

HALOCHOSCOPE ^{TOI}

This week we will revisit some issues dealt with in the past, specifically in Volume IV numbers 12-13. The questions relate to new issues as well.

Someone is anticipating a Simcha after Yomtov. This will involve having guests related to the "other side". He tried to get a painter to paint his home before Yomtov. However, the only time available is on Chol Hamoed. May he have a gentile painter do work on his home on Chol Hamoed? The gentile will be working as a contractor, and not as a hired laborer.

May schoolchildren do work for school on Chol Hamoed, that will only be due after Yomtov? This will not necessarily involve writing, but could involve recording words on disk.

The issues to discuss:

- (A) *What is Chol Hamoed and which Melachos are forbidden then?*
- (B) *What is the Melacha involved in painting a house?*
- (C) *What are the guidelines for having a gentile do work on Chol Hamoed?*
- (D) *What is the Melacha of Kosaiv, writing, and does it apply in these cases?*

(A) Chol Hamoed

The literal translation of *Chol* is mundane, or non-holy. The term is used to describe the days of the week that do not have the holy quality of Shabbos or of Yomtov. The intermediate days of Yomtov are thus called the less holy part of the holiday, compared to the first and last days of the holiday. Nonetheless, the special laws of the particular Yomtov (eating in the *Sukah* on Sukos; restrictions against *Chametz* on Pesach) are in full force. The special *Musaf Tefila*, corresponding to the *Musaf Korban*, offering in the Bais Hamikdash, is also said on Chol Hamoed. *Moed* is a word used to describe a Yomtov; its literal meaning is a meeting — between Hashem and His people. The Torah uses the term *Mikra Kodesh*, holy proclamation, for the intermediate days as well as the main days of Yomtov. It is clear that they, too, are holy.

Thus, we find that Chol Hamoed has some characteristics of Yomtov, including its holiness, but not all. It is bounded on both sides by Yomtov, and evidently, commemorates the holiday in part. The special *Shemone Esrei* is not said for the three main Tefilos, but *Yaaleh Veyavo* is inserted into the

regular weekday Shemone Esrei, *Hallel* and *Musaf* are recited, and there is a special Torah reading. *Kiddush* is not recited, nor is there an obligation to eat bread meals. However, many Poskim maintain that the full Mitzvah of *Simchas Yomtov* does apply, requiring one to eat special foods. According to some Poskim this is only possible today with wine. Similarly the Mitzvos of *Kavod Hamoed*, honoring Yomtov, apply. This means wearing festive clothing and forbids doing things that show a lack of respect for the Moed. In fact, one who is *Mevazeh*, shows disrespect, to the Moed is compared to an idol worshipper, the most grave sin, and forfeits his share in the world-to-come.

There are also restrictions on Melacha, the activities forbidden on Yomtov. From a contradiction between the *Pesukim*, the Talmud learns that the Rabbis have the authority to decide about the level of Melacha-restriction on Chol Hamoed. Some Poskim consider it Scriptural, with Rabbinical Guidelines. Thus, once the Rabbis determine to forbid a Melacha it is considered forbidden Scripturally. Others maintain the Talmudic passage links the Passuk (*Asmachta*) to a purely Rabbinical ordinance. Nonetheless, the Rabbinical ordinance is soundly based in Scriptural references, and for a reason that reinforces Scriptural Mitzvos. It is very serious, and its violations are strongly condemned.

The reasons for Rabbinical restrictions against Melacha on Chol Hamoed are to enhance the Yomtov before and after it. People should be free to eat and drink and study Torah. Accordingly, the Melachos forbidden are mostly what is forbidden on Yomtov itself, with emphasis primarily on those that recall the tedium of ordinary *Chol* activity. These are termed by some Poskim *Melech Avoda*, "work," i.e., agricultural, commercial and skilled labor activity.

