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Survey of Recent Halakhic Literature

Of Tobacco, Snuff and Cannabis (Part I)

Israel is both a major producer as well as a major consumer of cannabis and has long been at the forefront of research in various areas of cannabis science. Indeed, in a keynote address delivered in Tel Aviv at the fourth annual CannaTech conference, Ehud Barak, former prime minister of Israel and presently chairman of the Israeli medical cannabis company Canndoc/Intercure International, quipped that Israel has become "a land flowing with milk, honey and cannabis."[1] Medical marijuana has been legal in Israel since 1999. Recreational marijuana was essentially decriminalized in March 2017. Unlicensed growing and selling of cannabis remains a criminal offense as does repeated smoking of marijuana in public. First-time offenders are subject to a fine of approximately $270 with increased penalties for repeated offenses. The fourth offense renders a public user liable to incarceration.[2]

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This column is the first of a two-part series on halakhic matters relating to tobacco and cannabis. This piece relates to the questions of reciting a blessing on their use, their permissibility on Yom Tov, and a variety of questions relating to other holidays. Permissibility of tobacco and cannabis for both medicinal and recreational purposes, use contrary to the wishes of parents, kashrut supervision of cannabis and cultivation during shemittah will be addressed in Part 2 of this article in Tradition*'s Summer 2022 issue. The legal status of recreational cannabis in Israel is a matter in flux. As this column went to press the Justice Ministry was drafting policies to limit fines and prevent cannabis users from being prosecuted, thus effectively decriminalizing recreational use (although not in the I.D.F. or among minors). Whether these measures will attain the approval of the requisite Knesset committees is not yet known at this writing.*

[1] See Sara Brittany Somerset, "Israel Decriminalizes Adult Use Cannabis During CannaTech Conference in Tel Aviv," *Forbes*, April 5, 2019, https://www.forbes.com/sites/sarabrittanysomerset/2019/04/05/israel-decriminalizes-adult-use-cannabis-during-cannatech-conference-in-tel-aviv.

[2] See Alex Lubben, "Israel Just Decriminalized Weed Use," *Vice News*, March 5, 2017, pp. 27–29.

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There are presently some 95,000 registered Israeli medical recipients. During the month of May 2021 alone Israel consumed 3,455 kilograms or 7,617 pounds of cannabis. Ninety percent of the amount utilized was grown in Israel.[3] Growth and production is strictly controlled by the Israeli government, which in earlier years had licensed only a small number of growers. Prior to the last *shemittah* year, 5775, it was reported that only eight licenses had been issued and that one of those agricultural producers was controlled by fully observant Jews. Media attention became focused upon cultivation of cannabis during the last *shemittah* when there were only approximately one-fifth as many medicinal users.[4] According to a recent report, over 550 licenses for cultivation of cannabis have been granted or are currently pending.[5] The issue of if, and how, marijuana might be grown during the sabbatical year became a serious problem for observant growers who posed the question to rabbinic scholars. With the advent of the 5782 sabbatical year there has been renewed discussion of that problem in both popular and scholarly circles.

Halakhic issues involved in the use of marijuana[6] are multifaceted and the question of cultivating cannabis during *shemittah* is only one of many aspects of the marijuana problem. Although cannabis has been known to rabbinic scholars as a psychoactive drug since at least the sixteenth century[7] it has received scant attention in rabbinic writings. There is, to be sure, a significant overlap between halakhic questions associated with smoking tobacco and use of marijuana. However, only a limited amount of tobacco is cultivated in Israel. Since most of the tobacco consumed in Israel is imported from abroad, tobacco has received even less attention in conjunction with the *shemittah* issue.[8] In addition, many other halakhic issues associated with cannabis have also been raised in conjunction with the use of tobacco.

[3] See Yaakov Schwartz, "As Israel's Biblical Farming Sabbatical Nears, Medical Cannabis Is Budding Issue," *The Times of Israel*, July 9, 2021, https://www.timesofisrael.com/as-israels-biblical-farming-sabbatical-nears-medical-cannabis-is-budding-issue/.

