

## 1. May women get their hair cut on חול המועד?

Case:

A young recently married woman has a favorite hairdresser in her parent's city; she has not let anyone else cut her hair for years. Her only scheduled visit for the next six months is for Pesach, and the hairdresser has no appointments available before yom tov. May she have her hair cut on chol hamoed?

Discussion:

Men are forbidden to shave on chol hamoed, so as to ensure that they shave before the first Yom Tov<sup>1</sup>. According to Shulchan Arukh 546:5<sup>2</sup>, however, women may do all their usual cosmetics on chol hamoed. This general statement is followed by a list of specifics relating to makeup, hair arrangement, and hair removal, with the last being "she may draw a knife across her forehead". This may refer to shaving eyebrows, but as the use of "knife" rather than "razor" is anomalous if the reference is to shaving, it may instead refer to trimming bangs.

Shulchan Arukh's list is rooted in Mishnah Moed Kattan 8b<sup>3</sup>, as glossed by a beraita on Talmud Bavli Moed Kattan 9b<sup>4</sup>. However, there seem to be at least two important ways in which he diverges from the original. The first is that the beraita's language suggests that it is offering a comprehensive list of permitted cosmetics, whereas Shulchan Arukh seems clearly to be providing only a noncomprehensive series of examples. The second is that the last three items of Shulchan Arukh's list are not in the beraita.

I suggest that these differences are interrelated. Once Shulchan Arukh felt compelled to add cases not found in the beraita, he had no basis for believing that there were not more cases as well. Furthermore, it seems reasonable to assume that the cosmetic techniques of his time

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### שולחן ערוך אורח חיים סימן תקמו סעיף ה

עושה אשה כל תכשיטיה במועד –

כוחלת ופוקסת (פיל' מחלקת שיערה לכאן ולכאן רש"י),  
ומעברת סרק על פניה,

וטופלת עצמה בסיד וכיוצא בו;

והוא שתוכל לסלקו במועד;

ומעברת שער מבית השחי ומבית הערוה, בין ביד בין בכלי,  
ומעברת סכין על פדחתה.

A women may put on all her adornments on chol hamoed: She may put on eyeshadow and comb her hair from side to side, and ? and ? and other such things; but this is only if she can remove them on chol hamoed: and she removes hair from the underarms and from the groin, whether by hand or by tool, and she may pass a knife over her forehead.

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### תלמוד בבלי מסכת מועד קטן דף ט עמוד ב

"ועושה אשה תכשיטיה" –

תנו רבנן:

אלו הן תכשיטי נשים:

כוחלת ופוקסת ומעבירה [סרק] על פניה.

ואיכא דאמרי:

מעברת סרק על פניה של מטה.

differed somewhat from those of the Talmud, and that, once the beraita's list was not comprehensive, he saw no interest in banning new or future techniques.

The question then is from where he derived the cases not found in the beraita..

It seems likely, on the basis of Beit Yosef<sup>5</sup>, that Shulchan Arukh derived the permission for removal of underarm and pubic hair from Rambam<sup>6</sup> rather than directly from the version of the Talmud he possessed. While at least the permission to remove pubic hair was in Rosh's Talmud<sup>7</sup>, and the permission to remove underarm hair may have been in Rambam's<sup>8</sup>, neither appears to have had a version of the Talmudic text that had all three permissions. Shulchan Arukh therefore reasonably saw the rishonim as having added to the list in the beraita, and concluded that the list was not intended to be comprehensive.

Nonetheless, Mishnah Berurah<sup>9</sup> vites GRA and Pri Megadim as arguing that if Shulchan Arukh had believed haircutting and/or headshaving to be permissible, he would have listed them explicitly. This *diyuk* (deduction on the basis of close reading) is the basis for forbidding women's haircutting on chol hamoed. We therefore need to decide whether this reading, and the authorities behind it, are dispositive. Let's look first at Pri Megadim.

Pri Megadim<sup>10</sup> states that Shulchan Arukh's statement that a woman may "remove underarm hair and pubic hair" implies that women, like men, may not shave their heads on Chol HaMoed. He notes, however, that this seems counterproductive, as follows. The rabbis prohibited headshaving for men on chol hamoed so that they would be sure to shave their heads in advance, and not enter the festival in a state of *nivvul* (repulsiveness). But extra head-hair does not put women into a state of *nivvul*; rather, it adds to their beauty!?! Really, we should discourage women from shaving their heads before Yom Tov, rather than encouraging them.

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**רמב"ם הלכות יום טוב פרק ז הלכה כ**  
מותר ליטול שפה בחולו של מועד,  
וליטול צפרנים,  
ואפילו בכלי,  
ומעברת האשה השיער מבית השחי ומבית הערוה,  
בין ביד בין בכלי,  
ועושה כל תכשיטיה במועד:  
כוחלת ופוקסת,  
ומעברת סרק על פניה,  
וטופלת עצמה בסיד וכיוצא בו,  
והוא שתוכל לקפלו במועד.

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<sup>9</sup>(טז) ומעברת שער מבית השחי וכו' - אבל מראשה אסור גילוח ותספורת בחוה"מ באשה כמו באיש [הגר"א ופמ"ג]:

<sup>10</sup>**פרי מגדים תקמו:ט**

"ומעברת" -

עמ"א (כלומר שמעברת השער בסכין).

ומשמע לגלח ראשה אף באשה אסור בחה"מ כמו באיש,

אף על גב דל"ש בה נוול, דאדרבה שער באשה בראשה נוי,

ושער פדחתה מותר בסכין דקישוט הוא.

At first glance, Pri Megadim does seem to support Mishnah Beurah's halakhic position. However, more careful examination shows that Pri Megadim forbids headshaving, but never mentions haircutting. Why not? There are three possibilities:

- a) He sees haircutting as identical with headshaving, and therefore feels no need to mention it
- b) He does not consider haircutting relevant to women
- c) He specifically intends to permit haircutting.

It seems unlikely that he intends to equate headshaving and haircutting, because unlike headshaving, haircutting is intended to improve women's appearance. Furthermore, if haircutting is forbidden, he could have explained the prohibition against headshaving as subsidiary to that, as simply a bad haircut.

However, it also seems unlikely that he intends to permit haircutting. Pre Megadim's whole argument is that Shulkhan Arukh mentions underarm and pubic hair removal, but not head-hair removal, so he must forbid the latter – what basis does that give him for distinguishing between headshaving and haircutting?

That leaves b) – but is it really plausible that Pri Megadim could not imagine women simply cutting their hair? The answer to that, I believe, is yes. My evidence is that Rosh Moed Kattan 3:23<sup>11</sup>, in the context of discussing what forms of hair removal are permitted to women during mourning, states explicitly that “it is not relevant to mention haircutting with regard to women, as they grow their hair like a Lilith (i.e., very long)”.

While the comparison to demoneses seems gratuitous, and in its original context does not seem intended to flatter, Rosh clearly states that women simply do not cut their hair, and therefore failure to mention that case proves nothing one way or the other. This seems to me the most likely explanation of Pri Megadim's silence here.

What practical halakhic outcome results from this explanation of Pri Megadim? One might argue that since Pri Megadim applies the decree against headshaving to women, he would naturally extend to cover haircutting as well, but this would be a misconception. Rather, the Halakhah according to Pre Megadim is that the decree banning cosmetic procedures on chol hamoed never applied to women. Thus it is precisely because headshaving detracts from their appearance that it can be forbidden to them; while there is no intrinsic reason for the prohibition

#### <sup>11</sup>רא"ש מסכת מועד קטן פרק ג סימן נג

תניא באבל רבתי (פ"ז): לכל ל' יום אסור בתספורת אחד ראשו ואחד זקנו ואחד כל שער שיש בו ואשה מותרת בנטילת שער לאחר שבעה,

וגרסינן בפרק החולץ (דף מג א) בענין:

רבי יוסי אומר: כל הנשים יתאסרו חוץ מן האלמנה מפני האיבול, וכמה איבול שלהן? שלשים יום. אמר רב חסדא: ק"ו - ומה במקום שאסור לכבס ולספר מותר לארס, שלשים יום של איבול שמותר לספר ולכבס, אינו דין שמותר לארס?

וש"מ שהאשה מותרת בנטילת שער כדקתני באבל רבתי, וכן כתב בה"ג דאשה מותרת בנטילת שער. וקשה לדברי האלפסי: דאי אשה מותרת בנטילת שער לאחר שבעה, דלמא שריא נמי בשבת של ט' באב?!

ועוד, דנטילת שער שמתיר באבל רבתי באשה היינו ע"י טיפול סיד כדי שלא תתגנה על בעלה, ותספורת לא שייך להזכיר באשה דמגדלת שער כלילית?!

ועוד הקשה הרמב"ן ז"ל: דהל"ל שאסורה לספר ולכבס ומותרת לארס, וגבי ל' יום של איבול היה צריך להזכיר שמותרת לספר ולכבס, דתניא: "האשה מותרת בנטילת שער לאחר ז'", שאין הדבר ידוע ופשוט כל כך להקשות סתם בלא הזכרת הברייתא?!

ורש"י לא גרס התם "לספר" אלא "לכבס", והכי פירוש: שאסור לכבס שבת של ט' באב, דאסורין ללבוש כלים מכובסים אפילו ישנים ואפילו אינם מגוהצים, ל' של איבול, דאינם אסורים אלא בכלים חדשים מגוהצים, וכן עיקר:

to apply to them, there is also no reason it should not. Haircutting is a cosmetic improvement, however, and the rabbis explicitly exempted women's cosmetics from this decree.. I therefore suggest, contrary to Mishnah Berurah, that Pri Megadim probably permits haircutting for women on chol hamoed. There certainly is no evidence that he forbids it.

Unlike Pri Megadim, Mishnah Berurah's other source, the GRA<sup>12</sup>, does explicitly forbids women to cut their hair on chol hamoed. He bases himself on the same *diyuk* as Pri Megadim, namely that the specific permission for women to remove body hair suggests that they are not permitted to remove head hair. However, whereas Pri Megadim thought of women's cosmetic haircutting as oxymoronic, GRA says that the decree against haircutting on chol hamoed applies to women as well as and for the same reason that it does to men, namely so that they do not enter the holiday unkempt.