Automatically, those Melachos allowed on Yomtov for food preparation are excluded, including (out of the thirty-nine Melachos) the series culminating in cooking, starting with almost all those done to the product when it has been detached from the ground. On Yomtov, some of these are only permitted under specific circumstances, such as *Dash*, *Borer*, *Tochen*, threshing (including *Mefarek*, such as squeezing juice) sorting and milling or grinding. Some of these are forbidden on Yomtov, and some are only permitted when the Melacha could not be done before Yomtov. On Chol Hamoed all this is permitted. In addition, one may cut wood for fuel to cook with, or pick fruit etc., a Melacha done when the product is still attached, which is not permitted on Yomtov. Creating a fire (as opposed to burning with an existing fire) is forbidden on Yomtov, but permitted on Chol Hamoed. This concerns driving, and using electric appliances.

Basically, two main considerations are taken into account with regard to

suspending the prohibition against Melacha. They are: *Tzorech Hamoed*, things needed for the Yomtov itself, including for later days. On Yomtov one may not do even permissible activities in preparation for another day, under the laws forbidding *Hachana*, preparing. On Chol Hamoed only preparing for after Yomtov is an issue. Secondly, *Davar Ha'aved*, something not needed for Yomtov, that can not be delayed until after Yomtov without incurring a loss. The Rabbis did not make the laws of Chol Hamoed so strict that people would have to lose money over them.

Melachos such as sewing are permitted though they are not associated with food preparation, if they are also done for Tzorech Hamoed. However, this type of skilled work is not permitted universally. A *Maase Uman*, professional job is forbidden. A *Maase Hedyot*, amateur job is permitted. This is because when it is done by a professional, it is like any commercial activity. It is not considered as though it is being done Letzorech Hamoed. A professional may do the same job for personal needs in an unusual way such as an irregular stitch. If a professional is needed Letzorech Hamoed, he may do the work, *Betzina*, in private. This is to avoid misleading onlookers, who will not know that the work is done Letzorech Hamoed. Due to the restriction on commercial activity, even when doing something Letzorech Hamoed, the *Uman* should not stipulate a fee, but may take payment in a more casual manner.

Another exception to the rule, really a subdivision of Tzorech Hamoed, is *Poel She'ain Lo Ma Yochal*, a workman who has no money to pay for his immediate basic needs. He may work enough to earn this money. This has been broadly expanded today, since many jobs are dependent on a certain order, including few breaks in the routine, and fixed days and hours. Since continuing employment is often at stake, the dispensation is extended to allow people to do their work. [Davar Haaved is added for good measure.] However, it is usually not the work, but their attendance that is important. Therefore, they should avoid doing proper Melacha whenever possible.

Another extension of Tzorech Hamoed has been broadly expanded to day. Since one must have Simcha on Chol Hamoed, the pressure of not being able to do certain things might detract from this. For example, the Poskim discuss the permissibility of smoking. On Yomtov, many Poskim forbid it. Though it only involves using fire, this is only permitted if it is Shaveh Lechal Nefesh. That is, its permissibility rests on the need to prepare food. This dispensation is extended to other minor needs, but they must be universally accepted as a necessity and not a luxury. There is a view that the same rule applies to Chol

Hamoed. There is some debate on whether Melachos such as carrying or using fire for no Moed needs would be permitted. Assuming it is forbidden, some suggest that any Tzorech Hamoed would be permissible. Accordingly, smoking should be restricted. However, since one who has developed the habit might be depressed if he can not smoke, some suggest that it would constitute a Tzorech Hamoed. For the same reason it has become acceptable to travel on Chol Hamoed, despite the use of fire. People view it as a Tzorech Hamoed. As we shall explain later, using electronic devices also involve this Melacha.

A *Tzorech Mitzvah* is often invoked to allow Melacha on Chol Hamoed. This is true, but it is usually in conjunction with another dispensation. For example, one may write *Tena'im*, the contract drawn up to bind engaged couples to marry. Writing is normally forbidden. In this case, it is considered a Mitzvah need, combined with considerations such as the possible absence of witnesses after Yomtov, and the enjoyment of Yomtov.

