

HALOCHOSCOPE

This week's question:

May one wear an orthopedic insole outside an *eruv* (enclosed area) on Shabbos? May one wear a toe-warmer in his shoes in the same area?

The issues:

- A) *Hotza'ah*, carrying between domains or in a public domain on Shabbos
- B) *Derech malbush*, worn as clothing; *tachshit* jewelry; *masuy*, burden
- A) *Hotza'ah*

On *Shabbos* it is forbidden to carry from one domain to another. It is also forbidden to transport something for a distance of four *amos*, cubits, within a public domain. There are four domains or *reshuyos*: **Reshus hayachid**, a private domain, is an enclosed area, rather than simply private property. Ideally, it is bounded on four sides by fences over ten *tefachim*, hand-breadths. It could also be a post, steep mound or ditch ten *tefachim* above or below the surrounding area, with a minimum horizontal dimension of four *tefachim* wide and long. Inside a *reshus hayachid* one may carry.

Reshus harabim is an open area with unrestricted passage. According to the Talmudic view we follow, between parallel walls, such as a street, is considered *reshus harabim*. The minimum width between the parallel boundaries is sixteen *amos*. The Talmud debates an additional definition of *rabim*, public or multitudes. In one view it qualifies if it is accessible to and is frequented by the public. The other view maintains that 600,000 people must use it daily. This is based on the *Mishkan*, tabernacle in the wilderness. The laws of *Shabbos* are based on the construction *melachos* of the *Mishkan*. *Hotza'ah* is based on transporting the materials from the Israelite camp to the Levite camp in the middle. The camps numbered 600,000. The Levite camp was a *reshus harabim*. In addition, when the *Mishkan* was dismantled and assembled, boards were moved between wagons, *reshuyos hayachid*, and the construction site, *reshus harabim*. The poskim debate which view to follow. The prevailing *minhag* is to follow the lenient view, but some poskim recommend making an effort to follow the stringent view.

Karmelis, an unbounded area not frequented by the *rabim* is neither *reshus harabim* nor *reshus hayachid* by Scriptural standards. Scripturally, one may move things between a *karmelis* and both *reshuyos*. Rabbinically, it is considered both *reshus harabim* and *reshus hayachid* to forbid carrying between it and both of those, and to forbid carrying 4 *amos* within the *karmelis*. If it is enclosed on three sides, most poskim consider a Scriptural *reshus hayachid*. Accordingly, moving things between it and *reshus harabim* is a *melacha* with full liability. A very large fully enclosed area which is not part of a dwelling is also considered a *karmelis*, but one may carry four *amos* within it.

Mekom petur is too small to qualify as *reshus hayachid*, but separated from *reshus*

harabim by elevation. It is not considered a *reshus* at all, even Rabbinically. One may move things between it and all other *reshuyos*. Rabbinically, one may not use it to facilitate transferring from *reshus harabim* to *reshus hayachid* or vice-versa.

Other determining factors, such as curves in a street or breaks in a fence, are too extensive to be discussed here. Scriptural *hotza'ah* requires *akira*, picking the item up in one *reshus*, and *hanacha*, setting it down in the new location. Doing one without the other is also forbidden Rabbinically. Moving a total of four *amos* in a *reshus harabim* incrementally is also forbidden Rabbinically.

According to one view, it is Rabbinically forbidden to move things between adjacent properties owned by different people. They are a single Scriptural *reshus hayachid*, enclosed by their outer boundaries, but the impression is of two *reshuyos*, based on monetary law. Inside a communally owned *reshus hayachid*, all views Rabbinically forbid carrying. It is also forbidden to move things between the communal property and that of a single owner on its boundary. The former opinion considers this moving between properties of different owners. The latter view says it resembles a *reshus harabim*. To remedy this, the rabbis instituted the *eruv*. This nominally combines the properties into one large dwelling, with the remaining residents becoming guests therein. The 'guests' contribute food and formally cede their ownership to the 'owner', who keeps the food in his home. This is the *eruv*, literally, 'mixture' (of properties).