How much halakhic weight does this position of GRA carry? We must first note that GRA here is primarily engaged in commentary rather than psak. His purpose is to justify Shulchan Arukh's permission for women to shave underarm hair on chol hamoed. He suggests that Shulchan Arukh reached this conclusion based on the Talmud Yerushalmi, by process of elimination, as follows: The Yerushalmi permits "removal of hair"<sup>13</sup>, and as pubic hair is mentioned separately, and head hair is forbidden by the same decree that applies to men, only underarm hair was left.

However, GRA was surely aware that Shulchan Arukh's position regarding underarm hair is not original, but rather a verbatim citation of Rambam. What might Rambam have meant by "removal of hair"? GRA cites Tosafot Moed Kattan 18a<sup>14</sup> as saying, with regard to the parallel permission found regarding laws of 30-day mourning, that the phrase to refer to body hair exclusively<sup>15</sup>. But Rambam himself permits women to cut their head hair during 30-day

#### **גר"א תקמו:ח**<sup>12</sup>

"ומעברת האשה שיער מבית השחי ומבית הערוה בין ביד בין בכלי" – גירסת הרי"ף: "ומעברת סרק על פניה, וא"ד ומעברת סכין על פניה שלמטה", ובירושלמי שם: "נוטלת שיערה וצפרניה ומעברת כלי על פניה. א"ר יודן אבוי דר' מתניה: בלשון נקי היא מתניתא", ר"ל פניה שלמטה. והאי "נוטלת שיער" אינה תגלחת, מדל"ק "ומספרת" או "מגלחת", אלא בגוף קאמר, וכמ"ש תוספות במו"ק יח. וכן פירשו המפרשים מ"ש באבל "והאשה מותרת בנטילת שיער וכו'". אע"ג שהרמב"ם שם מתיר, היינו משום סוגיא דהחולץ שאמרו: "מה במקום שמותר וכו'", ועיין בטור יו"ד סי' שצ, אבל כאן, משום שלא יכנסו לרגל כשהן מנוולין, והך גזירה ג"כ באשה, וא"א דקאי על בית הערוה – הא קאמר אח"כ "ומעברת וכו'!" אלא על בית השחי, ומדקאמר "ומעברת סכין" וקאמר "ונוטלת שיערה וצפרניה", מותר בין ביד בין בכלי כמש"ל סי' תקלב וז"ש "בין וכו'".

#### <sup>13</sup>נטילת שיער

#### <sup>14</sup>ובגנוסטרי אסור - . . .

ורבינו תם פירש דכשם שמותר בשיניו כך מותר ליטול צפרניו [בזון] מחבירתה דכל זה חשוב שינוי לענין שבת ב'פ' המצניע (שבת דף צד): ושמעתי בשם רבי שמשון בר אברהם שבחול המועד מותר ליטול צפרנים לנשים, דקתני בירושלמי גבי ועושה אשה תכשיטיה במועד וחשיב נוטלת שיערה וצפרניה, וצ"ע.

בהלכות גדולות נמי אמרינן והאשה מותרת בנטילת שיער לאחר שבעה.

ונראה דבאשה נשואה דוקא קאמר, ומיירי במעברת סרק על פניה וטופלה בסיד, שהוא משום תכשיט שלא תנוול על בעלה, אבל בתספורת ממש אסורה . . .

<sup>15</sup> The structure of the Tosafot is hard to grasp, as the discussion of haircutting seems to be off the main line of discussion, which is nailcutting.

mourning, so he cannot have shared Tosafot's interpretation! GRA's defense therefore requires Shulchan Arukh to cite Rambam while changing his meaning. Furthermore, Tosafot Yevamot 43a<sup>16</sup> also permits women to cut their headhair after shiva, and in general the discussion in that Tosafot sees cutting headhair as included within "removal of hair".

What Mishnah Berurah presents as settled law based on precedent now looks very different, as it now seems he has only one source, and that source was based on a tenuous argument offered to defend a different but also tenuous halakhic claim by Shulchan Arukh. Nonetheless, GRA's authority is such that, in the absence of any halakhic authority explicitly disagreeing with him, we would likely suggest following his position as a *chumra*, to be safe.

But is there no explicit contrary position? GRA's rationale is that a decree applying to men might be mechanically extended to women. Arukh HaShulchan<sup>17</sup> writes, however, that there is an objection in principle to applying this preventive decree to women, as the cost to women's enjoyment of yom tov caused by banning any cosmetic treatment outweighs our desire to encourage pre-yom tov cosmetic preparation. While Arukh HaShulchan does not mention headhaircutting explicitly, his position leaves no room for GRA's argument.

So among acharonim, we have a dispute between GRA and Mishnah Berurah on the one hand (with Mishnah Berurah based partially on a misreading of Pri Megadim), against Arukh Hashulchan and possibly Pre Megadim on the other. None of these bring any explicit evidence from a rishon. However, none of them had access to the Chiddushei HaRitva, and it turns out that Arukh HaShulchan's position is strongly supported by Ritva Moed Kattan 8b<sup>18</sup>. Ritva offers two rationales:

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<sup>16</sup>תוספות מסכת יבמות דף מג עמוד א  
במקום שמותר לכבס - גרסי, ול"ג "לספר", דהא אמרינן [בירושלמי] במועד קטן לגיהוץ ולתספורת שלשים יום  
והר"ר יעקב מאורלייני"ש הביא מהך גרסא דאשה מותרת בנטילת שער [וכן איתא בה"ג]  
ועוד מצינו למימר דהתם אליבא דר' יוסי קיימי דשרי תספורת באבל, דהכי כתב בעל ה"ג: כשם שאסור לגלח במועד, כך אסור לגלח בימי  
אבלו, דברי רבי יהודה; רבי יוסי מתיר.  
כל ל' יום אסור לתספורת, אחד זקנו אחד שער ראשו ואחד כל שער שבו.  
וכשם שאסור ליטול צפרנים במועד, כך אסור בימי אבלו, דברי רבי יהודה; ר' יוסי מתיר.  
והאשה מותרת בנטילת שער לאחר ז' .  
ומיהו אין נראה, דשמא אשה דשריא באבלה שריא נמי בתשעה באב, וכן ר' יוסי דשרי לספר באבילות שרי נמי בתשעה באב.  
ועוד נראה דלרבי יוסי נמי אסור לספר, דמסתמא יליף פרע פרע מנזיר, וכל ראשו הוא דשריא לגלח, דניווול הוא, אבל לספר אסור, וכן משמע  
מתוך הלכות גדולות שהבאתי,  
וא"כ לא גרסינן הכא לספר, דגילוהו כל הראש לא מיקרי סיפור.

<sup>17</sup>**צורך השלחן תקמו"ז**  
ועושה אשה כל תכשיטיה לקישוט הפנים במועד, בין ילדה בין זקנה,  
והיינו שכוחלת בצבע, וכן נותנת כחול בין עיניה כדי שתהן נאות, ופוקסת – והיינו מחלקת שעה לכאן ולכאן ומתקנת שעה חוץ לצעיף,  
ונותנת חוטיין של בצק דק על פניה להאדים הבשר, ומעברת סרק על פניה, וטופלת עצמה בסיד וכיוצא בו להשיר השיער,  
ודווקא שתוכל לסלקו להסיד במועד, דאז מקבלת תענוג מזה, דבשעה שהסיד על פניה מצטערת קצת, אך אח"כ שמחה היא לה, ולכן  
אם השמחה תהיה במועד מותר, ואם לאחר המועד אסור,  
ומעברת שיער מבית השחי ומבית הערוה בין ביד בין בכלי, ומעברת השיער שעל פדחתה בסכין.  
וכל אלו קשה לעשותן קודם המועד, שתקלקל,  
ואפילו בלא זה א"א להחמיר על אשה בתכשיטיה, שכל שמחתה היא בתכשיטיה וזהו עונג יו"ט שלה,  
אבל האיש אסור לו מיני תכשיטין במה שיש בהן מלאכה,  
דגם בלא"ה אין לאיש להרבות בקישוטין ותכשיטין משום ""לא ילבש גבר שמלת אשה", כמ"ש ביו"ד סי' קפב.

<sup>18</sup>**ריטב"א מועד קטן דף ח עמוד ב**

ועושה אשה תכשיטיה במועד פי' שזה צורך הגוף הוא וכעין אוכל נפש ולפיכך עושה כדרכה ובלא שינוי ובטירחא רבה  
ולא גזרו בה שמא תכנס לרגל מנוולת דקישוט מילתא דצריכא כל יומא ויומא הוא ועוד שאין דרכן להשהות

- a) Since women have a general need to apply cosmetic treatments daily, there is no possibility of requiring them to complete their cosmetics before the holiday, and therefore no purpose in banning some of them on chol hamoed.
- b) Women do not generally neglect their personal appearance such that it is necessary to make decrees to prevent them from doing so.

It follows that GRA is a *shitat yachid* (minority position). Furthermore, a standard rule of *psak* is that the authority of precedent is greatly diminished when new evidence is presented that was not available to the original decisors, as we can hypothesize that they would have conceded had they been aware of that evidence, and here the GRA may have conceded to the *Ritva* had he been aware of it. Therefore, based on a purely technical halakhic discussion, there seem to be adequate grounds for permitting women to have their hair cut on chol hamoed. But there are four *metahalakhic* issues that require discussion as well.

1) What sort of attitude should we take toward gender distinctions in Halakhah?

Haircutting on chol hamoed is perhaps the safest topic we can choose for discussing this generally explosive question, and I must acknowledge that this framing – which assumes that gender distinctions constitute a discrete category, toward which a consistent attitude is appropriate – is borrowed from American constitutional law’s notion that various distinctions can be subjected to loose, intermediate, or strict scrutiny. But I think it offers a valuable tool to *poskim*, and I specifically favor subjecting potential Jew-Gentile distinctions in interpersonal *halakhot* to strict scrutiny.

This cannot, however, be the case with regard to gender in Halakhah – there are simply too many areas in which the distinction is deeply ingrained, and others in which such distinctions flow inexorably from physical differences. But there is nonetheless room for some form of scrutiny, especially when potential rulings seem to assume psychological or intellectual differences between men and women.

With regard to our case, the question is whether we are prepared to give significant halakhic weight to *Arukh HaShulchan*’s argument that women’s joy in their appearance is central to their religious experience of the holiday. If we perceive this as an invidious distinction, we will lose one of the two major pillars supporting any lenient *psak*.

