also a problem of Korei'a and is not the preferred way of opening a wrapper. While ripping indiscriminately is much more like Mekalkel, carefully unsticking it is not.

If a wrapper or box is perforated, one may not rip it on the perforations. This is a Scriptural Melacha of *Mechatech*, cutting something to size, according to many Poskim. The original Melacha applies to cutting parchment to size to use for writing. If one rips the wrapper in a way that the perforations will not necessarily be torn it is permitted as a Davar Sheaino Miskaven. [See Shabbos 74b 75b 111b-112b, Poskim. Tur Sh. Ar O.C. 317 322:5 340:3 13-14, commentaries.]

### **(C) Kavanah when making a Kli**

It has been noted that when opening a Pesach one does not violate a Melacha if he did not have intent to make a Kli. Some say this only applies where the alternative is Mekalkel. However, from the case of the toothpick we see that to be in violation of making a Kli one must have intent. Though some explain this only where the fashioning was done by hand with no tools, others use this as the basis to distinguish between two acts solely on the basis of their Kavanah. Thus, cooling a piece of red-hot metal is a Scriptural Melacha if done as part of the Kli-making process, but not if extinguished for safety. The logic seems to be that a Kli is defined by its use by man. Thus, if the act done when making the Kli could be for one of two purposes, it is only deemed a Kli if the correct intent was there. [See Shabbos 146a-b Beitza 33b Rambam, commentaries.]

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