In addition, the *eruv* area must be enclosed to be a true *reshus hayachid*. This is the *hekef mechitzos*. The same mechanism is used to allow carrying in a larger area, such as a neighborhood or even a city. Methods to enclose include fences or steep slopes. Across open flat spaces, a *tzuras hapesach* is made. Any wall can have a doorway through it. There is no maximum dimension of this *tzuras hapesach*, as long as it has 'posts and a lintel'. The post, called a *lechi*, must be 10 *tefachim* high, and strong enough to hold a light door. The lintel, called *kaneh*, must be directly over the top of the two *lechis*. It can be a flimsy string. The *hekef* must be continuous, with no breach more than 10 *amos*. Short breach spaces may not total more than erect spaces. If a true *reshus harabim* passes through it, *tzuras hapesach* is insufficient. Public passage breaks its 'wall' status. Gates must close it off. Even when they are open, they guarantee that it is a real doorway. [See Shabbos 2a 6a-9a 64b 82a 96b 99b-101a 130b Eruvin 6a-7a 11a-b 15b-17a 22a-b 59a 62a 91b 97b-101b, Poskim. Rambam Shabbos 16:16 Eruvin 1:5 2:15. Tur Sh Ar OC 345-347 349:1 5 362:10 366 392, commentaries.]

B) Malbush, tachshit and masuy

Only carrying a *masuy*, load, is considered *hotza'ah*. Wearing clothing is not *hotza'ah*, though the clothes are moved between the *reshuyos*. They are *batel*, secondary, to the person wearing them. These are conditions that affect the permissibility Rabbinically of wearing some items outside on *Shabbos*. Carrying in an unusual manner is not forbidden Scripturally. One usually carries in his hands, rather than wears the load. However, some loads are usually worn, for the convenience of the carrier.

Malbush, clothing, is worn for protection, to hide or cover, for comfort, and sometimes also for identification. *Tachshit*, an adornment, serves the body, but not in the same way as clothing. For example, the Talmud says a small flask of perfume worn to dispel

bad odors is a *tachshit*. It is also *batel* to the body. A cane for a lame man is considered a *malbush*. He cannot walk without it. It is like his shoe. Thus, to be *batel* to the body, it need not be traditional 'clothing'. If he can walk without it, he may not take it.

An item can be considered *malbush* if it is wrapped on a *malbush*, but not significant in its own right. It should be like a part of the first *malbush*. Thus, one who wears a decorative chain and pouch may not carry glasses in it. An item might be worn for medicinal purposes. If it really works, it may be worn like a *malbush* or *tachshit*.

Wearing certain items might lead to the wearer removing them (to show or hide them) and carrying. The rabbis forbid wearing them in a *reshus harabim* as a precautionary decree to prevent carrying. The Talmud is clearly concerned that women would remove jewelry to show off, and might then carry it four *amos*. Yet the prevailing *minhag* is to permit it. To justify the *minhag*, the poskim say we have no true *reshus harabim* nowadays, following the lenient view. In a *karmelis*, carrying it is a Rabbinic violation. Some say that the decree does not apply to a *karmelis*. Others forbid *karmelis* normally, due to confusion with true *reshus harabim*. However, in the absence of true *reshus harabim*, the rabbis permit wearing jewelry in a *karmelis*. In addition, the claim is made that only the type of jewelry that women do not remove to show off is permitted.

Wearing eyeglasses is discussed by the poskim. Early eyeglasses were perched on the nose, without temples. They were not clothing or ornaments, so they could be considered *masuy*. Some poskim forbid wearing eyeglasses, maintaining that this is a way to carry them. Others say that this is not the normal manner of carrying. However, they can easily be removed and held in the hands. Those who need them to walk may wear them. They will not be tempted to remove them and walk with them. Those who can see without them could be tempted to remove them and hold them or put them in their pockets. The prevailing *minhag* is to permit them, if they are firmly held in position.

Sometimes, something is secured to the body by being attached to another item of clothing, as mentioned, in various ways. Buttons are an integral part of a garment. A key-chain attached to a belt poses a problem. It is not part of it, and is indeed usually transported this way. Thus it is not even a *shinuy*, unusual manner that might otherwise mitigate the situation. Generally anything that is significant in its own right and is not an item of clothing cannot be considered part of a garment even when attached to it.