2) Should we evaluate potential gender distinctions primarily in terms of their outcomes, or rather in terms of their reasoning? What are we to do if the best way to reach the solution we see as most compatible with justice and with properly recognizing the *tzelem Elokim* in every human being is to utilize a legal rationale that seems sexist or even misogynist?

For example: Some understandings of the exegetical basis for the exclusion of women from the obligation to procreate can easily be criticized as sexist, for example the straightforward reading “It is the way of men to conquer, but not the way of women”. To counter this critique, a *posek* might seek to play up the positions that see women as rabbinically obligated. But a primary effect of the exemption is to prevent women from being halakhically coerced into procreative sex, and generally to give them halakhic control of their sexuality<sup>19</sup>, and this effect can be undone by the position that they are rabbinically obligated.

In our case, the result of seeing women as emotionally focused on their appearance would be to allow a particular woman (or perhaps all women) to do something that will unquestionably enhance her general and *yom tov* happiness. Perhaps, then, even if we answer question 1) by

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<sup>19</sup> See Jonathan Ziring, [Kol Hamevaser](http://www.torahleadership.org/categories/niddahsharon07.way), and lecture by Aryeh Klapper <http://www.torahleadership.org/categories/niddahsharon07.way>

proposing that gender distinctions be seen as suspect, that suspicion should be relaxed in this case.

3) To what extent are we willing to concede that past halakhot simply cannot be extended to current circumstances, that the differences are just too great?

This issue may present differently with regard to d'oraita law, where we are committed to the position that the Torah's Author foresaw all future circumstances and legislated accordingly<sup>20</sup>, and d'rabbanan law, where we have no such theological commitment. Thus, for example, Rav Moshe Feinstein takes the position that doing otherwise prohibited labor via preset electric timers often falls into a category of "appropriate to forbid but not actually forbidden"<sup>21</sup>, on the ground that the Talmudic Rabbis were unaware of electricity and therefore could not have legislated regarding it.

The issue may also present differently with regard to each of changes in scientific understanding, technological capacity, values, and customs.

In our case, the question is whether the prevalence of women with cut hair in our society is new, and if yes, whether

a) haircutting has become an essential element of at least some women's grooming, and therefore cannot be forbidden to them on chol hamoed now, even if it was previously forbidden, or conversely that

b) haircutting has become an essential element of at least some women's grooming, and therefore, since even they do not cut their hair weekly, the decree against haircutting applies to them for the same reason that it does for men, even if it did not apply to them previously.

4) To what extent are we willing to undo the rulings of past standard codes, such as Rav Yosef Karo in Shulchan Arukh, on the basis of our considerably larger-than-their's library of the works of the rishonim and of variant manuscripts of all rabbinic texts?

The potentially destructive effects of allowing such overturning can be seen in halakhic civil law, where plaintiffs can succeed only if the defendant has no plausible defense. A primary task of halakhic civil jurisprudence, therefore, is to eliminate positions from the discussion, and this the Shulchan Arukh accomplished admirably; the standard rule is that positions not mentioned in the Shulchan Arukh are halakhically irrelevant in civil matters. And yet, it is hard to allow rulings that no longer accord with the weight of textual evidence to stand, especially when they seem to us to have deleterious consequences.

In our case, the law has not been fully standardized, but the question is whether we are comfortable ruling against Mishnah Berurah and GRA at least in part because we have access to the Ritva and they did not.

Each of these questions deserves extended treatment. In this article, however, I will limit myself to brief treatments of both the broad issue and its relevance to our case, in the hope of discussing them in more detail and depth elsewhere.

4) To what extent are we willing to undo the rulings of past standard codes, such as Rav Yosef Karo in Shulchan Arukh, on the basis of our considerably larger-than-their's library of the works of the rishonim and of variant manuscripts of all rabbinic texts?

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<sup>20</sup> Although to the extent that d'oraita law is derived via human interpretation, application, and discretion, d'oraita law is no different than derabbanan

I think we should resist the temptation to establish a bright line and require that the Halakhah be determined either by pure historical/interpretational truth, as we understand it, regardless of precedent, or else by pure halakhic process establishing irreversible precedent. Rather, we should take the nuanced position that precedent generates significant but not infinite inertia, varying with its antiquity and the weight of the authorities who establish it. This inertia may be overcome by some compelling combinations of contrary evidence, practical need, and moral intuition.

In the case of women's haircuts on chol hamoed, the weight of precedent seemed to me extremely weak and the contrary evidence quite strong. No issue of morality is involved, and practical need would be a function of specific cases only.

3) To what extent are we willing to concede that past halakhot simply cannot be extended to current circumstances, that the differences are just too great?

I see three possible positions

- a) Laws should be seen as inevitably extending to whatever new circumstances seem to present the same issues.
- b) Laws can only extend to circumstances that could plausibly be seen as having been conceived of when the law was made
- c) Laws may or may not be extended to cover new circumstances at the discretion of contemporary decisors, subject to the willingness of the community to follow them when they exercise that discretion. In such cases, it should be evident, what are formally judicial decisions are in practice legislative acts.

I favor the last approach. In the case of women's haircutting, the question then became whether we should extend the decree made regarding men to women. It seems to me that this would be extending the wrong rabbinic ray, and that we should instead extend the exceptions for cosmetic bodyshaving and tweezing etc. to this case

2) Should we evaluate potential gender distinctions primarily in terms of their outcomes, or rather in terms of their reasoning?

Here again I think we should avoid bright-line answers. There are times, circumstances, and issues in which it is appropriate to focus on symbols; I cannot think of any non-extreme case, for example, in which I would pasken based on the sometime principle that "women's wisdom is only with the shuttle" – perhaps to free an agunah. But as a general rule it is wiser to focus on results, although one must always recognize that the results of a halakhic ruling are not just the immediate case, but also all cases for which that case will become precedent.

In our case, it is not clear to me that the presumption that women's happiness often depends on their sense of their own appearance is sexist, although taking the extreme formulation of Arukh haShulchan that "their entire happiness is in their adornments" literally rather than hyperbolically might be sexist. But I take it hyperbolically, and therefore am comfortable using Arukh haShulchan's consequent ruling as precedent.

1) What sort of attitude should we take toward gender distinctions in Halakhah?

I suggest that the key questions are

- a) whether should be that the proposed distinction has a purpose plausibly defensible in non-sexist terms and
- b) whether the proposed distinction plausibly relates to genuine differences in the religious, political, social or other experience of men and women.

In our case, the desire to make women's yom tov experience happier is certainly defensible in non-sexist terms, and I suggest that the proposed distinction between men and women on this

issue relates plausibly to the different norms and expectations governing male and female hair grooming and growth in our society.

**Ruling:**

In light of all the above, I ruled that the young woman in question could have her hair cut on chol hamoed.

## 2. Nylon, Cotton, and Sukkah Mats

Case:

A family with limited means but a large sukkah has been using a combination of sukkah mats tied with raffia<sup>22</sup> and low-end “matchstick blinds” sold commercially as windowshades as skhakh. Their raffia mats are endorsed by the Orthodox Union, but the matchstick blinds are tied with nylon string. They have now read on the Star K website<sup>23</sup> that only nylon monofilament may be used to hold these mats together, and on the OK<sup>24</sup> website that one should use only mats tied with cotton string. As purchasing new skhakh will be a major expense, they are asking whether they need to replace the matchstick blinds and/or the raffia-tied mats before using their sukkah this year.

Analysis:

What are the halakhic requirements for skhakh materials?

The two Biblical requirements are that it must be gedulei karka (made from something grown from the ground) that is not mekabel tum'ah (susceptible to ritual impurity). The classic example of acceptable material is “peshutei keli eitz”, wooden objects that have no beis kibbul (depression in which they can contain things).

However, Sukkah 12b states without explanation that beaten and carded flax, which seems to be both gedulei karka and not mekanbel tum'ah, is invalid as skhakh. Rav Ovadiah Yosef<sup>25</sup> cites three explanations for the invalidity:

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<sup>22</sup> **Raffia** is a fiber obtained from the raffia palm of Madagascar, exported for various uses, such as tying up plants that require support, binding together vegetables to be marketed, and weaving baskets, hats, and mats. It is also made into a native cloth that is exported as rabanna. The raffia palm (*Raphia farinifera* or *R. ruffia*) is crowned with enormous leaves that may be as much as 65 ft (19.8 m) long and composed of 80 to 100 leaflets. The fiber, which is soft, pliable, strong, and non-shrinking when wet, is torn in thin strips from these leaves. After being dried in the sun, raffia takes on a yellowish-tan hue, but it is often dyed other colors. [Source: Columbia Encyclopedia]

<sup>23</sup> <http://www.star-k.org/>

<sup>24</sup> <http://www.kosherspirit.com/Article.asp?Issue=14&Article=175>

**שו"ת יחוה דעת חלק א סימן סד**<sup>25</sup>

שאלה: האם מותר לסכך את הסוכה בסכך לנצח, שעשוי מנסרים דקים הקשורים בחוטי כותנה?

תשובה: בגמרא מסכת סוכה (דף י"ב ע"ב), נאמר: סיככה באניצי פשתן (כלומר: פשתן שנידק וניפץ) פסולה.

והסביר הרמב"ם (בפרק ה' מהלכות סוכה הלכה ד'), ש

אף על פי שכל זמן שעדיין לא נטוה הפשתן אינו ראוי לקבל טומאה,

ועוד, שהפשתן הוא גידולי קרקע,

ואין סיבה לפוסלו מן התורה, מכל מקום

גזרו חכמים שלא לסכך בו מפני שנשתנית צורתו וכאילו אינו גידולי קרקע.

והראב"ד בהשגות שם נתן טעם אחר:

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לפי שהפשתן שנידק וניפץ ראוי ליתנו בכרים וכסתות, ואז נעשה ראוי לקבל טומאה על ידי דבר אחר – לפיכך אין לסכך בו.  
והתוספות בסוכה (י"ב ע"ב) הסבירו הטעם:  
לפי שהוא קרוב לבוא לכלל טומאה לכשיהיה נטוה, וכמבואר בפרשת נגעים: "בבגד צמר או בבגד פשתים" –  
ולפיכך גזרו בו חכמים.

