

# HALOCHOSCOPE

**This week's question:**

**One person has already davened maariv on Friday evening. He has accepted *tosfos shabbos*, additional time added to his *Shabbos*. His friend pulls up in his car on the way to a later *minyán*, and offers him a ride. May he accept it?**

**The issues:**

- A) *Tosfos Shabbos*
- B) The *melachos* involved in driving
- C) When the driver is not in violation

**A) *Tosfos Shabbos***

*Halachic* day begins at night. The exact timing of 'nightfall' is unclear. Sunset would seem to be easy to determine visually. Yet, *halachic* sunset is also controversial. From the beginning of the concealment of the sun below the horizon until the afterglow is no longer evident, is all part of *shkia*, the sinking of the sun. Some say the *rakia*, sky or firmament, is viewed as a mass. The sun is viewed as going through this mass. Its entry into it, its being considered inside it, and its exiting the other side are all part of the process. Thus there is a beginning and an end of *shkia*. After *shkia* is over, the sky gets progressively darker. Eventually it is dark enough for three average stars to be seen in average conditions, *tzais hakochavim*. The time lag between *shkia* and *tzais* is called *bain hashmoshos*. Does *halachic* day begin at *shkia*, *tzais*, or sometime in-between? Is *bain hashmoshos* part of the preceding day, the following night, half-half, or in doubt? The Talmud debates these issues, concluding that the entire period is to be considered in doubt.

The time lag is also debated. In one view it is as short as the blink of an eye. The conclusive opinion (R. Yehuda) is somewhat contradictory. In one context, he gives this time as three quarters of a *mil*, and in another, four *mil*. A *mil* is a linear distance. The Talmud uses the time taken to walk such linear distances to measure time. The day can be divided based on the distance expected to be traveled by the average walker. Most commentaries calculate a *mil* as eighteen minutes. Three quarters is thirteen and a half minutes. Four *mil* is seventy-two minutes. Why not test *tzais hakochavim* visually? What about astronomical variations? Evidently, the visual aspect of darkness is really a sign by which one can determine true *halachic* timing.

Interpreting all this is further debated by the poskim. The best known reconciliations of R. Yehuda are the *Gaonim* of Bavel, *Rabeinu Tam* and the *Yereim*. *Rabeinu Tam* says that between the beginning of *shkia* and *tzais* is seventy two minutes. The first fifty-eight and a half minutes of this time is not considered *bain hashmoshos*. The sun has dropped below the horizon, but is lingering out of view. When it disappears totally for the day, *bain hashmoshos* begins, and lasts thirteen and a half minutes. According to the *Gaonim*, *bain hashmoshos* begins when *shkia* begins, and lasts thirteen and a half minutes.

Though it is still getting darker, it is fully night after this. *Tzais hakochavim* means that all stars can be seen. The smallest stars can not be seen until seventy two minutes after *shkia*. The opinion of the *Yereim* is generally interpreted as sundown being considered full night. *Bain hashmoshos* begins thirteen and a half minutes before then.

Many maintain that this is geographically relative. Other locations adjust proportionally, relative to *Bavel*. Visible appearance of average stars is used when available. Charts are made to fit patterns, based on a satisfactory sized star and mathematical formula. Seasonal adjustments are based on the angle of the sun. Due to the doubts, *Shabbos* is presumed to begin at *bain hashmoshos*, with each community following one of the views.

While the advent of the new day is in Hashem's hands, we have a *mitzvah* to sanctify *Shabbos* and declare its holiness. This applies during the day and at the onset. During *Shabbos*, close to the beginning, we need to recite *kidush*, and *havdalah* at the end. We also need to 'accept' *Shabbos* at the beginning. This can be done by candle-lighting, saying *kidush*, *lecha dodi*, *mizmor shir*, *borchu*, *maariv*, or even 'good *shabbos*' with the correct intent at, or before, the beginning. If one did not accept it before *Shabbos*, he still does so during *Shabbos*. *Shabbos*, for him, began at *bain hashmoshos*. If one accepts it early, *Shabbos* begins for him, even if it is still light. He has extended *Shabbos*.