Something worn as a dressing for a wound is *batel* to the body. It may be worn on *Shabbos*, and is even considered a *malbush*. It protects – the wound. If it is tied onto the body, the material used to tie is must be insignificant enough to be discarded with the dressing when it is disposed of. It is not a *malbush* itself. It is not being used as the dressing. Its redeeming feature is that it is *batel* to the dressing. If it is too valuable, it is not *batel* to the dressing, and wearing it is *hotza'ah*.

A coin, which has independent value, might be bound to the sole of the foot to heal a wound. This coin is thus *batel* to the body. The material securing it should be *batel* to it. Thus, to be considered *malbush*, an item need not be bound to the body. It may be *batel* to another garment. It may also be loose, but secured by a cloth. Conversely, the Talmud discusses the permissibility of pads used to soak up discharge. If they are worn for comfort, they are *batel* to the body. However, they must be secured in a way that they are not

easily removed and carried. Furthermore, the pad must be a *malbush* in its own right, rather than secured with a band or string.

The Talmud debates whether an amputee may wear a non-functioning prosthesis (wooden leg). The lenient view considers it a shoe of sorts. We follow the stringent view, because it is not used to aid in walking. The amputee will still use his crutches. There is an additional issue with regard to whether it counts as a receptacle. This depends on whether there is a hollow made to hold scraps of cloth, used to provide comfort. The scraps, however, do not even come up for discussion. Clearly, they are considered part of the 'shoe' – if indeed it would be considered a *malbush*.

Based on this, the poskim discuss insoles. They are loose inside the shoes (unless they are glued in). Shoes are a *malbush* in their own right. The insoles might even be considered *batei* to the shoes. Anyhow, they are like a medicinal coin in that they are bound to the body with the shoe. An orthopedic insole will not be removed while walking. [Perhaps, during the first few days, while the patient is getting used to them, he should refrain from wearing them on *Shabbos*. He might remove them if they are too uncomfortable. Once he is used to them, there is no issue.]

Regular insoles are worn to absorb sweat or for comfort. Both of these are considered clothing types, in this case. [Pads worn to absorb sweat are permissible, unless the purpose is to keep clothing dry and clean. In that case, they serve the clothing, rather than the body. Insoles are not there to keep the shoes dry, but to keep the feet comfortable.] Toe warmers are basically the same thing. They keep the feet comfortable. If they were easily removed, there would be an issue. The poskim mention a stringency to refrain from wearing gloves, if they are routinely removed to shake hands. This would not apply here. [See *Shabbos* 11b 57a-67b, Poskim. Tur Sh Ar OC 301:7 11 (MB44 (Dirshu 31), Kaf Hachaim 65-66) 14 17-18 22 24 etc, commentaries Ar Hash 61. Shoel Umaishiv III:2:109. Binyan Tziyon 37. Rav Pealim II:48. Har Tzvi OC:173. Shmiras Shabbos Kehilchasa 18:18 21, note 71-72.]

Toe warmers are activated by opening to the air. This could be *makeh bepatish*, putting final touches on a utensil. They should be opened before *Shabbos*. Thus, if they are needed for the daytime, one would have to get very long acting warmers. *Makeh bepatish* does not apply to inserting the warmers or the orthopedic insole. They are routinely removed and inserted in different pairs of shoes. [See *Shmiras Shabbos Kehilchasa* 18:note 79. *Halochoscope* XVI:15. The 39 *Melachos* (R Ribiat) p. 1362 1397.]

In conclusion, both may be worn. Toe warmers must be opened before *Shabbos*.

On the parsha ... The chartumim were unable to stand before Moshe because of the shechin boils ... [9:11] Why does the Torah use the word 'stand'? Surely, they could not even appear before Moshe, due to embarrassment [see Ramban]. Perhaps, they could have appeared, but since they had boils everywhere, including on the soles of their feet, they could not stand. The boils were too severe to be treated with a coin or a dressing.

Sponsored by Noah Bass and Debbie Rotenstein in memory of Noah's mother, Goldie bas Shmuel, a"n whose

yahrzeit was the 25th of Teves. ה

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