With regard to *Davar Haaved*, only preventing loss is permitted, not safeguarding one's gains or profits. In addition, there is a restriction on doing it in a manner of *Tircha*, extra effort. Thus, one may engage in certain agricultural activities that cannot wait, but must do them in the easiest way, even if they are not so economical. For example, one may water a dry field from a nearby spring, but not from a cistern that requires a lot of work to draw the water.

Furthermore, *Davar Ha'aved* was only permitted to prevent an imminent loss that could not be prevented earlier. One may not delay the activity to coincide with Chol Hamoed, to be able to do the Melacha. This is known as *Mechaven Melachto Lamoed*, planning his Melacha for Chol Hamoed, and the Rabbis forbid this, in part, as a penalty. One doing the activity, though preventing a real loss, has ignored the spirit of Chol Hamoed as a time of rest.

If the matter should have been taken care of before Yomtov, but the person was unable to due to *Oness*, circumstances beyond his control, he is permitted to do the activity on Chol Hamoed. For example, if one had arranged to have something done to his produce by workmen before Chol Hamoed but they backed out on him. Now it is Chol Hamoed and the produce will rot if it is not taken care of now, he is allowed to arrange to do it on Chol Hamoed.

Tzorchei Rabim, the needs of the public, are considered Tzorech Hamoed all the time. They may be addressed even on Chol Hamoed, even if they are not a *Davar Ha'aved*, and in some cases, even if they were planned to be done then. The reason for this last exemption is to save money from public funds. If people are anyway off work, and are not permitted to earn their regular pay, they will

agree to work for less to do the Melacha for the public. A *Maase Uman* should not be done even for *Tzorchei Rabim*, unless it is *Letzorech Hamoed* anyway.

Some Melachos, though *Letzorech Hamoed*, are also forbidden. They include laundering clothing and haircutting. This is to reinforce *Kavod Hamoed*. They both could, and should, have been done before Yomtov. To stop people from leaving them to Chol Hamoed, entering Yomtov looking unkempt, they were forbidden on Chol Hamoed. An *Oness*, (such as one who was not in a position before Yomtov to take a haircut, or towels or children's clothes which were laundered before Yomtov but got dirty again) is excepted from the rule.

In summary, there are five basic guidelines to what is permitted, sometimes used in conjunction: *Davar Ha'aved*; *Tzorech Hamoed*; *Poel She'ain Lo Ma Yochal*; *Tzorchei Rabim*; and *Maase Hedyot*.

The restrictions on these are: when possible, to avoid *Tircha*; *Mechaven Melachto Lamoed*; Things for *Kavod Yomtov* that should have been done before Yomtov; *Maase Uman*, and where this is absolutely necessary, *Betzina*; *Hachana*, preparing it on Chol Hamoed for after Yomtov.

The restrictions might be suspended for: *Oness*; *Tzorchei Rabim*.

Further study is required to cover these Halachos fully. [See Chagiga 18a Moed Katan esp. 2a-b 11b (and Yerushalmi 2:3) etc. Avoda Zara 22a Makos 23a Avos 3:11, Poskim. Rambam Hil Yomtov 7, commentaries. Tur Shulchan Aruch Orach Chaim 530 etc. commentaries. Moadim Uzmanim 298.]

(B) Painting

There is a distinct Melacha related to dyeing cloth, *Tzovai'a*. However, this is not necessarily applied in other cases. Painting a picture is the subject of some debate. Some consider it *Tzovai'a*, and some consider it *Kosaiv*, a form of writing, or making impressions. This could apply to a canvas painting, on paper, or even on a wall (mural). Painting a house is really a form of whitewashing. This used to involve making a layer of white plaster-like substance on the surface of a wall. Nowadays, this is really the same, but chemicals are mixed in to help ease the application and drying. They also make it possible to apply a thinner layer. This would involve the Melacha of *Boneh*, building. It is known as *Siyud Vechiyur*, or plastering and making patterns in the wet plaster.