This extension is called *tosfos Shabbos*. It is derived from a Scriptural *mitzvah* to extend *Yom Kippur*, beginning and end. *Shabbos* may be extended to as early as *plag ham-incha*, a seasonal hour and a quarter before 'night'. Thus, a part of an earlier day that could be considered attached to the next day is sanctified with the holiness of *Shabbos* for this person. *Shabbos* has a list of commandments, mostly negative, enforced by severe penalties. *Tosfos Shabbos* is less severe. It is based on a positive *mitzvah* and does not carry the penalties. One does not have the ability to impose the stringency of *Shabbos* that Hashem imposes. However, *tosfos Shabbos* is Scripturally binding. There is a view that only the last moments are included in the Scriptural aspect. Any earlier self-imposed time is Rabbinically *Shabbos*. In one respect, *tosfos Shabbos* is more stringent than *bain hashmoshos*. *Bain hashmoshos* is treated as a *safeik*, doubt of the more severe *Shabbos*. *Tosfos Shabbos* is definite. It is really *Shabbos* for the person who accepted it early.

As it depends on the individual, *tosfos Shabbos* is subjective. If a community accepts it at a certain time, all individuals are bound by the *minhag makom*. It is often customary to begin fifteen or eighteen minutes before sunset. This guarantees that one is adding on time even according to the opinion of the *Yereim*. In communities where there is no single authority, some people do *melacha* after this time.

As a self-imposed acceptance, *tosfos Shabbos* is viewed by some poskim as a relative and subjective 'vow'. Normally, one does not give much thought to how much he accepts. He accepts the concept of *Shabbos*, including all of its restrictions and stringencies. However, it is possible to both exclude certain matters, such as the option to make a *kidushin*, and even certain Rabbinical prohibitions, including some that are permitted during *bain hashmoshos*. It is also possible to make a rule based on what the normal person would have in mind. Thus, it is normal to have in mind to accept it for himself, but to benefit from the *melacha* of another person who did not accept it yet. This affects our case. [See Brochos 2b, Shabbos 35a 118b, Psachim 94a, Rosh Hashana 9a Kesubos 50a, etc. Poskim. Tur Sh Ar OC 89 261 262:3 263:4 10 11 15 16, etc., commentaries.]

## B) Driving on Shabbos

Driving a vehicle involves various *melachos* and Rabbinic ordinances. The most obvious is *hav'arah*, kindling a fire. There are multiple little explosions of the fuel according to the sparks produced in the engine. Ignition begins the electrical process that causes the sparks. Due to the complexity of the motor car, one violates this *melacha* many times over. *Kibuy*, extinguishing, is also involved, though most of the time this would not involve a Scriptural violation for *Askenazic* Jews. If there is no *eruv*, one violates *hotza'ah*, carrying or transporting. By moving the vehicle, albeit on wheels attached to the ground, one takes it from private to public domains and vice-versa, or for four cubits distance in a public domain. One could violate cooking, building, demolishing, *makeh bapatish*, final blows to complete something, *zoreh*, dissipating things with the aid of air, washing and squeezing, *tikun kli*, fixing or adjusting, and assorted other *melachos*. Moving the car and many parts of it involve *tiltul muktzeh*, although touching it, opening it or even sitting there does not violate this. Making ruts by pressing downwards is not considered plowing. However, if the car drags something through mud, it is considered plowing.

*Mechamer* forbids driving one's animals, a violation of the *mitzvah* to make them rest. If the animal is owned and driven by a gentile, a Jew may not ride, as a precaution against breaking a branch to whip it. In general, this decree extends to any use of an animal. One may not travel out of the *techum*, outer boundaries that are permitted on *Shabbos*. Depending on how far one travels, it could be a Scriptural violation. In one view, this is also part of the prohibition against riding animals. One might travel too far. This would apply to passengers as well.

A passenger does no *melacha* directly. His weight contributes to the total. The driver burns more fuel for him. If the driver is not Jewish, this means that he has a gentile do *melacha* on his behalf. This is forbidden. If the driver is Jewish, if the driver could not violate the *mitzvah* without his help, the passenger is liable for Scriptural *lifnei ivair*, helping another sin. *Mesayaia*, helping, is a Rabbinical expansion of *lifnei ivair*.

