

# CENTER FOR MODERN TORAH LEADERSHIP



## MAY NEWLYWEDS UTILIZE CONTRACEPTION TO DELAY HAVING CHILDREN?

By Rabbi Aryeh Klapper

A *tzoraat* lesion has halakhic consequences only once a kohen has confirmed its nature. However, kohanim have a positive Torah obligation (a “DO”) to inspect such lesions. Tannaim and Amoraim debate the circumstances under which a kohen has the discretion or obligation to delay making such inspections. Chazon Ish (end of Negaim) explains that these debates govern the parameters under which a Jew may justify delaying the fulfillment of any DO for which the Torah provides no deadline.

In “Halakhic Aspects of Family Planning”, published in the Fall 1982 issue of the *Journal of Halakha and Contemporary Society*, Rav Herschel Schachter applied Chazon Ish to the issue of delaying procreation via artificial contraception.

The mitzvah of Re'iyas Negaim (=viewing lesions) is similar to that of Piryah V'rivyah (=procreation) in that both have no biblically-set time for their performance.

Rav Schachter argued that Chazon Ish's reasoning forbids the use of birth control, regardless of method.

According to his opinion, then,  
a young married man would not be allowed to postpone the  
raising of a family,  
as such a delay would constitute a *bitul* (=nullification) of the  
mitzvah.

Rav Schachter's argument did not directly forbid married women to use contraception, nor did it forbid a man to marry a woman who stated her intention to use contraception. Furthermore, the article's introduction specifically stated that its intent was to encourage young couples to seek rabbinic guidance rather than assuming that halakhah forbids contraception in all cases. Nonetheless, it clearly made prohibition the default, with permission requiring a personal rabbinic “*heter*”.

In “The Halakhic Parameters of Delaying Procreation”, published in the Tishrei 2010 issue of *Meorot*, Rabbi Moshe Kahn z”l disagreed:

Rav Herschel Schachter . . . posits that a delay in the commandment to procreate is forbidden. He bases this view on the following principles:

1. The Hazon Ish's conclusion that a delay in fulfilling a positive non-time-bound commandment is viewed as a temporary cancellation of the commandment . . .

While I have deep respect for Rav Schachter, I must respectfully disagree with his reading of the Hazon Ish. I believe the conclusion of the Hazon Ish is unequivocal to permit a delay.

The practical halakhic dispute cannot be resolved on the basis of a single source, and many aspects of Chazon Ish's analysis are subject to challenge. However, correctly understanding Chazon Ish should significantly advance the conversation. That is my goal in this essay.

Chazon Ish frames the issue as follows:

Question:

A mitzvah that has no fixed time, from what point does one violate it?

His analysis begins from a beraita on Talmud Moed Kattan 7b. The beraita assumes that a kohen should avoid examining the possible-*tzoraat* lesions of a groom, including those on his house or clothes, until after the seven days of marital celebration, and similarly, that such lesions should not be examined during a Festival. Rabbi Yehudah and Rebbe dispute the source of this rule.

(Vayikra 13:14) “and on the day on which it is seen” – there is a day that you must see it, and a day that you must not see it.

Based on this, they said:

A groom with a new lesion –  
we give him the seven days of celebration (without examination),  
to him and to his house and to his clothes.

Similarly, on a Festival - we give him the seven days of the Festival.

These are the words of Rabbi Yehudah.

Rebbe says:

(That source) is not necessary.

Behold it says (Vayikra 14:36) “and the kohen shall order, and they shall empty the house” –

If we delay for him for a reshut (=optional) matter, all the more so for a mitzvah matter.

Abbayay and Rava then dispute the parameters of the dispute between Rabbi Yehudah and Rebbe.

Said Abbayay:

The difference between them is only the meaning of the Torah's words.

But Rava said:

The difference between them is a *reshut* matter.

The purpose of emptying the house prior to the kohen's examination is to save the owner the cost of replacing earthenware vessels that will become tamei if the lesion is *tzoraat*. Rava thus understands Rebbe as permitting the delay of lesion examinations even to save money.

Chazon Ish initially argues that even according to Rava, Rabbi Yehudah forbids delaying a *tzoraat* examination for a *reshut*-purpose, and it follows that the same is true for all other DOs. Rebbe disagrees only because he has a verse that allows such delays in the specific context of *tzoraat*. This yields a consensus position that other DOs, such as procreation, cannot be delayed for a *reshut*-purpose.

However, Chazon Ish concludes that this position is untenable. First, he contends (without a specific citation) that such delays are permitted regarding the DOs of chalitzah and yibum. Second, he cites a passage on Pesachim 4a.

Let us do the search for chametz at noon (when it becomes forbidden, rather than the night before)!?

And should you say: - the eager (*zerizin*) do mitzvot early – let us do the search at dawn,

as Scripture says:

and on the eighth day the flesh of his foreskin must be circumcised,

and a beraita teaches:

“the whole day is valid for circumcision; it's just that *zerizin* do mitzvot early,

as Scripture says:

Avraham rose early in the morning . . . !?

Delaying circumcision or the search for chametz apparently do not constitute violations or nullification of DOs, only a failure to achieve the level of *zerizin*.

