

# HALOCHOSCOPE

**This week's question:**

A town has a *minyan* of ten *shomrei Shabbos*. A number of *mechalelei Shabbos* join the *minyan*. May one of the *shomrei Shabbos* leave town for *Yomtov*, leaving behind a *minyan* that will need to rely on a *mechalel Shabbos*?

**The issues:**

- A) *Minyan, tefilah betzibur*
- B) Qualifications for *minyan*
- C) Leaving town when part of a *minyan*
- D) *Mechalel Shabbos befarhesia, public desecrater of Shabbos, for minyan*

A) *The minyan* [excerpted from Halochoscope XIX:09 16]

*Tefilah betzibur*, communal prayer service, is highly recommended by the Talmud. If one cannot join a *tzibur*, he should *daven* alone at the same time that the *tzibur daven*s. However, there is a question whether it is indeed an **obligation** in its own right. Clearly, if one is unable to pray with a *minyan* he must still pray privately. The only occasion when this is even debated by the Talmud is regarding *Musaf*. However, the question is, is it a *chiyuv*, strong obligation, a *mitzvah*, or simply a *maaleh*, advantage?

The most obvious advantage of the *minyan* is that *kadish, kedusha* and *borchu* may only be said with a *minyan*. However, even if one is not together with the *tzibur* in their location, he still gains an advantage by *davening* with them, at the time of their service. This time is an *ais ratzon*, time of Divine benevolence. Hashem is 'open' and positively disposed at this time. Some say that this is because a large group has approached Hashem at this time, or because when a *minyan* assembles, and are qualified to say *devarim shebikedusha*, the *Shechinah*, Divine Presence, is present, or that at this time, all *tefilos* are gathered up together, including those of one was not present with the *tzibur*.

If ten are needed for the reciting of *devarim shebikedusha*, there is something about the number ten that has in it the secret of the sanctity of Hashem in it. When a group does a *mitzvah* together the combined efforts add up to much more than the sum of the parts. Furthermore, just as each member of a team contributes a unique part, a group of Jews has different parts to it. Each contribution to the whole makes a difference in the result. The complete group is able to accomplish some things that none of the individuals can do by themselves. This is learned from the inclusion in the blend of incense in the *bais hamikdash*. One ingredient had a natural bad odor. It was added in, according to some, because when combined with the others, it brought out hidden qualities in them, and they brought out hidden benefits in it. The *tzibur* has a special quality of its own. Even if individuals are unable to focus and concentrate on their personal *tefilos*, when said with a

group, the group's *tefilah* is accepted. Often a group includes some who are not deserving. Yet, in general, a group is judged by its majority.

*Tefilah* is to make one's voice heard by Hashem. There is a chance that when *davening* alone it will not be heard. With a *tzibur* there is a guarantee that it will be heard. It follows that one is obliged to *daven* with a *tzibur*. Thus, the Talmud does not specify the obligation, but highlights the advantages. Furthermore, since one fulfills a *mitzvah* when *davening* alone, the Talmud, and later on, the poskim do not use terminology that implies that there is something wrong with *davening* without a *minyan*.

Perhaps the *mitzvah* of *tefilah* is essentially different when done with a *tzibur*. *Tefilah* is *rachamei*, to plead one's cause, or *avoda*, service of Hashem with the heart, or both. There is a big difference between one presenting it as an individual and a group presenting the *rachamei* of the entire Israel. There is a difference between individual *avoda*, such as an individual's offering in the *bais hamikdash*, and the *avoda* of the *tzibur*. Therefore, there is an additional obligation on anyone who is part of the *tzibur*.

