

# HALOCHOSCOPE

This week's question:

Someone did not remember to count *sefira* at night. The next morning, during *shacharis*, he remembered. He made up his mind to count when he finished *davening*. He repeated the day in his mind a few times. However, he does not remember whether he actually did count later. The following night, he remembered the situation. Now he would like to know, may he continue counting with a *brocha*?

The issues:

- A) *Sefiras ha'omer*, the opinions on the nature of the *mitzvah*
- B) Doubts about saying something when not in the habit
- C) *Safeik brocha*, whether to recite a *brocha* when in doubt
- D) *Sfek sfeika*, a 'double' doubt

## A) *Sefiras Ha'omer*

This Scriptural *mitzvah* requires every Jew to count the days from the offering of the *korban omer*, on the sixteenth of *Nissan*. After counting seven weeks, forty-nine days, the fiftieth day is *Shavuot*, when the two-loaf offering is made. A minority view considers this *mitzvah* independent of the offerings, but the majority consider them interdependent. Nonetheless, it still applies nowadays that no offerings are made, as a Rabbinical *mitzvah* in memory of the *Bais Hamikdash*.

The *omer* is a two step process, in which an *omer* measure of the fresh barley crop is offered. First, at night the grain is reaped and prepared. The next day the offering is made. If the reaping was not done by night, there is a Talmudic debate whether it may be done by day. The *mitzvah* to count is connected to the beginning of the process. Accordingly, there would be a debate whether one could count by day. The poskim are divided on which opinion to follow. In addition, the Torah says that the counting should be *temimos*, complete weeks. Some maintain that regardless of the *omer* offering, counting must be done by night to count the day complete. Jewish day begins at night. If one counted by day, only half the period was included. There is even a view that the *omer* is dependent on the *sefira*, which is why it must be cut by night. Some say one may count by day with a *brocha*. Others, that the first day must be counted by night, but not subsequent days. The consensus is that if one did not count by night he should count by day. However, due to the view that there is no *mitzvah* to count by day, one should not recite the *brocha*.

There is a question on what must be counted. Should it be the total of the forty-nine days, or should each day be counted to reach that total? That is, is counting each individual day a separate *mitzvah*, or part of the single *mitzvah* to count the total? On the one hand, each day is counted as a separate act, with its own *brocha*. On the other hand, each day alone accomplishes nothing. The poskim debate this issue, resulting in an interesting point of difference. If one missed one day entirely, if the entire counting is one long *mitz-*

vah, he can no longer keep going. If each day is separate, he can continue with the other days. As a result, when this occurs, the ruling is to continue counting, but without reciting a *brocha*. [See Menachos 65b-66a, Megilah 20b-21a, Rif & Rosh, end Psachim, Poskim. Tur, B.Y. Sh. Ar. OC 489, commentaries.]

#### **B) Doubt about saying something when not in the habit**

Often, one might be unsure whether he recited an inclusion in *tefilah*. Sometimes, the rule is that he may rely on the assumption that he followed his habit. That is, in the middle of a season when this insertion is always included, he is most likely to have included it. At the beginning of the season, or when any insertion is a change from the habit, the assumption is that he omitted it. In cases where the insertion is essential to the entire *tefilah*, this means that he would need to repeat the *tefilah*. The time taken to settle into the habit is thirty days. [Alternatively, many poskim agree that one can 'practice' repeating the excerpt of *tefilah* including it one hundred times. This also makes the phrase sufficiently fluent to assume that one said it out of habit.] Before this habit has formed the assumption is that one did not say it.

In relating this to our situation, we could explain the *tefilah*-insertion phenomenon two ways: The 'old' habit had been in place, and the 'new' habit did not yet settle in. We assume he followed his old habit. Or perhaps due to the absence of a need to insert it, or to exclude it, until now, we assume that he did not do something unnecessarily. That is, he did not yet begin the new habit. Following the first line of reasoning, in the case of *sefiras ha'omer*, there is no old habit. Accordingly, there is no basis to assume that the person did or did not count. One could say that he has not been counting until now, but this is not an opposing habit. It is the absence of one. This means that it is an even doubt. Following the other line of reasoning, one could say that he did not develop the new habit to count after *shacharis*. This would resolve the doubt, leading to the assumption that he did not count. A comparable situation should occur with regard to counting after *maariv*. Would we assume that one did not count in the first thirty days after *sefira*, because a new habit had not yet formed? Should we assume after the first thirty days that a new habit had formed? We do not find any reference to such a ruling. Therefore, we will assume that the first line of reasoning is the correct one. Counting is a separate event.