Chazon Ish recognizes that his second proof can be challenged by saying that it applies only to mitzvot that have a deadline, such as circumcision and eliminating chometz. However, perhaps because he considers the proof from chalitzah and yibum unassailable, he concludes that the halakhic default is that delaying a DO does not constitute a violation.

It seems correct that for all mitzvot with no fixed time – one may delay whether for a mitzvah matter or to avoid financial loss,

If so, he asks, why does Rebbe require a verse to justify delaying for a *reshut* matter in the context of *tzoraat*? He provides two answers. The first is that

the reason that one requires a verse (to justify delay regarding *negaim*) –

is that *negaim* are more stringent, because one is liable for excising (*tzoraat* lesions) and because it says regarding them “be on guard (=hishamer)”.

The second is that

the verse teaches us that (regarding *negaim*) one may delay without concern even for the issue of *zerizin*.

It follows that

by other mitzvot, it is also the case that one may delay either for a mitzvah matter or for a *reshut* matter.

Chazon Ish then tentatively adds two qualifications, one a stringency and the other a leniency. The stringency is that some considerations may not even rise to the level of *reshut*, and delaying for “no reason at all (=b'lo taam)” may be considered an immediate violation of the DO. The leniency, based on Tosafot Pesachim 29b, is that delaying a DO is never a violation so long as one still intends to fulfill it.

Finally, Chazon Ish carves out an exception for obligations that are generated by a vow, which are subject to a specific prohibition of “Do not delay (=bal t'acher)”. But he emphasizes that this exception is narrow.

However, for a mitzvah that he has not accepted upon himself, rather the Torah obligated him – there is no “Do not delay”.

The halakhic upshot is that Chazon Ish permits delaying a DO for *reshut* considerations, which specifically include but are not limited to financial considerations. He further suggests that no delay violates a DO so long as the intent is to fulfill the mitzvah eventually. Of course, the issue of *zerizin* still creates a default that earlier is better.

Let me emphasize again that Chazon Ish's analysis is not necessarily dispositive, halakhically or intellectually. Also, Rav Schachter's article and Rav Kahn's response raise other issues, some fundamental and some of detail, that I have not addressed here at all. Finally, I ask anyone who thinks I have misread or misrepresented Chazon Ish to please email or call me with their corrections, and I will *beli neder* acknowledge any errors publicly and in timely fashion. I am appending the Hebrew text of Chazon Ish here to facilitate such challenges.

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ויש לעיין: במצוה שאין זמנה קבועה, מאימתי קעבר עליה?  
 והנה במ"ק ז': ילפינן דמתניתין לדבר מצוה ולדבר רשות, ואיכא למ"ד דאין ממתינין לדבר רשות,  
 ומשמע לכאורה דאם נשתהה בשביל הפסד ממון - עובר בעשה,  
 וא"כ, בכל מצות דליכא קרא דממתינין לדבר הרשות - עובר מיד!  
 ומיהו, מצינו בחליצה ויבום - שאינו חייב מיד,  
 ואמרינן פסחים ד. שאם ממתינ - אינו עובר רק משום זירוז!  
 ומיהו, התם במצוה שזמנה קבועה, והרי אמרה תורה שאינו עובר עד שיעבור היום.  
 ומיהו נראה דבכל מצוה שאין זמנה קבוע - ממתינ בין לדבר מצוה בין להפסד ממון,  
 והא דאצטריך קרא בנגעים – דחמירי טפי, דחייב על קציצתו וכתוב בהו השמר;  
 א"נ, קרא אשמועינן דממתינ ואין בו משום זירוז, וה"ה בשאר מצות ממתינ לדבר מצוה ולדבר רשות,  
 וכדאמר בנדרים לב. במשה שנענש שנתעסק במלון תחלה, מכלל דמותר מן הדין.  
 ומיהו, אם מתעכב בלא טעם - אפשר דעובר בעשה.  
 ואפשר דכל שדעתו לקיימה - אינו עובר בעשה, וכעין שכתבו תוספות פסחים כט': במשה חמץ על מנת לבערו.  
 והא דאצטריך קרא שבת כד: שאין מילה שלא בזמנה ושריפת נותר דוחה יום טוב, ולא קרינן ליה ממתינ לדבר מצוה –  
 דכיון דמלאכת מצוה מותר ביום טוב - אין כאן חילול יום טוב, כמו קרבנות הבאין בשבת, ואין ראוי להמתין, ולא קרינן בזה  
 אפשר לקיים שניהם.  
 ובצדקה, דאמר ר"ה ו. דקאי עליה בב"ת לאלתר – יש להסתפק אי ממתינ לדבר מצוה ולדבר רשות.  
 ולמש"כ ר"ן נדרים ס. דבפיך לאו דוקא צדקה אלא כל קבלת מצוה – אם כן, יש לומר דקאי עליהו בב"ת לאלתר,  
 ומיהו מצות שלא קבל עליו אלא התורה חייבתו – אין בהו בל תאחר,  
 ועי' בכורות יג. לענין מצות פדיה ועריפה. [א"ה, ועיין בכורות סימן יז סק"ט, דמאי סימן ב ס"ק ב]