Boneh is forbidden on Shabbos or Yomtov. Even a small addition to the surface of a building is included. In addition, preparing the surfaces invariably involves both *Boneh* and *Sosair*, demolishing done for the sake of further building. On Chol Hamoed many of the Melachos of *Boneh* are forbidden because they are *Maase Uman*. Those that could be considered *Maase Hedyot* could be permitted

for the reasons that have been listed in section A. Painting an entire room must be considered Maase Uman. Certainly the old-fashioned type of Siyud Vechiyur would have been a highly professional job. Even though things are easier with our paints, the job is certainly better when done professionally. Therefore, it would definitely be forbidden, even for a Shul that is needed for Yomtov. [See Shabbos 103a, Yerushalmi 7:2, Moed Katan 6b-7a, Poskim. Rambam Shabbos 11:17. Sh.Ar. O.C. 540:1-3 544:1, commentaries.]

(C) Gentiles working on Chol Hamoed

Whatever is forbidden to Jews to do, they may not ask gentiles to do for them. This is based on the idea of *Shlichus*, agency, but is not considered Scriptural under almost all circumstances. Only one involved in the same kind of obligations can serve as a real agent. However, in order to preserve the integrity of the sanctity of Shabbos and Yomtov (and other Mitzvos where this restriction applies) and to prevent a Jew falling into the trap of doing it himself, they forbid it. In addition, it often involves discussing the Melacha with the gentile. It is also linked to a *Passuk* forbidding work done by a servant, which refers to a servant that is not otherwise obliged in the Mitzvah observances. Accordingly, asking a gentile to do things forbidden to a Jew on Chol Hamoed would be forbidden. Even asking him before Yomtov is forbidden, since the work will be performed on Yomtov.

However, There is an old rule that applies to this restriction, that could be applied here. A doubly Rabbinical restriction is permitted when there is a Tzorech Mitzvah. Assuming that the entire restriction on Chol Hamoed is indeed Rabbinical, one could ask a gentile to do work that will help in the performance of a Mitzvah. We know that writing is permitted for the sake of an engagement. This seems to apply even to a professional form of writing. However, one may not compare different Melachos on Chol Hamoed. Often there are special considerations for individual Melachos. Painting as a Maase Uman is forbidden. Painting a Shul is also forbidden. The Poskim discuss whether it would be permissible to ask a gentile to paint a Shul. The same discussion could be extended to our case. However, this all follows the assumption that it is Rabbinically forbidden. Those who consider it Scripturally forbidden would restrict it in our case as well.

Another dispensation might apply. A gentile may do work on his own time, even if the work is done for a Jew on Shabbos. This is because the gentile was not hired by the hour or day to do the work specifically on Shabbos. He does it *Ada'ata Denafshei*, on his own initiative. In this way, a contractor, who only

promises to finish by a date, but does not commit himself to work on Shabbos, may do the work whenever he wants. There is a major restriction to this dispensation. If the work is done on the property of the Jew, it has the appearance of a violation of *Amira Le'akum*, the term used for the restriction of asking a gentile to work on Shabbos. This appearance is forbidden in its own right. Accordingly, anything that has *Pirsum*, publicity, attached to it is forbidden. This forbids having an item known to belong to a Jew repaired by a gentile on Shabbos, even off the premises of the Jew. It also forbids any work done on the property of a Jew, especially *Meleches Mechubar*, work done to what is attached to the ground, such as a house. There is a case when this, too, is relaxed. Many Poskim maintain that if it is the common practice of the residents in a neighborhood to engage contractors only when doing certain types of work, the contractor may work on the premises of the Jew on Shabbos. In all these cases, one should tell the gentile not to do it on Shabbos, but if he wishes to do it anyhow, in many instances, he may.

