

HALOCHOSCOPE

This week's question:

What is the status of a bedroom with a spa in the sleeping area? Is this considered a bathroom, due to the presence of the tub? Should this be considered a primary usage, with consequences for the *mezuzah* on the door, bringing *seforim* or *tefillin* into the bedroom, walking around in the bedroom undressed and reciting *brochos*, or even regular chatter? What if there is a curtain around the tub, but it does not reach the floor or ceiling? Is it there for privacy, rather than as a partition between the sleeping area and the spa.

The issues:

- A) The sanctity of sacred items
 - B) Makom metunaf, unclean places; tashmish genai, no-respectful activities
 - C) Mechitza litzenius, a screen for privacy
- A) *The sanctity of sacred items*

Items invested with holiness must be treated with reverence. They may not be disposed of in the usual manner, but are stored or buried when they wear out. The *mitzvos* that apply to this include: *Umikdashi tira'u*, to show awe for the sanctuary; *Lo sechalelu*, not to desecrate Hashem and His Name; *Lo sa'asun kain*, not to profane items dedicated to Hashem as would be done to idols. Such items might be *tashmishai kedusha*, utensils that serve or service holiness, or *kedusha atzma*, actual holy items. Even items that are twice removed from the source of the sanctity, but are used in its connection, have some sanctity. These are called *tashmish detashmish*.

Tashmishai mitzvah, items used in the performance of a *mitzvah*, specifically, those required for the actual *mitzvah*, are governed by a different *mitzvah*. We learn from the *mitzvah* to cover the blood of slaughtered undomesticated animals or fowl, that one may not behave disrespectfully towards a *mitzvah*. While a *tashmish mitzvah* is in use for the *mitzvah*, or anytime that it is still viable, it may not be used for mundane purposes. When it is no longer viable, it is disposed of in a respectful way. If it is put into the garbage, it should be wrapped and placed there gently, so it is not soiled by the other items there.

In connection with rest rooms and the like, more *mitzvos* come into play. The Torah says that when Hashem is within our camps, our camps shall be holy, and He shall not see within us a nakedness. The positive *mitzvah* is *vehaya machanecha kadosh* and the negative *mitzvah* is *lo yir'eh becha ervas davar*. These are a *mitzvah* to keep unholiness from the presence of holiness, including writings and mouthing words of Torah and *tefillot*, and a *mitzvah* forbidding bringing something holy into a place reserved for the unclean. In a place where it is impossible to contain unclean items, one may not recite a *tefillah*. If a holy item must be taken in there it must be kept covered. If a dirty item is brought into a clean place, covering it would be sufficient to allow holiness to remain.

There are levels of uncleanness, such as where a foul smell is or is not present. There are also levels of holiness, such as thinking, saying, uttering Names of Hashem, or bringing in items that are on one of the levels of sanctity discussed in the next section. Depending on the level, concealment can vary. In general, there are two levels of covering up. One could put it into one pouch, or a double pouch. One of the pouches must be a neutral pouch not designated for the item. Alternatively, one could create a miniature separate domain for the item. This involves either erecting a partition or placing a covering with the dimensions of an *ohel*, tent that qualifies to prevent spread of *tum'ah* defilement. This is a canopy of at least a cubic *tefach* (about four inches in each dimension). [See Brochos Perek 3, Poskim. References to Halochose III:1:A.]

B) Unclean places

In Talmudic times a *bais hakisai*, privy, was often a secluded area in a field. If it had been used for solid relief it was considered *bais hakisai kavua*. Whether or not the waste matter was present, the location itself posed a problem. A *bais hakisai arai*, un-fixed area, is any spot chosen for urination. The rules are somewhat less stringent there. *Batei kisa'os parsiyos*, Persian privies, were constructed to remove all waste through a drain immediately. They also have a more lax ruling.

