

HALOCHOSCOPE

This week's question:

May one pose for a photograph being taken by a gentile on Shabbos? If the picture will be taken anyhow, but the Jew joins in with a group, does the ruling change? What if the group picture will not be taken unless the Jew joins? May a Jew benefit from the activity, such as to order or to display this picture later?

The issues:

A) The *melachos* involved in taking photographs

B) *Amira Le'akum*, directing a gentile to do *melacha*

C) *Aiva* and *Darkei Shalom*, avoiding strife and animosity

A) Photography on Shabbos

Photography can involve various *melachos*. Forming the picture involves, according to most poskim, a form of *kosaiv*, writing. It could also involve *tzovai'a*, dyeing. Assuming the camera works electronically, it might involve *hav'arah*, kindling, or other *melachos*. Stamping and other recording are inevitable. Adjusting the parts of the camera can involve *tikun kli*, fixing a utensil. Usually, the photographer will not stop at one picture, multiplying the violations. It would appear that the activity is Scripturally forbidden but the severity of one or more of these might be reduced to a Rabbinical violation. However, for a Jew, this would not allow it under normal circumstances. If the photographer is a gentile under the direction of a Jew, this might help a little.

Kosaiv is based on the original activity done in construction of the tabernacle, marking the boards so they would be assembled correctly. Writing two letters with any color ink or paint in any language or alphabet is forbidden. The Talmud debates whether a mark that is written or scratched that does not belong to any alphabet is Scripturally forbidden. Both letters should be next to each other on the same page, in order to fulfill the specifications of the Scriptural violation. However, if they are written on two attached pages, it is also considered connected. The final product should be permanent. The Talmud debates whether one letter that is an abbreviation or code for a full word counts.

In almost all cases where the Scriptural violation does not apply, there is a Rabbinical prohibition. Temporary writing, writing one letter, making a mark or sign, engraving and scratching on the skin are all forbidden anyhow. Writing that is usually done with the right hand, but was done with the left hand or any other part of the body, would still be forbidden. Accordingly, writing with the help of a mechanical device is strictly forbidden. If the device is no more than an elaborate extension of the hand, such as a typewriter, it should be forbidden Scripturally. Typing is done with both hands, so a right-handed person should be liable even when using his left hand. If the device causes the writing to appear indirectly, but no other force is needed, the activity should be attributed directly to the writer. It should be forbidden Scripturally, but might be considered a Rabbinical ex-

tension if a chain reaction is caused indirectly. Nonetheless, it is forbidden. The poskim debate cases where two letters are lined up next to each other, so they may be read as a word. This can apply to games or bulleting boards with slots for alphabet pieces.

Creating a picture, whether by painting it or any other way, is considered writing by many poskim. Some consider it dyeing, especially if it is painted on a wall. [It should be noted that according to those who consider building a *melacha* in minor amounts, even dabbing a small amount of paint on a wall, such as a minor repair, involves *melacha*. Thus, painting on a wall could involve three *melachos*.]

Taking a photograph that makes an immediate impression comes under the category of *kosaiv*. It could be argued that the negative film is not really readable in its present state. It would then be considered some kind of abbreviation according to some poskim. It serves as a sign to be made into another form, which is truly readable. It would still be forbidden, but not necessarily Scripturally. The picture is created by exposing chemicals to light. The actual activity involves simply opening the shutter for the time required to expose the chemicals. Then, depending on how it is done, the chemicals react to the objects exposed to them in their shades of light and color. This could be considered indirect action, and could reduce the severity of the prohibition, but would not permit it.

A picture that develops by itself is probably similar to the case of ink that is written in a way that it needs to be heated or otherwise treated to be read. This 'invisible' ink is discussed by the poskim. The issue applies to both the writer and the person taking it close to a heat source or treating it. Are either or both liable Scripturally? If one takes a Polaroid picture but does not peel off the cover, and another person peels it, is either liable? If the picture does not require peeling, the issue is whether causing the delayed picture to appear has the same status as writing when it appears immediately.

Digital cameras raise issues in their own right. The activity of the cameraman does not produce a picture. It records digital messages that are processed to form the image. The image can be displayed at will and then removed from the screen. It is stored in digital form until it is printed, in a separate process. Firstly, this means that the writing has not necessarily taken place yet, or has not taken place at all. Secondly, any writing can be judged to have happened indirectly. It is doubly indirect, since the initial exposure of the equipment is a somewhat indirect form of writing. Thirdly, the entire record can be considered temporary, even if it is considered written. On the other hand, given the nature of the electronic circuits used, many more activities involving burning have been caused.

The poskim discuss recording on a magnetic tape surface. While it might be invisible to the naked eye, it is clearly there. This applies to other *halachic* situations as well, such as the status of a written name of Hashem. It must be noted that it is considered an impression of some kind. It is also an abbreviation, in the sense that it is used to make a more visible or detectable image later. Though that image might also be temporary, or only viewable through light media, it makes the magnetic record a viewable impression.

In the case of digitalized circuits, the same ruling should apply. Magnetic impressions are also not really permanent, since they can be over-written. Electronic circuits are held in place, according to the connections made or broken, as long as they are not over-written. Therefore, the impressions appear to have the same status. Thus, the first two issues raised, that the writing has not taken place, or whether it is written at all, and the

consideration that it is indirect, do not seem to mitigate the prohibition. The issue of permanence is to be taken into account. However, when the Talmud distinguishes between temporary and permanent, it seems to have a different issue in mind. Writing must be retrievable to be considered a *tikun*, constructive activity. If it will disappear by itself quickly, it is not considered *tikun*. Thus, if one writes on his skin he is Scripturally liable. In the longer term, the impression will wear off, but in the interim a constructive impression has been made. In terms of being indirect, switching the circuits could be considered similar to lining up letters in a fixed frame. Assuming that the records are considered written in some form of abbreviated way, the circuits or bytes are indeed 'letters'. The activity of exposing the sensitive device is the same as taking a picture. This might indeed be considered indirect. However, it is no more indirect when using electronic circuits. Accordingly, it is clear that using a digital camera involves as many *melachos* as, if not more than, regular film. [See Shabbos 103a-105a, Poskim. Tur, B.Y. Sh. Ar. OC 340:4-5, commentaries. Igros Moshe OC IV:40:10. Yabia Omer IV:YD:19-21.]