וכתב רבינו ישעיה אחרון ז"ל בפסקיו שהעיקר כדברי התוספות.  
וכתב עוד, שלפי זה מותר לסכך בצמר גפן, הואיל ואין תורת טומאה עליו כלל, שהרי כל מיני בגדים חוץ מבגדי צמר ופשתים אינם מטמאים בנגעים.  
והנה לפי סברת רבינו ישעיה ברור שאין שום צד איסור לסכך בסכך לנצח, אף שנשריו קשורים בחוטי כותנה דהיינו צמר גפן. שהרי אפילו לסכך ממש בחוטי צמר גפן אין כל מניעה לדעתו, כל שכן כאן שאין החוטים אלא רק להעמיד את הנסרים הדקים, שהם הסכך של הסוכה.  
אולם יש לדון לפי טעמו של הרמב"ם, שפסול הפשתן לפי שנשתנית צורתו, ולפי זה ודאי שיש לפסול חוטי צמר גפן לסכך בהם מאותו טעם עצמו שנשתנית צורת הצמר גפן,  
וכן לטעמו של הראב"ד, שפסול הפשתן לפי שראוי ליתנו בכרים ובכסתות, יש לפסול סיכוך בצמר גפן, שגם הוא ראוי ליתנו בכרים וכסתות.  
ואם כן לפי דעת הרמב"ן במלחמות ה' פ"ב דסוכה (כ"א ע"ב) שהלכה כרבי יהודה שהסומך סוכתו בכרעי המטה ואינה יכולה לעמוד בפני עצמה פסולה,  
וכמי שאומר בגמרא שם שטעמו של רבי יהודה לפי שהוא מעמידה בדבר המקבל טומאה,  
וכ"כ הר"ן שם,  
לפי זה לכאורה נראה שיש מקום לפקפק על הסכך הזה, מפני שהמעמיד שלו חוטי צמר גפן שאין לסכך בהם.

אולם מלבד שהתוספות והרא"ש (סוכה כ"א ע"ב) כתבו שאין עיקר הטעם כמי שאומר מפני שמעמידה בדבר המקבל טומאה, אלא כמי שאומר מפני שאין לה קבע, ולכן אם יש גובה י' טפחים מן המטה לסכך כשרה,  
וכתב מרן הבית יוסף /א"ח/ (סוף סי' תר"ל) שכן דעת הרי"ף, ולכן פסק בשלחן ערוך שם להקל,  
ולפי זה מותר להעמיד הסכך אף בדבר שאסור לסכך בו. (וראה בס' השלמה, ובס' המאורות סוכה שם).  
ובתשובת מהרי"ל (סימן קנ"ז) כתב גם כן שמותר להעמיד את הסכך אף בדבר המקבל טומאה, הואיל ורוב הפוסקים פסקו כרבנן דרבי יהודה שהסומך סוכתו בכרעי המטה כשרה, ואפילו למי שפוסק כרבי יהודה, הרי יש אמורא שמפרש טעמו של רבי יהודה מפני שאין לה קבע, וכתב הרא"ש שכן עיקר, ולפי זה מותר ג"כ להעמיד הסכך בדבר שראוי לקבל טומאה, וכן נ"ל להלכה, ושכן נהגו כל רבותינו, ואין בזה ספק כלל עכ"ד.  
(וע"ע בשו"ת רב פעלים ח"ב חאו"ח סי' ס"ה).

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ועוד שאפילו לפ"ד הרמב"ן והר"ן שסוברים להחמיר, וכ"כ כמה אחרונים להלכה, יש מקום להכשיר הסכך שבנידונו, על פי מה שכתב הריטב"א בחידושו לטוכה (דף י"א ע"ב), שאף להפוסקים שאוסרים להעמיד הסכך בדבר שראוי לקבל טומאה, מכל מקום כל דבר שהאיסור לסכך בו אינו אלא מגזירת חכמים, לא גזרו חכמים לאסור להעמיד בו סכך הסוכה, משום שהטעם שאסור להעמיד בדבר שאסור לסכך בו, אינו אלא משום גזרה שמא יבוא לסכך בו ממש, אבל כשהאיסור לסכך בו מדברי סופרים, מותר להעמיד בו הסכך, משום שגזירה לגזירה לא גזרינן. ולכן חוטי כותנה שפיסולם לסכך הוא רק מדרבנן, לדעת הרמב"ם מפני שנשתנית צורתו, ולדעת הראב"ד מפני שראוי ליתנו בכרים וכסתות, מותר להעמיד בו הסכך לכתחילה. ואף שהגאון בעל פרי מגדים באשל אברהם (סי' תרכ"ט אות י"א) נסתפק אם גזרו בזה גזירה לגזירה, ויש אחרונים שפסקו להחמיר, העיקר כמו שמפורש בדברי הריטב"א הנ"ל להקל. וכן פסק הגאון רבי יהודה שמואל אשכנזי בספר בית השואבה. וכן פסק הגאון רבי חיים פלאג'י בספר לב חיים חלק ב' (סימן ק"כ). וע"ע בשו"ת אבני נזר (חאו"ח סימן ת"ע אותיות ב' - ג') ע"ש. וכן עיקר להתיר אף לכתחילה להלכה ולמעשה.

#### **Yechaveh Daat 1:64**

Question: Is it permitted to use skhakh of the "Lanetzach" brand, which is made of thin slats tied with cotton strings?

Answer: Talmud Sukkah 12b states: If he used znitzei pishtan (meaning: beaten and carded flax) as skhakh, the sukkah is invalid.

Rambam Sukkah 5:4 explained that

even though the flax is not mekabel tum'ah so long as it has not been spun, and furthermore, the flax is grown from the ground, so there is no deoraita reason to invalidate it as skhakh, the Sages decreed not to use it as skhakh because its form had been changed, so it was as if not grown from the ground.

The Raaavad Sukkah 5:4 gave a different reason:

Since the flax was beaten and carded, it is fit to be used to stuff pillows and cushions, and thereby could become mekabel tum'ah through that conjunction – therefore it should not be used as skhakh.

Tosafot Sukkah 12b explained the reason:

Since it is easily mekabel tum'ah once spun, as explained in the Torah regarding clothing-plague "on a garment of wool or a garment of flax" – Therefore the Sages decreed against it.

Rabbeinu Yeshayah the Later writes in his Psakim that the halakhah follows Tosafot.

He writes further that according to this it is permitted to use cotton as skhakh, since tum'ah does not apply to it at all, as no fabrics other than wool and linen are susceptible to the tuma'h of clothing plague.

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Now according to Rabbeinu Yeshayah's reasoning it is clear that there is no aspect of prohibition in using "Lanetzach" skhakh, even though the slats are tied with cotton strings, as in his opinion there is no objection to using cotton string as actual skhakh, all the more so here where the strings are only supporting the thin slats, which are the skhakh.

However, there is a basis for discussion according to the reason of Rambam, who invalidates the flax because its form was changed. According to this one would certainly invalidate cotton strings as skhakh for the very reason that the cotton's form was changed.

Similarly according to the Raavad's reason, that the flax is invalid since it is fit for stuffing cushions and pillows, one can invalidate cotton skhakh, since it is fit to be put in pillows and cushions.

Therefore, according to the position of Ramban (Milchamot HaShem Sukkah Chapter 2) that the halakhah

- a) follows R. Yehudah that one who supports his sukkah on his bedposts and it could not stand independently of those bedposts, and
- b) it follows the Talmudic position that R. Yehudah's reason is that the skakh would be held up by something mekabel tum'ah,

and RaN there wrote the same,

it seems that there is room to raise questions about this skhakh, because it is held up by cotton strings which ought not be used as skhakh.

However, not only did Tosafot and Rosh (Sukkah 21b) write that the primary explanation of R. Yehudah is not support by something mekabel tum'ah, but rather the position that the issue is lack of fixity, so that if it is 10 handbreadths above the bed it is valid,

and Maran Beit Yosef (OC 630) wrote that this is also the opinion of RIF, and therefore ruled leniently on this in Shulkhan Arukh (OC 630),

and according to this one can hold up the skhakh with something forbidden to use as skhakh (see Hashlamah and Meorot to Sukkah there),

and Responsa MaharIL 127 also writes that one can hold up the skhakh with something that is mekabel tum'ah, since most poskim ruled in accordance with the Sages who disagree with R. Yehudah and validate a sukkah supported by bedposts, and even for those who rule in accordance with Rabbi Yehudah, there is an amora who explains his reason as lack of fixity, and Rosh writes that this reason is primary, and according to this reason as well it is permitted to support skakh with something mekabel tum'ah - This seems to me correct in practice, and this was the practice of all my teachers, and there is no doubt about this.

(See also Responsa Rav P'alim 3OC65)

Furthermore, even according to the strict position of Ramban and RaN, and a number of acharonim write that the halakhah follows them, there is room to validate the skhakh under discussion here on the basis of RITVA Sukkah 11b, who writes that even those poskim who forbid holding up the skhakh with something mekabel tum'ah, for the reason that one may not support skhakh with invalid skhakh, only do so as a rabbinic decree lest he come to use the support material as actual skhakh. But where the invalidity of the skhakah is itself only rabbinic, one may use it as support, since we do not make "decrees upon decrees". Therefore, since cotton strings are only rabbinically invalid as skhakh, according to Rambam because their form has been changed, and according to Raavad because they can be used to stuff pillows and cushions, it is absolutely permitted to use them to support skhakh.

- a) (Rambam) Gedulei karka materials must not be radically altered from their original state. It is not clear whether this is a Biblical or rather a Rabbinic requirement.
- b) (Tosafot) Beaten or carded flax can be easily spun and then woven into garments, which would be mekabel tum'ah. This is clearly a rabbinic requirement.
- c) (Raavad) Beaten or carded flax can be used to stuff pillows, and as stuffing they would be mekabel tum'ah. This is clearly a rabbinic requirement.

None of these considerations would invalidate the twigs in matchstick blinds. However, the twigs must be held together by something. Are there any requirements for the material that holds them together, and if so, what are they?

One possibility is that any material which is necessary for the skhakh to function must itself be valid for skhakh. This would apply to strings holding the mats together if the individual slats would otherwise fall down or blow away. This position can be derived from Talmud Sukkah 21b, where one of two rationales offered for the position of the tanna Rabbi Yehudah, who invalidates a sukkah made by roofing the posts of a bed, is that the skakh must not require the direct support of material that is mekabel tum'ah, such as bedposts. It seems clear that this rule is Rabbinic<sup>26</sup>.

