

CENTER FOR MODERN TORAH LEADERSHIP

Center for Modern Torah Leadership



חרות ואחריות

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"Taking Responsibility for Torah"

A SECOND OPINION ON SECOND OPINIONS

Rabbi Aryeh Klapper, Dean

Dear Rabbi Klapper,

I am an American student spending a second consecutive "gap year" in Israel. At the beginning of my shana aleph I called my shul rabbi about observing yom tov sheini. He told me that his stance is to keep two days. I felt it was anti-halakhic for me to ask a rabbi in Israel who I knew would tell me one day, so I followed the opinion of my shul rabbi for all of the chagim.

This year I am increasingly resentful about keeping two days. The second day does not feel like yom tov, and because I have to find places where I can observe both days, the options for where I can go are limited. The limited options thereby impact the first day of chag as well, which means that both days suffer.

I am contemplating asking a different rabbi (whose position I don't know) for a second opinion. Can I?

Thank you!

*G'mar chasimah tovah,
Yana Tzviyah*

Dear Yana,

It sounds to me like your shul rabbi was properly careful not to pasken for you – he told you his stance, not what you must do. Perhaps (to his great credit) he realizes that a serious gap year in Israel is an enormously maturing experience, in which young people find new mentors and role models, and that it would be appropriate for him to disclaim any ongoing authority over your religious life, even if you were willing to grant it to him.

In any case, it doesn't sound like you asked him for a life-psak, but rather for term-limited guidance. I don't believe that a psak could be binding on you for a shanah

bet you had not yet committed to. Finally, as he and you are both aware, many of those who hold "two days" in principle would not apply that psak to a student spending a second consecutive year in Israel, especially if she had stayed in Israel for all the regalim.

So yes, I believe you can ask for a second opinion.

That's the easy part.

The harder part is: What should you do next?

You mention that you "felt it was anti-halakhic for me to ask a rabbi in Israel who I knew would tell me 'one day'". The colloquial term for this is "shitah-shopping", and I validate your sense that it lacks integrity.

On the other hand, what are your other choices?

You say that you're considering asking a second rabbi, whose opinion you don't yet know, for an opinion. I think you mean that you're looking for a rabbi to ask whose opinion you don't know, even if he wouldn't otherwise be your first choice.

That does seem better at first glance, but I'm not convinced that it is pointful. If you ask for advice rather than a psak, you're really just playing a game, as you'll keep asking until someone gives you the "one day" answer. And if you ask for psak, why is it religiously edifying to play halakhic roulette? Why should the answer of this particular rabbi be binding on you, if you have no particular reason to live within his subjective vision of Halakhah generally, or of yom tov or Israel/galut issues particularly?¹

Here it may be useful for me to share an element of my halakhic autobiography.

Some years ago, an engaged SBM alum called me with "the birth control" sheilah; could he and his fiancée plan to

¹ Here I am leaving open two other possibilities, namely that you **are** choosing this posek because there is a specific reason to be bound by his or her opinion on this specific issue, or that you are more broadly shifting from your shul rabbi to this posek (or poseket) as your primary halakhic mentor/consultant. Each of these possibilities deserves separate extended treatment.

use contraception for the opening year of marriage, so that she could finish her degree before dealing with childcare? He reminded me that in SBM I had argued that requiring couples to ask for a *heter* (formal halakhic permission) made them understand the seriousness of the question better, even when they knew that a *heter* would be forthcoming *if they asked*. But he said that it wasn't working for him that way – it felt like he was manipulating the system by calling me, especially as he did not call me often for psak.

His self-description still reverberates for me. It changed my approach to the birth-control issue specifically, and made me rethink the whole question of how to deal with sheilot when both I and the shoel are aware of a variety of contradictory answers, each held by numerous reputable poskim. Certainly that is the case with regard to your issue – both you and I know that very great halakhists hold “two days”, “one day”, and even the misleadingly named “one and a half days” position (which seeks to avoid yom tov prohibitions while davening chol prayers etc.).