B) *Amira Le'akum*

In our case, the questioner will not be taking a photograph himself, but will be part of a group posing for a gentile photographer. Assuming that the subject was posing by himself, this would involve *amira le'akum*, instructing a gentile to do *melacha* for a Jew that the Jew is forbidden to do on Shabbos. This is based on the verse that implies no *melacha* shall be done for a Jew, even if the Jew is not doing the activity. Some consider it a Scriptural prohibition. Some say this is true if the item on which the *melacha* is done belongs to the Jew. If it belongs to the gentile it is Rabbinically forbidden. Others maintain that it is a Rabbinical ordinance, to prevent the sanctity of Shabbos from becoming light in the eyes of the Jew. He might then do the *melacha* himself. It is also linked to the Prophetic prohibition against speaking mundane matters on Shabbos. It is also linked to the idea that the gentile is considered, in this respect, an agent of the Jew.

Amira le'akum is forbidden on all *melachos*, including Rabbinical ordinances. It is forbidden to direct the gentile before Shabbos, to do a *melacha* on Shabbos. It is also forbidden to indicate or hint to the gentile that he is expected to do the *melacha*. Under certain circumstances, one may hint to him that there is a situation that calls for a *melacha* to be done. The gentile will then decide to do it himself. If the gentile does a *melacha* of his own initiative, to serve his personal needs, the Jew need not stop him. In fact, one might even be permitted to set up such a situation. Of-course, the gentile might not do it, since he is really acting only in his own interests. One could not pose for a gentile if the photographer is making the picture for the Jew. If he wants to take a picture anyhow, the Jew need not prevent him. Posing to facilitate it is not the same as instructing the gentile, and would not be forbidden. However, the Jew is helping to cause the image to appear.

One may not benefit from activity done by a gentile. This is to prevent *amira le'akum*. Therefore, assuming the picture is taken anyhow, certain restrictions might apply to benefiting from it. However, if it was permitted to be photographed in the circumstances, the preventive measure against *amira le'akum* would not apply. One could then benefit from the result. Nonetheless, if the mitigating circumstances could change from case to case, the dispensation might not apply. One would still need the preventive measure in place. [See Shabbos 19a 121a 150a, Eruvin 67b, Gitin 8b, etc, Poskim. Tur, Sh.

Ar. OC 244, 276, 307:19-22, etc., commentaries.]

C) *Aiva and Darkei Shalom*

The circumstances in the particular case in question involve a Jewish convert attending a family reunion with the original gentile family. Understandably, relations are strained to begin with. Throughout the reunion, especially on Shabbos, relations will be more strained. With this event, i.e., refusal to participate in the group picture, they might get even more strained. Gentiles probably have no concept of the *melachos* or *shvusim* involved. It is very difficult to explain the prohibitions involved in doing nothing but allowing others to do it, especially when one is gaining no advantage from the activity. The refusal would then cause more animosity, and perhaps a *chilul hashem*. Are these considerations enough to relax a stringency in this case?

Aivah is not invoked to permit *chilul Shabbos*. In a definite situation of *aivah*, Rabbinical *melacha* is sometimes relaxed. However, this usually applies to extreme cases, risking danger. Our case is not that bad. *Amira le'akum* is relaxed in certain circumstances. These include primarily, needs of the public, needs of a *mitzvah*, needs of a (non-life threatening) sick patient and some cases of loss. *Darkei shalom* is invoked in specific cases, where the Rabbis deemed it necessary to make a show of goodwill to gentiles. Accordingly, one need not prevent them from doing things that might really involve a violation of sorts, but that they do not appreciate. One shows them compassion in some of the ways one is obliged to for Jews. [See references to HalochoScope X:24.]

In our case, the picture will probably be taken anyhow, with or without the Jew. If the Jew refuses to participate, the gentiles will feel very hurt. Thus, the Jew's posing is not what makes the photographer do the *melacha*. The photographer does not care either way. He is being hired by the gentiles. On the other hand, the feelings of the gentiles make it clear that his presence is considered important. However, he will not be doing it in order to have the *melacha* done, but to please the other people with his presence. In light of the level of his participation, and that the issues to begin with are Rabbinical, the Jew may allow himself to be included as a passive participant, for *darkei shalom*. Having done so, once the picture is made anyhow, he may benefit from it.

On the Parsha ... *The son of the Israelite woman uttered the Name and blasphemed. They brought him to Moshe. His mother's name was Shlomis, daughter of Divri, from the tribe of Dan ... [24:11] Shlomis, she would blabber Shalom to you .. chattering too much .. greeting everyone. (Rashi)* This is surprising. Is it not a good thing to greet people? What about *darkei shalom*? Moreover, this was the name she was given at birth! Why is she blamed? She also seems to have inherited talkativeness from her father's name! Names given at birth indeed personify the person. They are partially a prayer by the parents, and partially the actual destiny and identity of the child, foretold in near prophecy by the parent. Each attribute that a child is endowed with at birth can be used for the good or for the bad. *Darkei shalom* does not allow indiscriminate greeting. Shlomis was destined to cheer people by greeting them and talking to them. She used these qualities immodestly, leading to her downfall and that of her son.

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