In our case, a second possibility arises, that has some connection to another practical situation with regard to remembering an insertion. Our questioner had in mind beforehand that he would count later. In the evening he could not remember whether he had actually counted. The poskim discuss one who is unsure about having inserted the correct phrase, either immediately after completing his *tefilah*, or much later. If he is sure that he thought about the insertion beforehand, then was unsure immediately afterwards, many poskim maintain that he must assume that he omitted it. He must repeat the *tefilah*. If, however, he began having doubts later on, he need not repeat. We assume that he did not omit it. This applies to an insertion in *tefilah*, when one is conscious of the obligation to insert it. In our case, there is no natural prompt to make the questioner count after *davening*. However, if the principle distinguishing between an immediate doubt and a delayed doubt could be applied, he could assume that he did in fact remember to count at the time. [See Yerushalmi Brochos 7:4, Taanis 1:1, Tur, Sh. Ar. OC 114, Mor Uktzia, MB 38. 422:1, commentaries.]

#### **C) Safeik Brocha**

Reciting a *brocha* involves using the Name of Hashem. This may not be uttered in vain. The Rabbis are authorized to obligate us in the *brochos*. Some consider the *birchos hatorah* Scriptural obligations. The *birchos hamitzvos*, including the *brocha* on *sefiras ha'omer*, are patterned on it. However, if the Rabbis did not obligate a certain *brocha*, and deemed it unnecessary, it involves an unnecessary pronouncement of Hashem's Name. Some consider it a violation of the negative *mitzvah*, *lo sisa*. Others maintain that this could not apply to a *brocha*. Rather, it is a violation of the positive *mitzvah* to fear Hashem. Yet others maintain that when used in praise, albeit unwarranted, it could not be forbidden Scripturally, but Rabbinically. What if there is a doubt about the obligation for a *brocha*? On the one hand, reciting it touches on a possible Scriptural violation. On the other hand not reciting it possibly violates a Rabbinical obligation. When in doubt about a Scriptural law one tends to stringency. Therefore, one should rather not mention the Name of Hashem in this situation. When in doubt about a Rabbinical law one tends to leniency. One would not recite a *brocha*. Although one might otherwise try anyhow to practice stringency and fulfill the Rabbinical obligation, in this case, stringency on the Rabbinical law leads to leniency on the Scriptural law. [See E.g. Brochos 33a 39a, Temura 4a, Poskim. Tur, Sh. Ar. OC 206:6. Halochoscope I:9 II:13 IV:14.]

#### **D) Sfek Sfeika**

There are guidelines for ruling on a case of *safeik*. In some cases, majority chances or presumptions determine the case as though evidence is introduced to resolve it. In other cases, the *safeik* is preserved, but a ruling is issued, tending to either stringency or leniency. By preserving the *safeik*, one can introduce more factors, that could reduce the *safeik*. For example, if one ruled strictly, but still considered it a doubt, then found other evidence casting more doubt from another perspective, he could combine the doubts to rule leniently. This is called a *sfek sfeika*.