Bais hamerchatz, is a public bath house dedicated to people in an undressed state. Since their private parts are revealed, this contradicts the positive *vehaya machanecha kadosh* and the negative *mitzvah* of *lo yir'eh becha ervas davar*. Furthermore, due to its heavy use there is *zuhama*, body grime, in the water. Even when nobody present is unclothed, the room is considered unclean. The changing rooms are less stringent when nobody unclad is present. A *mikvah*, ritual immersion pool, is used when the body grime has been removed. It is considered a clean area when no-one present is unclothed. By association, one would avoid saying holy things there if possible. The room in which a married couple sleep is also treated as a possible unclean area. The Talmud discusses cattle barns, powder rooms where women make up (the poskim add laundry sheds) in relation to attaching a *mezuzah* there. These uses are called *tashmish genai*, disrespectful usage. Soiled food utensils must be removed from a *sukah* after use. They degrade the *sukah*, a *mitzvah* place. Bowls and sinks where they are washed indeed get very grimy. This might be somewhat comparable to a laundry room or an *ashpaz*, garbage heap. If a foul odor permeates it, it would seem disrespectful to wash *kailim* with *pessukim* there.

In former times, people often slept in the same room used for all other activities. A modern bedroom is used mostly for sleeping, which is an innocent activity, despite the likelihood of performing various body functions while asleep. One may not sleep wearing his *tefillin*, but they may be placed nearby. A *mezuzah* is required on a bedroom doorway. If a couple engages in marital intimacy, the *mezuzah* must be out of sight. Usually it is on the outside door post. If it happens to be inside, it must be covered. However, one may bring *seforim* into the room, as long as they are concealed when those activities are performed. One may also recite *brochos* and converse there.

Modern day rest rooms are discussed by the poskim. If a bath or shower are also present, the the room is likely to have some grime. The modern drainage makes it like *batei kisa'os parsiyos*. In general, while there are reasons to rule leniently on these

rooms, the poskim avoid relying on these extensively. Therefore, no *mezuzah* is placed there, because it is dedicated to *tashmish genai*. In addition, one should avoid *brochos*, and should conceal holy items in there. A building dedicated to bathing or toilets is exempt from *mezuzah*. If there are rooms in the building for other activities, they require *mezuzos*, as do the doorways that lead to them, even if they also lead to the *tashmish genai* rooms. However, in the rooms which are not used exclusively to bathe, one may recite holy utterances. The same would be true of a changing room that has no shower or bathtub. Some people are unclad some of the time, but others are clothed. Therefore, one may recite *brochos* in the room when there is no-one there in an undressed state.

One may not engage in conversation in a rest room, for modesty reasons. This does not seem to apply to a bathing area, although one may not engage in Torah discussions, or even think of them. After leaving a bath house or restroom one must wash his hands. According to many poskim, this applies even if he did not engage in personal body activities. There is *ruach ra'ah*, harmful negative spirit that attaches itself, in these places. Washing the hands removes the *ruach ra'ah*.

Another interesting issue arises with regard to water used for hand-washing in the morning. This water has *ruach ra'ah*, attached to it. A similar concern arises with regard to water used for washing after relieving and *mayim acharonim* after eating. The general practice is to cover these before reciting anything holy. Modern bathrooms and restrooms have drains in the sinks, and this issue should not arise. However, if there is residue, one may add fresh water to remove this *ruach ra'ah*.

Based on this, somewhat, some say that one may not bring food into a bathroom or restroom. Many poskim maintain that the *ruach ra'ah* of a restroom does not cleave to food. Nonetheless, they invoke the concept of *bizuy ochel*, disgracing the food, *tzniyus* in general, and the concept of *nekiyus hada'as*, common decency. However, the basic *halacha* does not forbid bringing food into the rooms, but forbids eating in there. In our case, since the room serves purposes other than bathing, it should not affect either of these. One could bring food there, and even eat it, when there is no-one undressed using the spa. However, if there is used water in the tub, many of these concerns arise. There could be *zuhama*, depending on whether the users scrubbed themselves before using the spa. There could be some form of *ruach ra'ah* as well. Therefore, the water should either be emptied out, or if one plans to reuse it, it should be covered. [See Brochos 23b-26a Shabbos 40b 61b-62a Yuma 11a Sukah 29a Sanhedrin 21b, Poskim. Tur Sh Ar OC 3:2 (BHT2) 4:2-9 (ST8) 18 (MB40, Dirshu) 43:1-2 74 83 84 281:2 (Kaf Hachayim, Dirshu 5) 639:1 YD 282:4 286:1-2, commentaries. Chovas Hadar 2:9-12, notes. Salmas Chaim OC 9 18. Tzitz Eliezer XIV:2. Be'er Moshe V:1. Btzel Hachochma III:11. Teshuvos Vehanhagos I:11 II:4. References to Halochose II:44:C, VIII:39:B.]