In our case, the two possible dispensations could apply. The reasons would be that the needs of making a *Shiduch* are considered a Mitzvah. There is a precedent for doing certain Melachos in that cause. There is also a need for *Shalom Bayis*, domestic harmony, present and future. In addition, the work is done by a contractor. If the only way this is done in that town is through a contractor, this alone might permit it. If most people use a contractor, it might also be permitted. If some people use a handyman, including an in house janitor, this might deem the work a Maase Hedyot. [See Moed Katan 12a, Poskim Tur, Sh. Ar. O.C. 543.]

(D) Writing

Writing is a Melacha, forbidden on Shabbos and Yomtov. However, it is usually a Maase Hedyot, since it is not done professionally. Therefore, in cases where it is evidently a Maase Uman, such as the work of a professional scribe, it is forbidden. In addition, writing often relates to other activities that are anyway forbidden, such as commercial dealings.

A professional may write if the work is needed for the Rabim for Yomtov. He may also work to earn his minimum needs for Yomtov, or if refraining will lead him to financial loss. Regarding Davar Haaved, instances are discussed where a bill of *Kidushin* must be made to safeguard one's chance of marrying this woman, or a *Get*, divorce which is necessary to release a woman from a husband planning to leave town. (Kidushin is possible through other means, which is not true of a *Get*.) Another example could be filing reports (taxes!) which have a deadline, after which there might be financial loss or other undesirable consequences. One should not plan this for Chol Hamoed — Mechaven Melachto.

Writing in any alphabet is considered writing. Drawing pictures and painting is also forbidden. It is possible that one who draws or paints for recreation might consider it Tzorech Hamoed, his *Oneg Yomtov*. Similarly, one who draws diagrams to aid his Torah Study, may do so on Chol Hamoed. (If camera photography is considered a Maase Uman, taking the picture accomplishes both Melachos at once.)

Even Maase Hedyot writing should only be done Letzorech Hamoed or for a Davar Haaved. For example, writing out a shopping list to buy supplies for Yomtov, or for a sale which will be over after Yomtov. In addition, commercial records of transactions that have already taken place may be recorded immediately to avoid loss. *Chidushei Torah*, novel ideas or interpretations of Torah, may be written down. In the words of the Poskim, there is no greater Davar Haaved than having to rethink the whole thing again after Yomtov. Besides the possibility that it will have been forgotten, it is also a time-consuming effort. The same time could be spent more productively by the Torah scholar, had he written it sooner.

Even when permitted as a Maase Hedyot, the Poskim recommend the custom of writing in an unusual manner, such as sideways. This is not necessarily accepted as a dispensation to the prohibition of Melacha, but when the writing is anyhow not forbidden, it is imposed as a Chumra, stringency.

Mechanical and electronic writing raises two issues: Firstly is it considered writing? Secondly, is it a Maase Uman or Hedyot?

For a more complete discussion on this subject please consult the references and the pertinent back issue. For our purposes, we will focus on two items. First, if no printing is done, and the items are only saved to disk, it is like recording on tape. The fonts and design, which are the Uman part of it, are not produced in hard copy. Using the electricity is permitted by many Poskim even when there is no Tzorech hamoed. The second item is the peace of mind of the student. The pressure could diminish their joy. However, they should not spend an undue amount of time on this. This would amount to the type of Tircha that the Rabbis restrict. [See Shabbos 103a-b 104b Moed Katan 18b-19a (Tosafos etc.) Beitza 39a Rambam Hil. Shabbos 11:15-17 Hil. Yomtov 7:13-14 Tur Sh. Ar. O.C. 340:4-5 commentaries. Y.D. 271 Taz 8. Chazon Ish 164:2-3. Zichron Shlomo (Hilchos Chol Hamoed) p. 78-79, notes and refs. Halochoscope II:4 III:1.]