Rav Ovadiah Yosef absolutely rejects this position with regard to materials that meet Biblical but not rabbinic requirements for skhakh. He is less definitive with regard to materials that are Biblically invalid as skhakh. The OK, however, writes that “the *Shulchan Aruch* tells us that a *davar hamamid* (literally “thing that makes stands,” i.e. a key element) that is *mekabel tumah* is not kosher.

What does this mean? When laying the *schach* on the sukkah, you usually lay it on sticks. It is not preferable to lay the *schach* on metal bars, however, b'di'eved (after the fact) it is acceptable. This means that the supports for the *schach* should only be made from something that is kosher for *schach* l'hatchila (in the first place). Similarly, if you were to use something non-kosher to hold together the *schach*, it would also present a problem.”<sup>27</sup>

What is the basis of the dispute between the OK and Rav Ovadiah?

*Shulchan Arukh* 529:7<sup>28</sup> writes that there is room to doubt whether one can place a ladder across the walls of a Sukkah so as to put skhakh on top of it, and RAMO generalizes this to any

Even though the gaon P'ri Megadim in Eshel Avraham 629:11 was unsure whether we make a “decree upon decree” here, and some acharonim rule strictly, the primary position is that explicit in the above RITVA for leniency.

So also ruled the gaon R. Yehudah Shmuel Ashkenazi in *Sefer Beit HaShoeivah*.

So also ruled the gaon R. Chaim Pelagi in *Lev Chaim* 2:120.

See further *Responsa Avnei Nezer* OC 470:2-3.

So the clear ruling in theory and practice is to absolutely permit this.

Along the way, Rav Ovadiah raises the possibility that cotton string would be forbidden *miderabbanan* because, like processed flaxstalks (*anitzei pishtan*), they can be used to stuff cushions, and other reasons. As he rejects these, and no one else raises them, I will not discuss them here.

Jonathan Cohen pointed out correctly in private correspondence that Rav Ovadiah may agree that *lekhatchilah* one should not hold the skhakh up with things that are *pasul mideoraita* as skhakh.

<sup>26</sup> As no Biblical source is cited for the invalidity, the only rationale for making it Biblical would be the claim that essential support materials are considered part of the roof, i.e. skhakh. But in that case one would never be able to build the walls of the sukkah out of mekabel tum'ah materials, and this is clearly not the Halakhah!

<sup>27</sup> <http://www.kosherspirit.com/Article.asp?Issue=14&Article=175>

<sup>28</sup> שולחן ערוך אורח חיים סימן תרכט

סעיף ז

(כב) יש להסתפק אם מותר להניח ח סולם על הגג כדי לסכך ט על גביו. הגה: (כג) לכן אין לסכך עליו; (כד) ואפילו להניחו על הסכך י להחזיקו, אסור; וה"ה בכל כלי המקבל טומאה, כגון ספסל וכסא (כה) יא שמקבלין טומאת מדרס (מהרי"ל).

utensil that is *mekabel tum'ah*. This suggests that there is a requirement that Sukkah supports must not be *mekabel tum'ah*.

However, Rav Ovadiah follows numerous achronim in noting that this reading of 529:7 contradicts Shulkhan Arukh 530:13<sup>29</sup>, where he rules without qualification that one may in fact simply roof across bedposts, so long as the height of the roof above the bed will be sufficient. RAMO also makes no comment. The standard resolution to this apparent contradiction is to say that 529:7 does not set up an absolute requirement that skhakh supports not be *mekabel tum'ah*, but rather objects to using skhakh supports that might come to be used as skhakh.

Mishnah Berurah<sup>30</sup> cites anonymous achronim as objecting lekhatilah to the use of *mekabel tum'ah* items as support. While he offers the rationale of 'lest one come to use them as skhakh', it is not clear whether his position is limited to utensils that might realistically be used as skhakh.

I suggest, however, that even Mishnah Berurah would not go as far as OK in banning lekhatilah as skhakh-support all materials that are invalid as skhakh, whether or not they are plausible candidates to be used as roofing. Rather, Mishnah Berurah records a specific concern with materials that are *mekabel tum'ah*<sup>31</sup>.

Why does this matter? OK's halakhic conclusion is that one may use only string that is *gedulei karka*, such as cotton or raffia. Nylon string, which is made from petroleum, is by its very nature unusable as skhakh support. OK in large measure justifies putting a *hechsher* on sukkah mats on the basis that its *mashgiach* checks carefully to ensure that nylon string has not been substituted for cotton.

Star K claims to accept this position of the OK position in principle<sup>32</sup>. In practice, however, they differ, on the ground that "held together" is not the same as "held up". In other words, they contend that the strings holding the mats together are not in fact considered to be skhakh-support. As a result, Star K does not require its strings to be kosher skhakh. (In fact, as we shall see in several paragraphs, they require the opposite.)

Star K nonetheless encourages consumers to place sukkah mats tied with non-skhakh string flat on top of the sukkah so that the string is not in fact "holding up" the skhakh. This position is hard for me to understand – the real issue should, I think, be whether the string is necessary to keep the slats on top of the roof, not whether they raise it an additional fraction of an inch over the roof.

Accordingly, it seems to me that, if one is genuinely concerned for the position that skhakh-supports must be *gedulei karka*, but uses mats tied with artificial string, one must ensure that each individual slat would be supported sufficiently if the string were removed. Perhaps one

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<sup>29</sup> שולחן ערוך אורח חיים סימן תרל

סעיף יג

(נח) הסומך סוכתו על כרעי המטה והכרעים הם מחיצות, (נט) אם יש בה גובה י' טפחים מן המטה לסכך, כשרה; ואם לאו, פסולה. ואם סמך הסכך על עמודים והכרעים הם דפנות, כ אפילו אין גובה עשרה מהמטה עד הסכך, כשרה, כיון שיש י' טפחים מהארץ עד הסכך.

<sup>30</sup> משנה ברורה סימן תרכט ס"ק כב

ואפשר דיש לנו להחמיר שלא להעמיד בדבר המקבל טומאה שמא יבוא לסכך בו ואע"ג שמעמידו הסכך על כותל אבנים משום דלא שכיח שיסכך בהם וכן העתיקו כמה אחרונים לדינא דלכתחלה יש ליהדר שלא להעמיד הסכך בדבר המקבל טומאה אכן בדיעבד או שאין לו שאר דברים קי"ל דמותר להעמיד הסכך בדבר המקבל טומאה כדמוכח בסוף סי' תר"ל

<sup>31</sup> Mishnah Berurah also cites a position that all *peshutei klei eitz* wide enough to put things on are rabbinically *mekabel tum'ah*. It is not clear to me why no one cites this as a *prima facie* reason to see mats per se as *bediavad*.

<sup>32</sup>

must also ensure that each individual slat would remain on the roof in an ordinary wind even if it were not tied to its fellows. I suspect that these conditions are rarely if ever met by sukkahs covered with sukkah mats – the individual slats are too light - and therefore in practice Star K's mats work only if one rejects the OK position in toto.

Star K then raises an issue with directly opposite implications. Based on Igrot Moshe OC 1:177, they suggest that if the string holding the mat together is mekabel tum'ah, the entire mat would become mekabel tum'ah, and therefore invalid as skakh even mideoraita. On this basis, they will only hekhsher mats held together with monofilament nylon string. Here some background is necessary.

String of any material is generally not considered mekabel tum'ah; thus OK uses cotton string. However, Rashi to Shabbat 64a suggests that string which can be used as jewelry is mekabel tum'ah. Star K's website apparently takes the position that Rashi refers to any string composed of more than one strand, and therefore requires monofilament, which can generally only be made of artificial materials<sup>33</sup>.

Reading the website, it seemed clear to me that the two requirements, nylon and monofilament, were contradictory. Nylon, so far as I knew, is not mekabel tum'ah; why then should it matter whether it was monofilament? Requiring monofilament meant that a multistrand string would be mekabel tum'ah, but that could not be true of nylon!

The Star K rabbinic staff initially suggested that R. Heineman held that nylon can be mekabel tum'ah – such positions do exist, although I contend that they do so only with regard to actual garments of nylon – but R. Heineman confirmed that he holds the standard position that nylon is not. What, then, justified requiring monofilament? To understand this position, we must return to Igrot Moshe cited above.

Igrot Moshe appears to be addressing<sup>34</sup> whether one can use wooden slats from a disassembled venetian blind as skhakh. He first suggests that peshutei klei eitz can in fact be mekabel tum'ah rabbinically, and therefore that the slats are intrinsically invalid. However, he concedes that this is a difficult position to sustain<sup>35</sup>. Furthermore, it seems likely to me that even Rav Moshe applied this only to reshaped peshutei klei eitz, such as venetian blind slats, but not to wood left in its natural condition, such as in matchstick blinds<sup>36</sup>.

Igrot Moshe then says, however, that the slats were held in the blind by a woven material (likely cloth tape). He cites a variety of sources to suggest that peshutei klei eitz can be mekabel tum'ah when they are combined with something woven (*arig*), and that they remain invalid skhakh even when removed from the combination.

R. Heinemann suggested that R. Moshe's position applied even if the cloth tape were made of nylon, in other words even if the cloth tape itself was not mekabel tum'ah. This struck me as a remarkable chiddush, but lacking any familiarity with that area of halakhah, I had no evidence on the issue. In correspondence with Star K rabbinic staff, they confirmed my sense that this would be a highly original position, and brought evidence for their sense. I look forward to hearing and conveying the result of their subsequent conversation with Rav Heinemann.

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<sup>33</sup> But see the discussion of raffia below

<sup>34</sup> The teshuvah is apparently written in continuation of a telephone conversation to which we are not privy

<sup>35</sup> Laaniyut da'ati, it seems to be founded on a forced reading of Beit Yosef as having a forced reading of Rambam. (insert complete sources)

<sup>36</sup> This assumes that the wood in matchstick blinds is not reshaped, which in turn requires a halakhic definition of reshaping.

So by combining the position of Rashi that string which can be used as jewelry is mekabel tum'ah with an understanding of Rav Moshe as saying that peshutei klei eitz cannot be used as skhakh if they are in combination with woven material even if that material is not mekabel tum'ah, it seems possible to require specifically nylon, to avoid the problem of the string being mekabel tum'ah, and monofilament, to avoid the problem of wovenness.

However, even granting that we need to account for Rashi, and that Rav Moshe should be thus interpreted, we still do not reach the result of requiring nylon monofilament.