When traveling, one is obliged to go a certain distance out of his way in order to catch a *minyan*, but no further. As a *maaleh*, it would not make sense to oblige one to make accommodations for it. Furthermore, how could one be exempted if the *minyan* is past than the limit? In summary, it is certainly an advantage, apparently a *mitzvah*, and possibly an obligation to participate in *tefilah betzibur*. To qualify as *tefilah betzibur*, some suggest that one must begin with the *tzibur*. Some say as long as one is generally saying his personal *shemone esrei* in a group setting, at approximately the same time, it counts as *tefilah betzibur*. [See Brochos 7b-8a 21a-b 30a-b, Megillah 19b, Poskim. Tur, B.Y. Sh. Ar. OC 55:22 (Rema), 90:9, etc. commentaries. Bais Elokim II:11. Igros Moshe OC II:27, III:4 7.] [See Nidah 4a, Poskim. Tur Sh Ar OC 467:11, YD 105:1 (Taz 3, PMG) 84; Darkei Teshuva 72 133 136 139, commentaries.]

#### **B) Qualifications for a minyan**

Only those strictly obligated in the service may be counted into a *minyan*. This includes adult Jewish males. Gentiles, *avadim*, servant slaves of a Jew whose original lineage is gentile but attain quasi-Jewish status, women, and minors are not obliged to *daven* with a *minyan*. Therefore, their voluntary attendance, though commendable, does not add to the minimum number required. In a sense, each participant in a *minyan* is exempting all the others of their own obligation. This is similar to one who recites *kiddush* on behalf of others assembled. Only one who is obligated himself can discharge the obligation of the others. [See Tomer Devorah i(:4, Lische'airis Nachalaso)]

The Talmud and poskim debate certain situations wherein a quasi-obligant or other holy entity can be counted as the tenth. Nine members are present whose obligation is definite. The tenth is one of these questionable cases. They are: an *eved*; a baby in his crib; the *aron hakodesh*; and nine people in a room situated in a way that they could be mistaken for ten. In turn, some say this means that they are spread out, so people can lose count. Some say they are crowded together, so people could view them as a larger group. We do not generally follow the lenient view, at least not for *tefillah*. The poskim debate combining two of these cases, where a minor holds a *sefer Torah*, or a *chumash*. Some

rely on this in emergencies. There is even a view to include a woman as the tenth "man". [This would apply in specific situations where she could be in the same room while the men are *davening*, such as when the men are her father, husband and sons.]

We do not include any of these quasi cases, but the concepts show that there is some leniency regarding the tenth man. Nine men plus can also work, sometimes. The question is, how strong should the substitute *kedusha* of the tenth participant be?

The basis for *minyan* is the presence of the *Shechinah*. Therefore, if one congregant is unable to actively participate, such as a sleeping member, most poskim agree that the *minyan* is still valid. Some poskim do not recognize a sleeping congregant. However, they recognize one who cannot participate to respond because he is in the middle of his own *tefilah*. There are junctures during one's private *tefilah* at which one may not interrupt to respond *amein* and the like. This person is normal and competent but practically unable to participate verbally. This is not considered an obstacle to his being counted. Furthermore, he may usually fulfill his obligation anyhow, according to many poskim. *Shomaia ke'oneh*, one who hears is as good as one who responds. Thus, he is indeed participating. One who is asleep might be healthy and normal, and only physically unable to answer. However, he is not fulfilling anything, since he does not listen. In addition, he could be awakened. Therefore, his "condition" is correctable.

Other exclusions include a *cheresh*, deaf mute, and a *shoteh*, an imbecile. These are considered incompetent due to their condition. They are thus exempt from all *mitzvah* obligations. No other physical handicaps disqualify one from being counted as one of the ten. The Talmud says that a convert who has been circumcised but has not yet immersed cannot be included. This implies that one might have otherwise included him conceptually. However, this passage is reinforcing the ruling that both of these processes are necessary to validate a conversion. Since we flow this view, as opposed to the view that either one can work, this is really obvious.

The poskim mention situations of *safek*, a doubt about the eligibility of a particular congregant. A classic case is one whose exact birthday is not known, or who was born *bain hashmashos*, at twilight. What is his status on the day he might be *bar-mitzvah*? Another example is a borderline *shoteh*. In such circumstances, some invoke the concept of *safek derababnan lekula*, in a doubt about Rabbinical law one tends to leniency. The requirement of *tefilah* might be Scriptural, but the requirement of *minyan* is Rabbinically instituted. [See Brochos 21b 47b-48a, Poskim. Tur Sh Ar OC 55:1-9, commentaries.]