Besides all of the above, the spectacle of riding on *Shabbos* raises questions in people's eyes. One may not do something permissible that arouses suspicion. Doing something usually not done on *Shabbos* can involve *avsha milsa*, something considered intrusive on the *Shabbos* calm. There is also an issue of *uvdin dechol*, doing things that are usually done the same way during the week, and that are usually done by violating a *melacha*. Paying passengers may not purchase tickets and the like on *Shabbos*. Allowing travel could tempt passengers to violate this. [See Shabbos 19a Eruvin 43a Beitzta 36b, Poskim. Tur Sh Ar OC 248:4 249:1 305:18, etc., commentaries. Tzitz Eliezer I:21.]

## C) When the driver is not violating anything

Our driver is Jewish but is not in violation of anything. The passenger is not helping him do anything wrong. The only issue for the driver could be that he is helping the passenger. Thus, the passenger helps the driver help the passenger help the driver, and so on. Obviously, this could not be an issue. However, the passenger himself might be in violation. It might be forbidden for him to have others do *melachos* on his behalf. If so, the passenger is indeed helping the driver do something forbidden.

When one has another do something on his behalf, the act can be attributed to him or to the agent. In general, *shlucho shel adam kemoso*, one's agent is like himself. A *mitzvah*

performed by one's agent is attributed to the appointer. A gentile is not considered an agent. However, for the purposes of *amira le'akum*, the Rabbinical prohibition against asking a gentile to do something forbidden to Jews, we apply *shlichus lechumra*, to be stringent, to the gentile. The act is attributed to the appointer. In this case, the gentile is not in violation of anything. *Ain shliach lidevar avairah*, a Jew can not be considered an agent to violate a *mitzvah* on behalf of an appointer. 'Rather than listening to the mortal subject who sent you on this mission, you should have followed the instructions of his Master!' The transgression is attributed to the agent rather than the appointer. If one Jew asks another to violate *Shabbos* for him, the transgression is attributed to the second Jew. In our case, the 'agent' could not be in violation. In this way he is similar to a gentile.

Can a Jew who did not yet accept *Shabbos* do something on behalf of one who accepted *Shabbos* early? The poskim debate this case. One view permits the first Jew to actually ask the second Jew to do *melacha* on his behalf. The other view forbids asking him to do it, but permits benefiting from it if the second Jew did it of his own accord.

The poskim debate the reasoning of the lenient view. In one view, asking is only forbidden when the requested activity is forbidden to all Israel. Another view is that *amira* is not forbidden when the request is for something that the requester had the choice not to forbid to himself. Some say it all depends on whether *ain shliach lidevar aveira* requires the agent to be culpable or not. Others say, one is not in violation through *shlichus* until the *shliach* acts. When addressing a gentile, instructions are an issue, because the speech itself is forbidden. Here, the instructions are not a violation. The later acts of the *shliach* are not attributed to the appointer. *Tosfos Shabbos* depends on what he had in mind. He did not have in mind to forbid himself from asking another person to do things for him.

From all of the above, it appears that the stringent view forbids asking because of *shlichus*. Without asking there is no *shlichus*. The consensus is that one may rely on the lenient view, and ask another to do the *melacha*. [See Tur Sh Ar OC 263:17, commentaries, Shaarei Teshuva 5 6, Rav's Sh Ar, Kuntres Acharon 8.]

In our case, while he did not ask the driver for the favor, the passenger has to get into the car. The driver will have to open the door, to save the passenger from lighting the dome light. Then the passenger will get in. People who *davened* early with him might see, as will his family when he arrives home. *Maris ayin*, the appearance of something forbidden, is forbidden even if it is actually permissible. It is also *uvdin dechol*. Therefore, though there is nothing legally wrong with it, he may not accept the ride.

**On the Parsha ...** *They shall guard [Aharon's] mishmeress and that of the whole congregation ... and the mishmeress of all Israel .. [the Levites are] given to [Aharon and his sons] by the children of Israel ... [3:7-9] Mishmeress* means a job one is appointed to do. All Israel needed to care for the needs of the sanctuary. The Levites acted as *shlichim* .. [See Rashi etc.] Who appointed the Levites as *shlichim*? The people for whom they are agents did not instruct them. If they do it without being asked, they could not be *shlichim*! The Torah appoints them. All Israel must abide by the Torah, their acceptance automatically serves as an agreement to the *shlichus*. Also, Moshe is considered the *shliach* of all Israel to make any appointments on their behalf.

♠ Sponsored in memory of R. Shimon ben R. Eliezer Blumenthal zt'l, whose *yahrzeit* is on the 25<sup>th</sup> of Iyyar. ♠

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