Rashi actually states that string which is both spun and braided (*kalua*) can be mekabel tum'ah, and on Shabbat 57a he explains that kalua means "made of chains, hollows and rounds". However, it seems to me that (and Deborah Klapper confirms – I owe this insight to her overall) that just about all string (as opposed to rope) in the United States is twisted (shazur – see Rambam Hilkhos Keilim 1:12) rather than braided (kalua). When I raised this point with Rav Heineman, he agreed that Rashi would not view twisted string as mekabel tum'ah, and therefore that even multifilament twisted nylon string would be valid. It seems to me further that by this logic twisted cotton thread would actually be preferable, as it is not mekabel tum'ah and valid skhakh, and thus does not raise an issue of "holding up". Either way, the twisted strings, cotton or nylon, in matchstick blinds should pose no halakhic barrier to their use as skhakh<sup>37</sup>.

However, Rav Heinemann's argument does pose a difficulty for mats bound with raffia. These mats carry the OU hechsher and identify themselves as mehadrin. It seems likely to me that the OU prefers them to cotton because they are made by unwinding the fibers of the raffia palm leaf, rather than by spinning, and therefore are even less *nishtaneh* mibiryatam, changed from their natural form, than cotton<sup>38</sup>. It may even be a natural monofilament in the halakhic sense that the fiber is used as unwound from the plant, rather than by twisting multiple fibers together – I am not sure of the commercial manufacturing process. But raffia ribbon is used as is for decoration, and therefore may really be a problem according to the Rashi that sees strings used for decorations as mekabel tum'ah. I suspect, however, that such usage is quite minimal and likely to remain so, and therefore halakhically disregardable.

There remain two possible halakhic issues with storebought blinds. The first is that mats intended or used for sleeping or sitting on, and blinds that may be wrapped around one as personal sunshades, are mekabel tum'ah<sup>39</sup>. For this reason the OK tries to make its mats as uncomfortable as possible, and puts signs on the walls of its Chinese factory declaring that these mats are not intended for sitting. The last element seems comic – imagine the workers' conversations about the eccentric buyer once the mashgiach leaves! – and ineffectual to me, as workers' kavvanah cannot and generally should not be determined by their employers<sup>40</sup>. But this seems beside the point, as no one used matchstick mats for seating – woven mats perhaps, but not these. Mats are also invalid if their like are used for roofing yearround, which OK claims invalidates sukkah mats in Kenya. I note only that this problem is far more likely to create issues for sukkah mats than for regular blinds.

The last issue is the question of hanging hardware; it's not clear to me what percentage of blinds are sold with and what without. One might argue that hanging hardware, or at least metal

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<sup>37</sup> I look forward to hearing Star K's conclusion on the reality, and therefore the halakhah.

<sup>38</sup> Although laaniyut daati this is only a problem for linen, which requires beating to separate into fibers, not for cotton, where the fibers are immediately evident.

<sup>39</sup> The Talmud (insert source) actually distinguishes between "large" and "small" mats, but size here seems to be an indicator of intended usage rather than a formal legal category.

<sup>40</sup> I accept of course matzot mitzvah and other circumstances in which lishmoh is necessary.

hanging hardware, is the equivalent of the cloth tape – it is certainly mekabel tum'ah - and thus according to Rav Moshe would invalidate the wood. However, Rambam Keilim 4:5-10 makes clear that the conjunction of peshutei keli eitz with something mekabel tum'ah only invalidates if the mekabel tum'ah is the primary element (ikkar) and the wood secondary (tafel). For example, a wooden key with metal teeth is mekabel tum'ah, whereas a metal key with wooden teeth is not. It seems to me difficult to view hanging hardware as more essential relative to the actual blind than the key blank is to the teeth.

I would go further and suggest that on the same ground even a matchstick blind with internal strings that are mekabel tum'ah would be valid according to Rav Mosheh, who dealt with a venetian blind where the cloth was an integral part of the mechanism regulating light entrance.

## ANSWER

For all the above reasons it seems to me that store-bought all-wood matchstick blinds are perfectly valid skhakh, whether they are made with cotton or nylon string. Each of the materials used to bind commercial sukkah mats has halakhic disadvantages, but none seems severe enough to create a psul even lekhatkhilah. I therefore think that the family in question may continue using both kinds of mats as it has previously.

## THREE ADDITIONAL NOTES

1.

It is an open secret that kashrut agencies put their seal on products that do not require kashrut certification. There is hekhshered bleach, for example, even though bleach is fatally poisonous, and inedible materials are not subject to the laws of kashrut. The agencies<sup>41</sup> argue that if companies wish to pay them for such certification, they are not committing fraud by accepting payment for doing so, so long as they tell the company that the product is kosher regardless.

What about the consumer? Rabbi Moshe Heinemann of the Star K, an agency whose openness to my questions while researching this topic was admirable and impressive, agreed during a phone conversation that consumers as well must be informed when a certified product does not require certification, lest they be misled into paying more for a hechshered than non-hechshered product. Star K does indeed publish a list of food products not requiring certification; while the list is neither comprehensive nor coordinated with the list of products actually certified, it is an important step toward transparency.

Anecdotally, however, my impression is that at least a significant percentage, and possibly the majority, of kosher consumers assume that the presence of a hechsher on an item demonstrates that supervision is necessary, and thus will not buy the identical product without a hechsher. This is particularly the case for baalei teshuvah and recent converts, but extends to learned people as well. The result is that kashrut may entail unnecessary costs for such people, *even if supervision per se does not impose significant production costs that make hechshered products more expensive than non-hechshered products*, as they will pass up unhechshered brands “on sale” or generics in favor of hechshered name brand products at full price<sup>42</sup>. This is of course a greater burden on the poor; it functions like a regressive tax. It seems to me that full transparency about what needs hashgochah is a moral necessity.

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<sup>41</sup> Full disclosure: including the KVH, on whose beit din I serve

<sup>42</sup> It might be worthwhile to investigate this empirically.

The last sentence needs to be strengthened by a rigorous definition of “need”. The discovery of a creative halakhic argument does not per se create a halakhic need to account for it, especially when the argument casts doubt on the validity of the longstanding practice of observant Jews. It is reasonable for an agency to put a hechsher on a product to verify that it meets a particular nonnormative halakhic standard, but only if it is fully transparent that there is no requirement, even lekhatchilah, to meet that standard.

2.

It is generally assumed that the near-absolute reliance by consumers on hekhsherim, the result of halakhic progress; whereas previously consumers only “read the ingredients”, and thus missed many significant kashrut issues that have been discovered by the newly professionalized industrial kashrut agencies, consumers now “rely on the professionals” and therefore are less likely to eat nonkosher food. Examples of significant issues consumers may previously have missed include the anti-clumping agents in dried fruit, the clarifying agents in clear apple juice, and many, many others.

I suggest that this assumption is erroneous. The truth, rather, is that it was perfectly permissible halakhically to “read the ingredients” before kashrut agencies expanded. Halakhically, one is permitted to eat food that is probably kosher, so long as one has made a reasonable effort to determine whether it is actually kosher. Before industrialized kashrut agencies, reading the ingredients constituted a reasonable effort. Now, however, the agencies have the information in hand, and so it can be argued that personal investigation and judgment no longer constitutes a reasonable effort. It is worth asking how much communal resources should be out into diminishing the amount of physically nonkosher food we eat, even if legally we are not diminishing the number of prohibited eating acts.

3.

The sukkah mat controversy leaves the lay consumer in an unfortunate position, in which the dueling agencies each insist that only their skhakh is valid, on the basis of arguments that they cannot reasonably evaluate on their own. The dueling hashgachot then generate dueling brands, each of which plausibly advertise themselves as the halakhically best alternative.

My contention is that kashrut agencies should be very careful to distinguish transparently between halakhic necessities and advantages, and between lekhatchilah and bediavad, so that consumers can, where appropriate, make decisions on price or other variables when the halakhic issues are not strong enough to supervene.

## Beautifying the Commandments: A Brisker Pilpul

Mishnah Sukkah 29b teaches that a desiccated lulav is ritually invalid. Rashi and Tosfot agree that the invalidity stems from a lack of “hiddur” (for now, “beauty”), but disagree as to the source of the hiddur standard that a desiccated lulav fails to meet. Rashi cites to Exodus 15:2, “This is my G-d and I will glorify Him” (*zeh e-li v’anveihenceforth v’anveihu*), meaning that this standard is just an instance of a beautification obligation that applies to all commandments.<sup>43</sup> Tosfot, however, cite to the term “hadar” in Vayikra 23:40’s description of the etrog, which is extended by *hekesh* to the lulav as well. This makes the standard specific to the mitzvah of the 4 species<sup>44</sup>

### A.

Tosfot challenge Rashi on the ground that *v’anveihu* 15:2 generates an ideal standard but not one that invalidates. His evidence for this is Sukkah 11b, or 33a, where the anonymous Tannaitic position that the lulav should be bound, but is valid even if not bound<sup>45</sup>, is said to stem from *v’anveihu*. Rashi’s position can be defended in the following ways:

- a) A lack of hiddur which results in an object being less hadar than it was initially, such as a lulav drying out, invalidates even *bediavad*, whereas a lack of added hiddur, such as not being bound is only a *lekhatchilah* requirement<sup>46</sup>. (Kappot T’marim)
- b) On Shabbat 133a, the Talmud cites a beraita in which the Sages, disagreeing with Rabbi Yehudah, declare that a Torah scroll which contained a Divine Name that was not written with proper intention cannot be validated by overwriting the Name with proper intention, because the Torah would then appear “spotted”, which would violate *v’anveihu*. Most commentators understand the Sages as invalidating the overwritten Torah even *bediavad*, and thus as providing a precedent for Rashi’s position regarding the desiccated lulav.

In light of b), how can Tosfot’s ground for rejecting Rashi be sustained?

- a) They might have read the invalidation there as well as being only *lekhatchilah*.
- b) Exodus 15:2 speaks of glorifying a Divinity Who can be pointed to.<sup>47</sup> Perhaps this referred specifically to printed renditions of the Divine Name. The issue of overwritten Divine Names therefore is hiddur that is directly connected with the verse, and therefore may apply even *bediavad*, unlike anything associated with the *daled minim*. (Encyclopedia Talmudit cites this idea from Chatam Sofer.)

### B.

While Rashi’s defense against Tosfot appears well-taken, a more serious issue is an apparent internal contradiction (סתירה) within his commentary.

