

HALOCHOSCOPE

This week's question: Rerun of Vol V No 30

Someone has a foot problem and requires specially made orthopedic leather shoes. On *Yom Kippur*, he could walk around indoors with no shoes, or even wear sneakers for short distances. However, he would experience severe pain if he were to wear sneakers or other footwear for the length of the walk to *shul*. May he wear his customized leather shoes to walk to *shul*?

The issues:

- A) *Inuyim*, the afflictions on *Yom Kippur*
- B) Leather shoes
- C) Dispensations of the *inuyim*

A) The *inuyim*

The Torah does not specify what is forbidden on *Yom Kippur*, apart from the prohibition against performing *melacha* and the *mitzvah* of *shabason*, literally, to rest. What the Torah does say is that one must afflict oneself. This *mitzvah* is worded in the form of a positive *mitzvah*. Through grammatical rules of *derush*, the Talmud shows that it is really a negative *mitzvah*. Violating the *mitzvah* is punishable by *kareis*, excision, or being cut off from the spiritual roots of the Jewish people and their connection to Hashem. As a negative *mitzvah*, it can also be punishable in a *bais din* with *malkos*, lashes, if the perpetrator was given due warning about this punishment.

The Talmud discusses the meaning of *inuy*, self-affliction. The obvious meaning would be to actively afflict oneself by sitting in the heat or cold. However, the choice of language indicates a passive form of *inuy*. Furthermore, the context of the *mitzvah* indicates that the type of *inuy* carries a penalty in other situations. The Talmud also derives from the use of the words: *Veha'avadeti es hanefesh*, ([Hashem] will destroy the soul [of one who violates *Yom Kippur*]), that the self-affliction has to do with what is needed to sustain life. *Nefesh* is used in context of the life force. Therefore, the Talmud shows that the intended *inuy* is to refrain from eating and drinking.

The Talmud adds another four *inuyim*: refraining from bathing or washing the body or any part thereof; rubbing and smearing the skin with oils and lotions; having marital relations; and wearing shoes. Nonetheless, even if they are Scriptural, since only eating and drinking can be considered *inuy* of *avaidas hanefesh*, they are the only ones that carry the penalty of *kareis* or *malkos*. However, the *poskim* maintain that one who violates the other *inuyim* is punishable with *makas mardus*, lashes for rebelling against the rulings of the Rabbis.

The Talmud connects the additional *inuyim* to *pesukim* throughout Tanach. There is a debate on where the Torah indicates the additional *inuyim*. One source cited by the Tal-

and is the word *shabason* in juxtaposition to the *inuyim*. In the context of *Shabbos*, this word is the source for what are known as *shevusin*. These are additional restrictions besides the *melachos*. Generally, *shvus* is used when referencing rabbinical decrees. The Rabbis had the power to institute passive refrain from certain activities. In our context, it appears to indicate the empowerment of the Rabbis to institute additional *inuyim*. It would seem that the restrictions are instituted by the Rabbis but are then sanctioned by the Torah. We find similar cases where the Torah leaves details to be determined by the Rabbis, but the framework is Scriptural. [There is a view that *shevusin* on *Shabbos* are in this category.] Nonetheless, these *inuyim* do not carry a Scriptural penalty. There is an opinion that the use of the term "*shvus*" indicates a rabbinical restriction without the gravity of a Scriptural source. [All Rabbinical restrictions are backed by the Scriptural *mitzvah* to follow the Rabbis. Thus, indirectly, they are all Scriptural. However, Rabbinical institutions have in-built leniencies over Scriptural ones.]

The other source implies that the *inuyim* are hinted at by the use of the word for *inuy* five times in The Torah in reference to *Yom Kippur*. [eating and drinking are considered one *inuy*.] The Talmud proceeds to derive from other sources which other self-afflictions are meant by the Torah. The fact that some of the sources for these are not found in the Torah, but rather in other *seforim* of Tanach, couples with unusual terms used by the Talmud. Lead many poskim to consider this source *asmachta*. That is, the institution of the additional *inuyim* is strictly Rabbinical, but can be linked to *pesukim* for support.

One commentary focuses on a difference between the two sources for the other *inuyim*. According to the first source, the Torah uses the word "*shabason*", and according to the second, "*inuy*". Women are usually exempt from positive time-bound *mitzvos*. The Talmud includes women in the prohibition by interpreting the word "*ezrach* (native resident)" used in connection with *inuy*, but not with *shabason*. Thus, it does not apply to the other *inuyim*, and women should be exempt. The other source, basing itself on another use of the word "*inuy*", would include women. If, however, it is a Rabbinical institution, women would definitely be included. Others maintain that women would anyhow be included in *shabason*, although it is a positive *mitzvah* and is time-bound. Since it is fulfilled passively, it is like a negative *mitzvah*. [See Yuma 73b-74b 76a-77b, Poskim. Tur Sh Ar OC 614, commentaries. Chinuch 313, Minchas Chinuch.]

B) Neilas sandal

The Talmud derives from the way David Hamelech suffered afflictions as he fled the uprising of Avshalom, that walking barefoot is considered *inuy*. Thus, the ideal would be to remove one's shoes on *Yom Kippur* and to walk barefoot. However, the Talmud discusses wearing shoes made of reeds or their derivative materials. Accounts are given of sages and scholars who used such shoes, as well as shoes made of materials such as woven palm leaves, and of wearing thick cloths around their feet. This is one source to permit any type of footwear other than leather, which provides both protection and comfort. Thus one is "barefoot" as opposed to wearing leather shoes or sandals. Another source reconciles a variation in texts of a semi-Mishnaic source by saying that leather is forbidden, even for socks, while other materials are permitted, at least for socks indoors.