[4] See, for example, "Does Medicinal Cannabis Have '*Kedushat Shviit*'?," *Israel National News* (Oct. 12, 2021), https://www.israelnationalnews.com/News/News.aspx/314893.

[5] See Somerset, "Israel Decriminalizes."

[6] The earliest halakhic reference to cannabis may be with regard to *kilayim*, *Kilayim* 2:5. *Tiferet Yisra'el*, *Kilayim* 2:5, identifies that plant with the Latin *canibus*. *Tiferet Yisra'el* cites an alternate interpretation: a species of plants known as "*kunba*." *Arukh* regards it to be a spice used in cooking.

[7] Radvaz, *Hilkhot Kilayim* 5:19, comments: "Leaves of the cannabis, known as '*kannub*,' are eaten in Egypt, are intoxicating and it is said that [they cause] one to become happy. It is consumed raw 'as is.' There are locales in which clothing is made from it as [clothing] is made from flax." Use of hemp to make cloth was known much earlier. Rashi, *Shabbat* 27b, s.v. *ein madlikin*, speaks of "*beged kanbus*."

[8] Jerusalem's *Edah ha-Ḥaredit* has regularly provided a list of cigarette brands free of *shemittah* problems in its *Madrikh ha-Kashrut* published for use during the *shemittah* year.

I. Tobacco as a Food

1. Blessing

The earliest discussion of the halakhic issue with regard to tobacco is a question posed by *Magen Avraham*, *Oraḥ Ḥayyim* 210:9.[9] *Magen Avraham* expresses doubt with regard to whether "those who place grass known as '*tubak*' in a pipe, light it, and draw the smoke into their mouths and then expel" the smoke are to be considered persons who "taste and expel" food, a behavior that does not require a blessing,[10] or whether smoking tobacco is comparable to smelling a fragrance which does require a blessing. In the words of *Magen Avraham*, "[*A*] *fortiori*, a blessing should be required since the body also derives pleasure [from tobacco] for many become satiated by it as if [they had] eaten and drunk." A Sephardic scholar contemporaneous with *Magen Avraham*, R. Mordecai ha-Levi Galante, *Darkhei No'am*, no. 9, considers the question of whether tobacco is to be deemed a food with regard to other areas of Halakhah.[11] *Pri Megadim*, *Eshel Avraham* 210:9, objects to *Magen Avraham*'s comment, stating that it is certain that no benefit requiring a blessing is derived from tobacco because tobacco is bitter and used only as "somewhat of a medicament." R. Jacob Emden, *Mor u-Keẓi'ah*, *Oraḥ Ḥayyim* 210, s.v. *u-temehani*,[12] followed by *Ḥatam Sofer* in a gloss to *Oraḥ Ḥayyim* 210:2 and a long list of scholars,[13] takes it for granted that tobacco is not a foodstuff requiring a blessing. Curiously, R. Abraham Samuel Benjamin Sofer, *Teshuvot Ketav Sofer*, *Oraḥ Ḥayyim*, no. 24, reports that, before smoking, R. Mordecai Benet was wont to drink a small quantity of water and recite the appropriate blessing in order to avoid confronting *Magen Avraham*'s doubt regarding whether smoking tobacco requires a blessing. R. Menachem Eisenstadter, *Zikhron Ɣehudah* (Jerusalem,

[9] See also *Eliyahu Rabbah* 210:3.

[10] See *Shulḥan Arukh* and Rema, *Oraḥ Ḥayyim* 210:2.

[11] See also R. Chaim David Ḥazan, *Ɣishrei Lev* (Izmir, 1870), p. 5a.

[12] R. Jacob Emden, *Mor u-Keẓi'ah* 210, s.v. *u-temehani*, in particular, expresses astonishment that one might entertain the notion that the palate or the internal organs derive pleasure from tobacco that is designed only as a medicament to "empty the person, to dispose of waste, to aid in digestion, and to regulate the blood." See also *ibid*., *Oraḥ Ḥayyim* 511, s.v. *ibra*. Moreover, *Mor u-Keẓi'ah* continues, "even if . . . some people derive such pleasure from [tobacco] that is meaningless, for its beginning and end is bitter and completely unacceptable to those who [begin to] train themselves in its use; rather, afterward 'habit becomes nature' to regular users."