Mishnah Sukkah 34b reports a מחלוקת as to whether at least one *hadas* must not be cut off at the top, with Rabbi Tarfon taking the lenient position. By contrast, Mishnah Sukkah 29b records an apparent consensus that a lulav cut off at the top is invalid. The obvious question is why Rabbi Tarfon has a stricter standard for the lulav than he does for the *hadas*.

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<sup>43</sup> In Brisker translation: It is a *din* in the *chiyuv* of hiddur mitzvah in kol hatorah kullah.

<sup>44</sup> A *din* in the *daled minim*

<sup>45</sup> Binding the lulav is required *lekhatchilah* but not *bedieved*

<sup>46</sup> Note that according to Kappot T’marim *v’anveihu* is a Biblical standard, but the Rabbis were given the discretion case-by-case (*m’saran hakatuv lachakhamim*) whether to apply it *bediavad* or *lekhatchilah*.

<sup>47</sup> In rabbinic exegesis of the Torah, the word “zeh” always refers to something that can be pointed at.

Rashi explains that a cut-off lulav is invalid because it lacks “hiddur”, but that Rabbi Tarfon does not require “hiddur” with regard to the hadas.

Now, if one believed, as per Tosfot, that only Vayikra 23:40 can generate an invalidation on grounds of “hiddur” with regard to the 4 species, Rashi’s explanation would be reasonable. Rabbi Tarfon’s position would be that the *hekesh* applies the word “hadar” to the lulav, which is next after the etrog in the verse, but not to the hadas or aravah. But with regard to the desiccated lulav, Rashi ruled that Exodus 15:2 can also invalidate, and Exodus 15:2 applies to the hadas in the same way as it does to the lulav!?

Nachamanides in his commentary Milchamot Hashem offers what will turn out to be a helpful insight. He notes that the *hadas* is defined as a shrub whose leaves cover its branches; therefore, he argues, a *hadas* whose top is cut off is visually indistinguishable from one whose top is not cut off, and therefore does not lack “hiddur”.

This insight explains well why Rabbi Tarfon invalidates a decapitated lulav but validates a decapitated *hadas*. But it cannot be Rashi’s explanation, as it suggests that Rabbi Tarfon believes that a decapitated *hadas* does not lack “hiddur”, whereas Rashi is explicit that Rabbi Tarfon believes that it does lack “hiddur”, but that he does not require “hiddur” with regard to the hadas.

To resolve this contradiction I suggest that it is necessary to posit that Rashi sharply distinguishes two different varieties of “hiddur”, which I will term respectively “aesthetic” and “structural”. The first refers to the experience generated by the object, the second to the nature of the object. The first is generated by Exodus 15:2 and applies to both the lulav and the hadas, whereas the second is generated by Leviticus 23:40 and, according to Rabbi Tarfon, applies to the lulav but not to the hadas.

What emerges then according to Rashi is the following:

- a. A desiccated lulav is ugly, and therefore invalidated by Exodus 15:2.
- b. A decapitated lulav is both ugly, and therefore invalidated by Exodus 15:2, and partial, and therefore invalidated by Leviticus 23:40.
- c. A decapitated hadas is not ugly, and therefore irrelevant to Exodus 15:2, and while partial, according to Rabbi Tarfon is not subject to Leviticus 23:40.

Once this הקירה is established, we can actually see it clearly in Rashi’s very precise language, as follows:

- a. Rashi says that a desiccated lulav is invalid "ואנוהו" דכתיב "דבעינן מצוה מהודרת, דכתיב "ואנוהו".
- b. Rashi says that a decapitated lulav is invalid דלא הוי הדר.
- c. Rashi says that according to Rabbi Tarfon a decapitated *hadas* is valid דלא בעי הדר בהדס.

Note that with regard to the decapitated lulav and hadas Rashi is careful to speak of “הדר”, the word from Leviticus 23:40, rather than “הידור”, the actual requirement.

Distinguishing the two types of required “hiddur” enables Rashi to avoid another potential difficulty raised by his allowing Exodus 15:2 to invalidate: Why is it necessary to derive a requirement of “hiddur” for the lulav from Leviticus 23:40, when the identical requirement is already in place from Exodus 15:2? Now it should be clear that the requirements are not redundant, as they refer to two different types of “hiddur”.

Tosfot do not face this difficulty, as according to them Leviticus 23:40 is needed to make “hiddur” a requirement even בדיעבד. However, Tosfot’s explanation faces its own challenge. We saw above that Sukkah 11b and 33a explain the position that an unbound lulav is less than ideal but not invalid on the ground that it lacks the “hiddur” required by Exodus 15:2. But if Leviticus

23:40 sets the same standard, but adds the capacity to invalidate, why doesn't it invalidate an unbound lulav?

One way to defend Tosfot's position is to say that they make the same distinction as Rashi, but they believe that a desiccated lulav lacks both types of "hiddur". But Rashi's precision actually enables us to deepen the חקירה in a way that opens up a better path for Tosfot as well.

When speaking of Exodus 15:2, Rashi refers to the requirement that the mizvah have "hiddur", whereas when speaking of Leviticus 23:40 he makes no mention of the mitzvah. It therefore seems likely that "aesthetic hiddur" relates to the totality of the mitzvah experience (is a דין in the מעשה המצוה), whereas "structural hiddur" relates exclusively to the mitzvah-object (is a דין in the חפצא של מצוה).

Tosfot may accept that Exodus 15:2, relates to the מעשה and Leviticus 23:40 to the חפצא, but see both as related to the same type of "hiddur". However, the scope of Exodus 15:2 is broader, since it can relate to experiential elements that are external to the formal חפצא. Tosfot might believe that the binding of the lulav should be seen as such an external element.

### C.

The idea that Exodus 15:2 applies to the מעשה, rather than the חפצא, enables us to explain what might otherwise be a very difficult passage.

Mishnah Sukkah 36b records a dispute between Rabbi Meir and Rabi Yehudah as to whether one can bind the lulav with materials not from the 4 Species. To support his position, Rabbi Meir cites a practice in Jerusalem of binding the lulav with gold rings – gold is certainly not one of the 4 Species! In response, Rabbi Yehudah claims that the gold was a tertiary binding, while there was a primary binding made from the 4 Species.

Rava explains that Rabbi Yehudah's position is that using a non-4 Species material in the binding would mean that one took 5 Species in the hand, a violation of the commandment בל תוסיף (which we will here understand as prohibiting adding to the חפצא של מצוה). According to this explanation, however, why does the presence of the primary binding help! One is still taking 5 Species in the hand for the sake of the mitzvah!?

Rashi explains that the additional binding is only for נוי, a clear reference to Exodus 15:2. His point, we can now understand, is that whereas Leviticus 25:40 relates to the חפצא, Exodus 15:2 does not, and therefore an element added for the sake of Exodus 15:2 does not become part of the חפצא, and therefore does not generate a violation of בל תוסיף.

As noted in C, Tosfot may acknowledge this distinction. Alternatively, Tosfot may hold that Exodus 15:2 is defined as an exception to the prohibition against בל תוסיף, in the same way as לא תסור.

### D.

It is possible that Rashi and Tosfot differ in yet another way. Tosfot may define Exodus 15:2 as an independent mitzvah of "hiddurizing" mitzvot, whereas Rashi may understand it as a technical requirement within each mitzvah. Thus for Tosafot a lack of "hiddur" should not invalidate a mitzvah (except where, as with regard to the 4 Species, there is a "hiddur" requirement native to the mitzvah), as the lack does not relate to that mitzvah at all, whereas for Rashi it does.

Rashi and Tosafot's respective understandings each apparently line up well with one side of a מחלוקת found on Sukkah 37a. Rabbah held that the binding of the lulav must not prevent

one's hand from directly contacting the lulav, whereas Rava did not see this as an issue. As we know from 11a and 33b that the purpose of the binding was "hiddur" derived from Exodus 15:3, perhaps the issue between them was whether that verse set up an independent mitzvah, in which case something intended to fulfill that mitzvah would serve as a separation (הציצה) between the hand and הפצא, or rather a technical requirement within each mitzvah, in which case it would not be a הציצה. So Rabbah would line up with Tosfot, and Rava with Rashi. Indeed, Rava's language seems explicitly to say that anything fulfilling Exodus 15:2 becomes part of the הפצא.

However: If Rashi held like Rava, and Rava held that any object fulfilling Exodus 15:2 becomes part of the הפצא של מצוה, we return to our problem in C, namely: why do gold rings that fulfill Exodus 15:2 not violate בל תוסיף? Note that it is Rava who explains that position as well.

My suggestion here is that according to Rashi objects that fulfill Exodus 15:2 become a הפצא of the mitzvah, but not the *same* הפצא. Thus they do not generate a בל תוסיף issue. However, Rashi held that two הפצות of the same mitzvah do not serve as barriers with regard to one another.

Perhaps one can argue for Rashi's position from the fact that even Rabbah does not require one to ensure that one's hand touches each of the four species directly; in other words, the species do not serve as barriers between the hand and each other. However, it is also possible that the four species together constitute one aggregate הפצא.

It is also possible that the dispute between Rabbah and Rava is simply about whether Exodus 15:2 is defined as an exception to בל תוסיף. This would enable both Rashi and Tosafot to fit with either position.

### 1. שמות טו:ב ופירושים עליו

"עזי וזמרת י-ה ויהי לי לישועה זה א-לי ואנוהו אל-הי אבי וארממנהו"

### 2. פירושים למלת "ואנוהו" בשמות טו:ב

- א. ר' יוסף בכור שור - בשיר
- ב. רבי עקיבא (שבת קלג:): - הוי מרבה בשבחיו (בפני אומות העולם)
- ג. תרגום אונקלוס - ואבני ליה מקדש
- ד. אבא שאול (שבת קלג:): - הוי דומה לו; מה הוא חנון ורחום, אף אתה חנון ורחום
- ה. רב סעדיא גאון - אערוג אליו ואבוא למשכנותיו
- ו. ר' ישמעאל בן ברוקא (שבת קלג:): - התנאה לפניו במצות; עשה לפניו סוכה נאה, ולולב נאה, ושופר נאה, ציצית נאה, ספר תורה נאה, וכתוב בו לשמו בדיו נאה, בקולמוס נאה, בלבלר אומן, וכורכו בשיראין נאין.