Here a second element of halakhic autobiography is relevant. I spent a year of YU Semikhah at the Gruss Center in Yerushalayim, when I was 22 and had just about no experience of halakhic decision-making. I faced the same issue as you, and ended up following the “1.5 day” position out of kavod for Rav Lichtenstein zt”l’s well-known position.² I was aware that Rav Amital zt”l held “1 day”, but in my family circles everyone held two days. There was a certain transgressive thrill in visiting with my charedi American relatives at their hotel on Yom Tov Shenit in weekday clothes; I’m not sure I could have dealt with doing melakhah in front of them.

7 years later, I came back to Israel for Pesach as a newlywed. My wife’s family was in Israel for the year, keeping one day.³ Deborah, my wife, very much wanted to do the same, which was also the position she had followed during her gap year.

I was very uncomfortable changing from Rav Lichtenstein’s view, even though I had never found it intellectually convincing – indeed, Rav Lichtenstein did not present it as intellectually coherent, but rather as a gesture of respect to the great poskim who held 2 days. But my in-laws bought me my first Bar Ilan Responsa Project CD on erev Pesach, and I very much wanted to play with my new toy. So I had my sister-in-law (who was keeping one day) type the queries in for me on the second day. In the end I became convinced that the one-day position was absolutely correct (see http://torahleadership.org/categories/yom_tov_sheni.pdf), and I paskened accordingly the week after we returned home, for someone else. (My wife is still upset about this.)⁴

This was perhaps the first time that I had paskened for someone else on the basis of my own interpretation of primary sources. I think I was willing to do it because there was a clear safety net. Even if my readings were completely mistaken, there was no doubt that the outcome was respectable.

The price of that safety net was the risk of arrogance – wasn’t it chutzpah to believe that I had compelling evidence on an issue on which far greater minds than mine had been debating for hundreds of years? But I thought (perhaps mistakenly) that I had genuinely new arguments, and also evidence that had been overlooked by or unavailable to many poskim. Moreover, this evidence supported the intuition that Rav Lichtenstein had expressed, as a tradition from his rebbe the Rav, as a tradition from his grandfather Rav Chaim Brisker, that the one-day position was correct.⁵

I therefore encourage you to read and understand an article (or as many articles as you can) that lay out the technical halakhic issues well, and that enable(s) you to understand what fundamentally drives each position, or to at least understand one of the key drivers for each position. I suggest also that you talk through the non-halakhic issues with someone (or many people) whose religious insight you trust. If you do both of these, I think that this can be an

² whom I saw myself as “in the presence of”, and therefore felt unable to decide for myself on (informal) *moreh balakhab bifnei rabo* (issuing a halakhic ruling in the presence of one’s primary teacher) grounds.

³ I believe this was the pesak they had received from Rav Simchah Kuk,

⁴ I’m leaving aside the question of why she felt bound to follow whatever psak I followed on this issue.

⁵ As I understand it, the Soloveitchiks and Rav Lichtenstein followed the 1.5 day position because they thought it would be arrogance to decide for the one day position on the basis of intuition alone.

opportunity for you, as it was for me, to dip a toe in the sea of serious psak.

I want to make clear, though, that yom tov sheni in Israel belongs to a limited class of cases, in which (at least within the Religious Zionist community) multiple great poskim legitimate each of a set of contradictory positions, and maintain their positions in full awareness of each other's critiques. Not every intellectually plausible halakhic argument can be used as the basis for action; in order to justify action, it also needs to be acknowledged as a basis for action by people with halakhic authority, aka poskim.⁶ Nothing I say here contradicts or is even in tension with that.

At the same time, I am not a fan of the pure “aseh lekha rav” model, which requires everyone to pick a single halakhic authority and following them consistently.

First, having a rav does not remove anyone's moral and spiritual responsibility for their own decisions. If the posek you first pick turns out to be a “bad shiddukh”, whether for subjective or objective reasons, you must find someone better for you. (And I believe that your first posek's decisions will not bind you, especially if you ask for hatarat nedarim.)

Second, it makes no sense to ask somebody for a binding psak unless you have a reason to prefer their judgment to yours, and to the judgment of others whom you could ask and whom you know would give a different answer. So don't pick a rav just because you think you have to. That's a bad idea with all sorts of shiddukhim.

But in the absence of a designated rav *muvhak*, how can non-poskim make halakhic decisions? I hope we'll have occasion to discuss that soon.

Bivrakhah,
Aryeh Klapper

⁶ Obviously this begs the question of how such authority is achieved, maintained, and recognized.