[13] See sources cited by R. David Yosef, *Halakhah Berurah*, *Tinyana*, X, 210:21, *Sha'ar ha-Ẓiyyun*, sec. 50 and XIII, 216:30, and *ibid*., sec. 68 as well as *Halakhah Berurah, ibid*., *Birur Halakhah*, sec. 35.

5757), p. 33, similarly reports that his father, *Maharam Ash*, drank a small amount of water or ate a bit of sugar before smoking tobacco.[14]

Most intriguing is *Ketav Sofer*'s suggestion that, if tobacco is to be treated as a food requiring a blessing before inhaling its smoke, it may similarly require a *berakhah aḥaronah* (a blessing recited after partaking of food) after smoking. *Magen Avraham* does not raise a question with regard to recitation of a *berakhah aḥaronah* following smoking. That question was raised by *Ketav Sofer* in his earlier-cited responsum concerning tobacco. *Ketav Sofer* suggests that, for consistency, R. Mordecai Benet, who recited a blessing over water before smoking, should also have consumed a quantity of water sufficient for a *berakhah aḥaronah.*

On first analysis it might seem that *Ketav Sofer*'s criticism lacks merit. It is necessary to recite a blessing before partaking of even a morsel of food. A *berakhah aḥaronah*, however, is required only upon consumption of a quantity of food at least equal to the weight[15] of an olive.[16]

[14] Cited also by R. Aaron Simchah Rabinowitz, *Piskei Teshuvot*, II, 216:11, note 67. See also *infra*, note 35. R. Menachem Eisenstadter, *Zikhron Yehudah* (Jerusalem, 5757), p. 33, also reports that on days during which *Maharam Ash* used *tabak* he recited a blessing over spices in order to discharge a possible obligation with regard to the *tabak* of the entire day. However, it is difficult to comprehend how it is possible that there not be a *hese'aḥ ha-da'at* in the enjoyment of snuff during the course of an entire day. See *Sha'arei Teshuvah*, *Oraḥ Ḥayyim* 111:9. *Zikhron Yehudah*'s comment is a reference to snuff and the term "*tabak*" is used to denote a substance different from an earlier-cited reference to cigarettes. R. Moshe Ḥagiz, *Halakhot Ketanot*, no. 102, cited by *Ba'er Heitev*, *Oraḥ Ḥayyim* 219:9, rules explicitly that no blessing is required before use of "*tabak* inhaled through the nose."

[15] There is a significant disagreement with regard to the weight of the olive to which the Sages refer. See R. Chaim P. Benish, *Middot ve-Shi'urei Torah*, 2nd edition (Bnei Brak, 5760), chaps. 12–13; and R. Ya'akov Yisrael Kanievsky, *Shi'urin shel Torah*, 2nd edition (Bnei Brak, 5729), nos. 2–3 and 11 as well as p. 65, sec. 20 and p. 66, sec. 24.

A *kezayit* is a measure of volume rather than a measure of weight. A *kezayit* is equal to the volume of water displaced by a medium-sized olive. See R. Abraham Chaim Noe, *Shi'urei Torah*, 2nd edition (Jerusalem, 5707), *Pit'ḥei Shi'urim*, *sha'ar* 7, chap. 1, sec. 1 as well as *Middot ve-Shi'urei Torah* 11:3

[16] The various opinions are presented by Rabbi Benish, *Middot ve-Shi'urei Torah*, chap. 13, in historical order beginning with the Geonic period. R. Abraham Chaim Noe's opinion that a *kezayit* is the equivalent of 57.6 c.c. (1.947688 US fl. oz.) is based upon the position of Rambam and is larger than the measure accepted by earlier Ashkenazic authorities. Rabbi Benish asserts that those authorities based their calculations upon the *dirham* to which Rambam, *Commentary on the Mishnah*, *Edyot* 1:2, refers. See also *ibid.*, *Kelim* 2:2 and introduction to *Menaḥot* as well as *Middot ve-Shi'urei Torah* 13:4, note 24. Those authorities assumed the weight of Rambam's *dirham* to be identical with that of the Turkish *dirham* which was the equivalent of 3.205 grams (0.113 oz.) whereas Rabbi Benish contends that the *dirham* of the period of Rambam was equivalent to 2.83 grams (0.0998 oz.).