### 3. סוכה לג.

מאן תנא להא דתנו רבנן: "לולב מצוה לאוגדו, ואם לא אגדו – כשר"?  
מני? אי רבי יהודה - כי לא אגדו, אמאי כשר? אי רבנן - מאי מצוה קא עביד?  
לעולם רבנן, ומצוה משום "זה א-לי ואנוהו".

### 4. סוכה כט:

משנה: לולב הגזול והיבש - פסול. של אשירה ושל עיר הנדחת - פסול. נקטם ראשו, נפרצו עליו - פסול. נפרדו עליו - כשר, רבי יהודה אומר: יאגדנו מלמעלה.

### 5. רש"י סוכה כט:

יבש - דבעינן מצוה מהודרת, דכתיב "ואנוהו"

### 6. תוספות סוכה כט: ד"ה לולב

(יבש) - משום דאיתקש לולב לאתרוג דכתיב ביה "הדר"

### 7. גיטין כ.

אמר רב חסדא: גט שכתבו שלא לשמה והעביר עליו קולמוס לשמה, באנו למחלוקת רבי יהודה ורבנן, דתניא: הרי שהיה צריך לכתוב את השם, ונתכוין לכתוב יהודה וטעה ולא הטיל בו דלת, מעביר עליו קולמוס ומקדשו, דברי רבי יהודה. וחכמים אומרים: אין השם מן המובחר.  
אמר רב אחא בר יעקב: דילמא לא היא, עד כאן לא קאמרי רבנן. התם - דבעינא "זה א-לי ואנוהו" וליכא.

### 8. סוכה לד:

משנה:

רבי ישמעאל אומר: שלשה הדסים ושתי ערבות לולב אחד ואתרוג אחד, אפילו שנים קטומים ואחד אינו קטום. רבי טרפון אומר: אפילו שלשתן קטומים.  
רבי עקיבא אומר: כשם שלולב אחד ואתרוג אחד, כך הדס אחד וערבה אחת.

### 9. רש"י סוכה לד:

ר' טרפון אומר אפילו שלשתן קטומים - דלא בעי הדר בהדס.

### 10. רמב"ן במלחמות לסוכה לד:

ורבי טרפון מכשיר בזה ולא באחר משום שההדס בעבותו תלוי הדרו שעליו חופין את עצו משא"כ בשאר המינין

### **11. סוכה לו:**

משנה. אין אוגדין את הלולב אלא במינו, דברי רבי יהודה. רבי מאיר אומר: אפילו בחוט במשיחה. אמר רבי מאיר: מעשה באנשי ירושלים שהיו אוגדין את לולביהן בגימוניות של זהב. אמרו לו: במינו היו אוגדין אותו מלמטה. גמרא.

אמר רבא: אפילו בסיב, אפילו בעיקרא דדיקלא. ואמר רבא: מאי טעמא דרבי יהודה? קסבר לולב צריך אגד, ואי מייתי מינא אחרינא, הוה חמשה מיני.

### **12. רש"י לסוכה לו:**

במינו אוגדין אותו מלמטה - לשם מצות אגד, וזה לנוי בעלמא.

### **13. רש"י לסוכה כט:**

נקטם ראשו - פסול, דלא הוי הדר. נפרצו עליו - משדרה, ואינם מחוברין אלא על ידי אגודה, כי חופיא שקורין אשקוב"א, לאו הדר הוא.

### **14. סוכה לו:**

רבי מאיר אומר אפילו במשיחה כו' - תניא:

אמר רבי מאיר: מעשה ביקירי ירושלים שהיו אוגדין את לולביהן בגימוניות של זהב. אמרו לו: משם ראייה? במינו היו אוגדין אותו מלמטה.

אמר להו רבה להנהו מגדלי הושענא דבי ריש גלותא: כי גדליתו הושענא דבי ריש גלותא, שיירי ביה בית יד כי היכי דלא תיהוי חציצה. רבא אמר: כל לנאותו אינו חוצץ.

### **15. רש"י לסוכה לו:**

שיירי ביה בית יד - מתחת לאגד, שלא יקחנו במקום אגדו, דקסבר: אין האגד מן המצוה, כרבנן דאמרי אין צריך אגד.

### 1. Exodus 15:2

G-d is my strength and my song – this is my G-d *v'aniveihu*, the G-d of my father and I will exalt him.

### 2. Translations of *v'aniveihu* in commentaries to Exodus 15:2

Rabbi Yosef Bekhor Shor – I will adorn him with song

Rabbi Akiva (Talmud Shabbat 133b) – praise him greatly before the nations of the world

Onkelos – I will build him a sanctuary

Abba Shaul (Talmud Shabbat 133b) – be similar to him; just as he is gracious and merciful, you too should be gracious and merciful

Saadia Gaon – I will yearn toward him and go to his sanctuaries

Rabbi Yishmael ben Broka (Shabbat 133b) – be adorned before him with mitzvot; make before Him an attractive Sukkah, an attractive lulav, an attractive shofar, attractive *tzizit*, an attractive Torah scroll, and write it for His sake in attractive ink, with an attractive pen, a skilled scribe, and wrap it in attractive fabric.

### 3. Sukkah 33a

Who is the author of the following *beraita*: “It is a mitzvah to bind the lulav, but if he did not bind it, it is still valid”?

Who is the author? If R. Yehudah, why is it valid if he did not bind it? If the Rabbis, what is the mitzvah?

Really it is the Rabbis, and the mitzvah comes from “this is my G-d *v'anveihu*”.

### 4. Sukkah 29b

Mishnah:

A stolen or dried out lulav is invalid.

A lulav of a tree dedicated to idolatry or from an idolatrous city is invalid.

A decapitated lulav, or one with its leaves spread is invalid.

If its leaves are separated, it is valid.

Rabbi Yehudah said: He should bind it above.

### 5. Rashi to Sukkah 29b

“dried out” - lulav is invalid because we require a beautiful mitzvah, as Scripture writes “*v'anveihu*”.

### 6. Tosafot to Sukkah 29b

“dried out” - because the lulav is “analogized” to the etrog, which Scripture describes as “beautiful”

### 7. Gittin 20a

Said Rav Chisda: A bill of divorce that was written not for the sake of divorce, and he then reinked it with a pen for the sake of divorce – this case is subject to the dispute between Rabbi Yehudah and the Rabbis, as we learned in a *beraita*:

If the word he needed to write (in a Torah scroll) was the Tetragrammaton, and he intended to write YHWDH (Yehudah) and left out the D (thereby making the Tetragrammaton), he may re-ink it with a pen and (thus) sanctify it, according to Rabbi Yehudah.

But the Sages say: The Name is not ideal.

Said Rav Acha bar Yaakov: Maybe this is not so, and the Rabbis did not go so far. There, the reason was that it must meet the standard “this is my G-d *v'anveihu*”, and it does not.

### 8. Sukkah 34b

Mishnah:

Rabbi Yishmael says: Three hadasim and two aravot, one lulav and one etrog, even if two of them are decapitated and one is not decapitated.

Rabbi Tarfon says: Even if all three are decapitated.

Rabbi Akiva says: Just as there is one lulav and one etrog, so too there is one hadas and one aravah.

**9. Rashi to Sukkah 34b**

“Rabbi Tarfon says: Even if all three are decapitated” – since he does not require beauty with regard to hadasim.

**10. Nachmanides, The Wars of Hashem to Sukkot 34b**

Rabbi Tarfon declares the hadas valid when decapitated, but not so the other three species, since the beauty of the hadas depends on its density, as its leaves cover its wood, which is not true of the other three species.

**11. Sukkah 36b**

Mishnah:

One may only bind the lulav with a binder of its own species, according to Rabbi Yehudah.

Rabbi Meir says: Even with a saddle-rope.

Said Rabbi Meir: A true story: the people of Jerusalem used to bind their lulavim with gold rings.

They said to him: They would bind it with their own species underneath.

Gemara:

Said Rava: Even with bark, even with heart of palm.

Rava further said: What is the reason of Rabbi Yehudah? He holds that a lulav requires binding, so that if he were to use a binder of a different species, there would be five species.

**12. Rashi to Sukkah 36b**

“They would bind it with their own species underneath” – for the sake of the mitzvah of binding, so the gold ring was for mere adornment.

**13. Rashi to Sukkah 29b**

“A decapitated lulav” – is invalid, since it is not beautiful.

“If its leaves spread” – from the spine, and they are only connected via the binding, like . . . this is not beautiful.

**14. Sukkah 37a**

‘Rabbi Meir said even with a rope’ –

*A beraita:*

Said Rabbi Meir: A true story: the elite of Jerusalem used to bind their lulavim with gold rings.

They said to him: You bring that as evidence? They would bind it with its own species underneath.

Rabbah said to the official lulav-binders of the House of the Exilarch: When you bind the lulavs of the House of the Exilarch, leave enough extruding for a handhold, so that the binding will not be a separation.

Rava said: Anything brought to adorn it does not separate.

**15. Rashi to Sukkah 37a**

“Leave enough extruding for a handhold” – below the binding, so he won’t hold it at the place where it is bound. He held that the binding is not part of the mitzvah, following the Rabbis who held that the lulav does not require binding.

מחלוקות

a. תוספות vs. רש"י

regarding פסול לולב היבש מקור

b. רבנן vs. רבי יהודה

whether לולב צריך אגד

c. רבי מאיר vs. רבי יהודה

whether the primary lulav binding can be gold

d. חכמים vs. רבי יהודה

whether a Sefer Torah can be koshered by re-inking its passul shemot

e. תנא קמא vs. רבי טרפון

whether a decapitated hadas is valid

f. רבה vs. רבא

whether the binding is a חציצה

חקירות

A. מראה vs. צורה\עצם\מהות (phenomena vs. noumena)

B. חפצא vs. מעשה\מצוה

C. מכל vs. בכל

D. דחוייה vs. הותרה

נפקא מינות (in our sugya)

א. Can ואנוהו be a פסול בדיעבד, and if yes, in what contexts?

ב. Do the חכמים think that a ספר תורה שהעבירו קולמוס עליה לקדשה is פסול אפילו בדיעבד?

Cases

a. לולב היבש

b. לולב שנקטם ראשו

c. הדס שנקטם ראשו

d. לולב שאיננו נאגד

e. ספר תורה שהעבירו עליה קולמוס לקדשה

f. לולב שלא שיירו בה בית יד מתחת האגד

g. לולב שאגדו אותו בגימוניות של זהב לחוד

Parallel חקירות

C. חצי שיעור, חינוך, לפני עור