C) Mechtza

The Torah says *vechisisa es tzaiasecha*, you shall cover your (going out) waste. Thus, in the context of the prohibitions against uttering holy words in the presence of waste, covering helps. The poskim debate various aspects of this. If there is a smell, one should also distance himself from it. The other main question is whether the purpose of covering it is to remove it from sight, or to remove it from one's presence. The difference

between these views is situation where a partition is erected in front of the waste. If it is a full *mechitza*, the waste is out of sight, and can also be considered not present. It is in another domain. A true *mechitza* divides or separates domains from one another. However, it is possible to erect a *halachic mechitza*, that does not hide the item. For example, if one stands ten *tefachim* (about 35 inches according to some contemporary poskim) above the waste matter, the cliff face counts as a *halachic mechitza*. In one view, even if there is a smell, one may recite *shema* there. It counts as a separate domain. [We follow the view that presence of a smell is always an issue.] The other view maintains that this is not what the Torah means with *vechisisa*, you shall cover. The item must be out of sight. Based on this debate, a similar question arises in the opposite situation. If the item is not actually covered, but has a *mechitza* in front of it. However, the *mechitza* is not *halachically* good enough to separate the domains. It is just for privacy. According to the view that the item must be concealed, it is out of sight. According to the view that it should be in its own domain, it is still in the same domain as the person *davening*.

Many *halachos* of *mechitza* for the purposes of *tefilah betzibur* are modeled on those that apply to carrying on *Shabbos* and *eruvei reshuyos*, combining domains. One detail is that the *mechitza* must reach to the ground. It does not need to be perfectly attached. If it is close to the ground, within three *tefachim* (10 or 11 inches), it is considered connected. This concept, *lavud*, is quasi-Scriptural. It must be a minimum of ten *tefachim* high.

Inside a larger room, there is a question about a *mechitza* that does not reach the ceiling. While it works to separate areas for privacy, does it work to separate domains? The Talmud debates this concept in regard to people lodging in a large auditorium, and whether they are considered separate encampments. The poskim debate whether we require the curtains to reach the ceiling, both in regard to *eruvim* and in regard to *tefilah betzibur*. It was common to have a high *bimah* from where the *shliach tzibur* would lead the congregation. The question arises whether he is part of the rest of the *tzibur* if the *bimah* is ten *tefachim* high. Similarly, if the *bimah* is less than ten *tefachim* high, but the railing around it ends up being ten *tefachim* high, is this a separate *reshus*, domain? Specifically in a *bais hakeneses*, the common usage of the larger room combines them.

Assuming that we follow the view that considers the *shliach tzibur* is in the same *reshus*, the opposite would be the case here. In our case, the curtain does not reach to the floor, but to the rim of the tub. Perhaps we could add the curtain to the sides of the tub, to make a continuous *mechitza*. The rail at the top of the curtain does not reach the ceiling. If someone is in the tub behind the curtain, may the others in the room recite *brochos*? We may combine the opinion that out of sight is sufficient with those who would validate this *mechitza* to permit it. [See *Eruvin* 72a-b 9b, *Poskim*. *Tur Sh Ar OC* 55:19 370:3, commentaries. *Chazon Ish OC* 93:8.]

In conclusion, if the water is emptied out and no-one is undressed, it is considered a bedroom, rather than a bathroom. If a person is undressed in the tub, or if the water in the tub has not been changed for a day the curtain helps to separate the area.

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