As *Ketav Sofer* formulates the question it seems to be: If smoking is analogous to "tasting and expelling," there are no grounds for requiring a blessing; but if smoking requires a blessing, even though nothing is swallowed, because tobacco satiates, a blessing should be required both before and after smoking in a manner comparable to consumption of food. The weight of the quantity of smoke that is "inhaled and expelled" is certainly not equivalent to that of an olive. Even if the minimum

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Consequently according to Rabbi Benish, the *beiẓah* is the equivalent to approximately 50 grams (1.7637 oz.). See *Middot u-Shi'urei Torah* 13:7, 30:1–6 and 13:3. The various opinions with regard to the weight of a *beiẓah* range from 46 grams (1.6226 oz.) of the Ashkenazic authorities to 93–100 grams (3.28-3.5274 oz.) of *Noda bi-Yehudah*, *Oraḥ Ḥayyim*, *Mahadura Kamma*, no. 38 and *Ḥazon Ish*, *Oraḥ Ḥayyim* no. 398: *Kuntres ha-Shi'urim*. See *Shi'urei Torah* 13:8 as well as 14:5.

Shulḥan Arukh, *Oraḥ Ḥayyim* 486:1, rules that a *kezayit* is equal to one-half an egg. The weight of an "egg" is the weight of an egg from which the shell has been removed. See *Teshuvot Nodah bi-Yehudah*, *Oraḥ Ḥayyim*, no. 38; *Ḥazon Ish*, *Oraḥ Ḥayyim* 100:6; *Shi'urei Torah*, p. 133; and *Middot ve-Shi'urei Torah* 14:5, 15:1, 15:5 and 15:15, note 119. *Mishnah Berurah* 586:1 states that the volume of an egg is the volume of an egg together with its shell. *Ḥazon Ish*, *Kuntres ha-Shi'urim*, sec. 17, rejects that view, declaring that there is no source for that position. Cf., however, *Middot ve-Shi'urei Torah* 15:15, note 119. It is generally assumed that the weight of the shell of an egg equals one-tenth of the weight of the entire egg. Rabbi Noe, however, assumes that it is equal to one-twentieth of the entire egg. See *Shi'urei Torah* 3:9 (p. 128) and *Middot ve-Shi'urei Torah* 15:2 and 15:7. Cf., also, *ibid.*, 15:16, note 125.

According to R. Chaim Noe, *Shi'urei Ẓion* (Jerusalem, 5709), p. 70, a *kezayit* is the equivalent of 27 c.c. (0.927979 fl. oz.) [or perhaps 27.37 c.c. (0.9254898 fl. oz.) since in a different statement *Shi'urei Ẓiyyon* reports that an egg is equal to 54.35 c.c. (1.83779 fl. oz.)] and, according to Rambam, 25.5 c.c. (0.86 fl. oz.). According to Rabbi Noe the weight of half a *beiẓah*, or a *kezayit*, is 27 c.c. (0.912979 fl. oz.); according to Rabbi Benish, 22.5 c.c. (0.76 fl. oz.); and according to *Ḥazon Ish*, 45–47 c.c. (1.52–1.589 fl. oz.). See *Middot ve-Shi'urei Torah* 15:6.

In *Shi'urei Ẓiyyon*, p. 70, Rabbi Noe states that the volume of an egg without its shell is 57.75 c.c. (1.95 fl. oz.). If so, a *kezayit* would equal 27.37 c.c. (0.925 fl. oz.). Presumably, Rabbi Noe took into consideration the opinion that a *kezayit* is a bit less than half an egg. See *Middot ve-Shi'urei Torah* 15:16, note 125.

In *Shi'urei Torah*, p. 191, Rabbi Noe states that the volume of a *kezayit* is 25.6 c.c. (0.8658 fl. oz.). *Middot ve-Shi'urei Torah* 15:16, note 125, opines that this calculation was based upon the assumption that the shell is equal to one-fifteenth of the volume of the entire egg and also took into consideration the opinion that a *kezayit* is slightly less than half an egg.