#### **C) Leaving town without a minyan**

Members of a community must ensure the continuity of the *minyan*, similar to the *korban tamid*, which was to be brought every day without interruption. A community has the power to compel members to follow certain rules. This is based on a Rabbinical ordinance to support critical elements of the community. This includes payment for *shul* and its functionaries, including when necessary hiring a *minyan*. Included in this are customs and conventions that can be expected of any community. Therefore, if a community member wishes to leave town for the *Yamim Noraim*, when everyone has a *minyan*, he must ensure that a *minyan* remains. If there are ten members, one may not leave unless he

hires a replacement. If there are eleven, and two leave, they partner to pay for the replacement, and so on. Our question is twofold: does this apply to other *Yomim Tovim*? Does it apply when there will be a *minyan*, but it will rely on *mechalelei Shabbos*. The answers to both depend on the conventions. It seems common today to expect a *minyan* for *Yomtov*. Therefore, it would apply to every *Yomtov*. [See Bava Basra 7b-8a, Poskim. Tur Sh Ar OC 55:21-22 CM 163, commentaries.]

#### **D) Mechalel Shabbos befarhesia participating in a minyan**

Under normal circumstances, any Jew is *muchzak bekashrus*, considered an observant Jew, and is qualified to perform on behalf others or to testify as a kosher witness. However, our situation raises the issue of *abaryan* or *mumar*, a known habitual violator. One who violates *mitzvos* can lose his *chezkas kashrus* for other purposes. Violations can be *shogaig*, unintentional, *maizid*, intentional but not necessarily habitual, or a *mumar*, literally, exchanged – having exchanged his religion. *Mumar lechol hatorah*, violator of the entire Torah, *leavoda zara*, idolater, *lechalel shabbos befarhesia*, public desecration of *Shabbos*, or one who professes not to believe in the words of the sages, is equated with a gentile regarding certain *halachos*. Many of our uneducated brethren nowadays are considered *tinokos shenishbu*, captive from childhood, rather than *mumar*. Their violations are considered *shogaig*. There is also a view that public desecration of *Shabbos* was once considered the worst violation. It meant that the perpetrator was inevitably involved in violating everything else. Nowadays, unfortunately, it is the first thing people violate.

Given this situation, a consensus of poskim validate the *minyan* even if it includes *mechalelei Shabbos*, even on *Shabbos* when they had to be *mechalel Shabbos* to get there. Nonetheless, it is extremely *bidieved*, not ideal. If one *shomer Shabbos* in this town goes away, the other nine are relying on the *bidieved* situation. There does not seem to be any specific requirement on who the leaver hires as his replacement. He needs to be a qualified *minyan* member. Based on the discussion, this includes *mechalelei Shabbos* as long as they are not brazen and intentional. Their disqualifying status might also be a *safek*. [See *Shabbos* 68b Eruvin 69a-b Sanhedrin 27a Chulin 5a, Poskim. Tur Sh Ar OC 55:11, Piskei Teshuvos. 189, MA 1. 385. YD 2 119 124 159 251, EH 123:2 141:33, commentaries. Divrei Binyomin #5. Tzitz Eliezer VIII:17-20. Igros Moshe OC I:33 II:40.]

In conclusion, he may leave for *Yomtov*. If the remaining nine hire a *shomer Shabbos* to attend, they cannot force the leaver to pay a share. He could be nice and do so!  
**On the parsha ...** *The fire on the altar should burn on it, it may not be extinguished. The Kohain shall burn wood on it every morning, every morning ... Aish tamid, a continuous fire, must burn on the altar, it may not be extinguish. [6:5-6] Why is this repeated? Why repeat the morning? [see commentaries]* Although fire came down from heaven, there was a *mitzvah* for a human to light it. Repetition emphasizes that it is not the existence of the fire, but the act of kindling and preventing extinguishing. Maintaining continuity of the *minyan* is more for the one attending than for the community. He must keep his personal active *tamid* going continuously.

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