In actuality, at least different views are expressed by the poskim. All are based on the Talmudic definition of *min'al*, shoe. In the first view, the Talmud only considers leather shoes a *min'al*. All other materials are not forbidden. The second view considers wooden shoes a *min'al* as well, but permits any other materials. The third view considers anything that offers protection to the foot a *min'al*. Thus, a shoe or sandal of any material that protects the foot from the ground, even if it is not comfortable, is forbidden. A fourth view seems to use a different determining factor. This view maintains that the reason other materials are permissible is that one still feels a little barefoot when wearing them. He feels the ground through them. This view seems to consider the critical factor the comfort of not walking barefoot. However, the other materials might offer the same comfort as leather. Therefore, it is unclear when or why other materials are permissible according to this view. One interpretation offered is that the other materials are indeed only permissible if they do not offer thick protection.

The other view seems to consider the critical factor to be the definition of a shoe. This is based on other instances where shoes are defined. These include the fact that a shoe of leather defines the domination of humankind over the animal kingdom. It is improper to wear such shoes at a time when man is meant to lower himself, such as in mourning, penitence, self-affliction and in the presence of the *Shechinah*, divine Presence. Other *kabalistic* reasons are given, based on the Hebrew *ne'ilah*, which means, in our context, wearing shoes. Another instance is found in the Torah for the *mitzvah* of *chalitza*. This is removal of a man's shoe by the widow of his brother who passed without leaving offspring. In a further instance, one may not wear something in the public domain on *Shabbos* unless it fits the criteria of clothing. Regular leather shoes are considered clothing. Other forms of foot covering might not be. Wearing them on *Shabbos* in a public domain amounts to carrying. The Talmud discusses the correlation between the various instances, particularly with regard to shoes of wood or other materials.

As a result of the various debates and views expressed by the poskim, we follow the majority ruling that shoes made of leather or of wood with a leather covering are forbidden. If the seams of shoes of other materials are reinforced with leather, they are also forbidden. Some poskim also forbid shoes that are even partially coated with leather. Presumably, these also show the glorification of mankind. The majority permit shoes of other materials including wood. A minority suggest stringency on shoes that offer full protection. [See *Shabbos* 65b 102b Yuma 78a-b Yevamos 102b-103b, Poskim. Toldos Adam (Ramban), Avaius, Neilas Sandal. Shela, hilchos teshuva, Torah Or & commentary on Brocha She'asa li ... Tur BY Sh Ar OC 614:2, Taz etc. GRA Ar Hash Mate Efrayim 2, commentaries.]

C) Dispensations from inuy

the Talmud gives two types of person a dispensation from the restriction against wearing shoes: a mother within the first thirty days of childbirth; and one who is in danger of being bitten by a scorpion. The second dispensation is the subject of much debate. Some maintain that the issue is not the permissibility of wearing shoes. Rather, it is the permissibility of wearing something else for protection, even though it is not true "cloth-

ing". However, the ruling we follow is that it is considered a dispensation for situations of danger. If the walk to *shul* involves wading through mud, the poskim also permit wearing shoes. This is especially true since cleaning one's feet of mud involves washing, a different *inyu*. Another reason is that some people are *istanis*, delicate and could get sick from the emotional or psychological feeling of the rain and mud. Thus, it is considered medically necessary. The poskim say that not everyone may just claim he is *istanis*. In modern times, when shoes of other materials are easily available, many poskim do not permit leather shoes for this purpose.

The dispensation for a new mother is to protect her from catching cold. Based on this, plus the suspension (dispensation) for cases of danger or risk of injury, the poskim permit one who has a foot injury to wear a shoe. If both feet are injured, he may wear both shoes. This is to protect him from further injury.

The Talmud forbids one who has had his foot amputated from wearing his artificial foot or crutch if it is made of or covered with leather. This, however, does not pose a contradiction to our scenario, in which the person with the injury may wear the shoes. The amputee has a healthy stump, which, it is presumed, will not be injured if he does not wear his leather shoe. Presumably, if he has had to make a fitted shoe, specially of leather, to protect his stump from further injury, he may wear it.

Some poskim recommend following the minority view that forbids any comfortable shoe. Others maintain that *Yom Kippur* is still *mikra'ei kodesh*, a type of *Yomtov*, regarding dress. One may not add *inyuim* to those required by *halacha*. [On Tisha b'Av one may practice stringency.] Furthermore, some poskim maintain that nowadays, since we have the possibility of wearing comfortable man-made sneakers, a new mother or anyone with one of the aforementioned dispensations should wear man-made sneakers rather than leather shoes. This would not help in our case, where the leather shoes are custom-made.

According to the view considering the four additional *inyuim* to be Rabbinical restrictions, anything done for healing, or simply not done for enjoyment, is not included in the restriction. Accordingly, the person who has a foot condition would qualify as one who needs to wear the special type of shoe. Those who consider it Scriptural still might give the Rabbis broad discretion in applying it. They would permit it in cases similar to the Talmudic case of a new mother. These orthopedic shoes are meant to protect from pain, which will cause the patient to adjust and probably injure his feet more. He is may certainly be considered as much in need of the dispensation outdoors and the *istanis* in the rain and mud. [See Yuma (77a, Tosafos) 78b, Poskim. Tur Sh Ar OC 614:2-4, commentaries. Nitei Gavriel Yom Kippur 47:7 11-14, notes. Mekadesh Yisroel Yomim Noraim 324-325.]

In conclusion, the patient may wear his orthopedic shoes to walk to *shul*.

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גמר חתימה טובה ה' תש"ט of Tishrei.

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