Two instances arise in which one may recite the *brocha* despite a doubt. The first occurs when one missed counting by night. He then counted by day without a *brocha*. This was due to the question whether the *mitzvah* applies by night only or also by day. The following night he is faced with a new issue. If the *mitzvah* only applies by night, he has missed one night. If the entire counting is part of one long *mitzvah*, he has now lost his 'continuity', and may not continue. Naturally, he should still continue counting, because the *halacha* might follow the other views. However, should he say a *brocha*? According to some, he is not fulfilling the *mitzvah*, so his *brocha* is in vain. Therefore, this is a *safeik brocha*. In such situations, we follow the rule that two *sfeikos* may be combined to mitigate the doubt. Some explain this as a way of making a fifty-fifty doubt into a two to one doubt. If the *mitzvah* is to count each day separately, he may continue with a *brocha*. Even if it is one long *mitzvah*, maybe it applies by day, in which case he is still eligible to count with a *brocha*. The second such situation occurs when one is unsure whether he counted at all the previous night, or he is unsure whether he counted the correct number the preceding night. Here, too, if each night is a separate *mitzvah*, he may continue. Even if they are part of one continuous *mitzvah*, he might have counted correctly the night before, making him eligible to continue counting. Here, too, the possibility of violation is more remote than a simple *safeik*. [See Psachim 21b, (Rosh) 45b, Poskim. Tur Sh. Ar. OC 442:4 9-10, commentaries.]

Our questioner thinks he might have said the *sefirah* correctly by day. This would permit him to continue counting with a *brocha*. However, since he is unsure whether he did indeed count, he has a *safeik* about the *brocha*. Counting by day is a fulfillment according to one view, a *safeik* in its own right. Since he might not have counted, there is a *sfek sfeika* whether he is still obliged. Can this be added to the possibility that each day is its own *mitzvah*, to allow him to consider himself still obliged? May he, thus, continue with a *brocha*? Or would we have to say that he must consider himself out of the picture before he can employ this last *safeik*? While it helps to preserve one *safeik*, when two *sfeikos* are present, the issue might be considered resolved. One *safeik* applies to whether he counted at all. He might have missed a day. A second *safeik* applies to whether the *mitzvah* applies by day or not. According to the stringent view, he missed one day anyhow. The third *safeik* applies to whether missing a day causes a problem on subsequent days. Some say he may not continue with a *brocha*. [See Kaf Hachayim OC 489:89.]

It is possible to consider the first two *sfeikos* as one. Both cast the same doubt, for different reasons: did he miss one day? The third *safeik* casts another doubt: does missing one day make a difference? In cases of a *sfek sfeika* with two manifestations of the same *halachic* doubt, many poskim agree that it is considered one doubt, based on a Talmudic passage. If so, our case remains a *sfek sfeika*, and the questioner may continue with a *brocha*. Though this is not entertained by the aforementioned view, in that case, presumably, it is a simple doubt whether he had counted. Our case relates to one who thinks he did count. In addition, we raised the possibility that he remembers being aware of his need to count. He made a conscious note to do so later. Therefore, we might give him benefit of the doubt to assume that he followed through at the time but can not recall it later. Accordingly, he may continue counting with a *brocha*.

**On the Parsha ...** *Kenega nir'a li babayis, 'like' a nega, appears to me in the house ... [14:35].* The Torah uses a term of *safeik*, indefinite. The person coming to the *kohain* to report the *nega* might be a great scholar who knows the colors and sizes of *negaim*. He knows that this is definitely a *nega*. Even so, he may not use definite language, but indefinite language. (*Rashi, Sifra*) Why would the Torah choose this *mitzvah* in particular to teach this lesson? Furthermore, why discuss a case where a 'great scholar' knows that it is a definite *nega*? Why not discuss a case where the *nega* is so obvious that even a simple person can tell that it is a *nega*? He should still not decide it himself, but should tell the *kohain* about it in indefinite terms! Perhaps we may suggest that this *nega* is not as obvious as it would appear. Only a great scholar can decide that it is a definite *nega*, using his scholarship. While the primary lesson is not to rule before the *kohain*, the secondary lesson is that when one needs scholarship to decide a *safeik*, he should not rely on his own scholarship alone. In his own home, he can not be objective. He might even rule stringently in error, because he does not see all the sides to the question. He must preserve the *safeik*. While *negaim* might seem to be a simple matter of colors and sizes, there might be other mitigating circumstances, that create a *sfek sfeika*.

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and Bina, a"n, mother of Beverly Barkon, which was on the 30<sup>th</sup> of Nissan. 

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