If the *kezayit* is assumed to be the equivalent of one-third of an egg, its volume for Rabbi Noe is 17.2 c.c. (0.58 fl. oz.), for Rabbi Benish 16.6 c.c. (0.56 fl. oz.) and for *Ḥazon Ish* 33 c.c. (1.12 fl. oz.). See *Middot ve-Shi'urei Torah* 15:16 and 15:16, note 126. Rabbi Noe states that as little as 14.4 c.c. (0.4869 fl. oz.) is to be considered a "doubtful" *kezayit*. See *Shi'urei Torah*, p. 195 and *Middot u-Shi'urei Torah* 15:16, note 126.

quantity requiring a *berakhah aḥaronah* is determined by the amount of tobacco burned in order to produce smoke, it is unlikely that the amount of tobacco consumed in smoking would equal the minimum quantity.

However, *Ketav Sofer*'s query must be understood as questioning why, if tobacco requires a *berakhah* before inhaling, should it not also similarly require a *berakhah aḥaronah* upon smoking even a minimal quantity, i.e., a quantity even less than the size of an olive. *Ketav Sofer*'s argument for requiring a *berakhah aḥaronah* subsequent to smoking is supported by Rashi's explanation of a statement recorded in the Gemara, *Niddah* 51b. The Gemara states that the Sages did not institute a *berakhah aḥaronah* to be recited after smelling pleasant fragrances. There is no suggestion that, had the Sages instituted such a blessing, they would have required a minimum quantity of a pleasant aromatic substance. Rashi explains that a blessing of that nature was not ordained because "*hana'atah mu'etet*," i.e., the pleasure of smell is scant or *de minimis*. However, if smoking provides a pleasurable sensation of a quality and magnitude comparable to consumption of food, reasoned *Ketav Sofer*, a *berakhah aḥaronah* should be required.

However, in explaining why no *berakhah aḥaronah* was ordained subsequent to inhaling a pleasant fragrance, *Magen Avraham* 216:1 advances an entirely different rationale: A *berakhah aḥaronah*, as well as Grace after Meals, must be recited within the period of time during which pleasure is still derived from the food, i.e., within the time period that the individual

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Magen Avraham, *Oraḥ Ḥayyim* 486:1, states that, according to Rambam, a *kezayit* is equal to less than one third of an egg. See also *Mishnah Berurah* 486:1. Rashba, *Shabbat* 91b, s.v. *ke-zayit*, describes the size of a *kezayit* as a quantity less than one quarter of an egg. See *Middot ve-Shi'urei Torah* 11:1 and *Shi'urei Torah* 3:2. See *Shi'urin shel Torah*, p. 65. According to *Ḥazon Ish*, half an egg is the equivalent of 45–47.5 c.c. (1.52-1.61 fl. oz.).

Ḥazon Ish states that, for purposes of stringency, the volume should be calculated as a third of a medium-sized egg or "even" the size of an average olive of our day. Rabbi Noe rules that the equivalent of a *kezayit* is 25.6 c.c. (0.8656 fl. oz.). See also *Shi'urei Torah*, *ibid*., note 125. See *Shi'urin shel Torah*, 2nd ed., p. 65. See *Shi'urin shel Torah*, no. 11 and *Middot ve-Shi'urei Torah* 15:16.

Upon determination of the volume of a *kezayit* in c.c.s (or fl. ozs.), the weight of the olive or any other food product can be determined and expressed in grams or dry ounces. As recorded in *Shulḥan Arukh*, *Yoreh De'ah* 324:1, a quantity of the food to be assessed should be placed in a container filled with water such that the volume of water displaced is equal to that accepted as the volume of an olive. The quantity of food necessary to displace that amount of water is a *kezayit* of that foodstuff. That quantity of food, i.e., the *kezayit* of that foodstuff, can then be weighed and the weight expressed in grams or dry ounces. The weight of the volume assessed in this manner will vary from product to product. Cf., R. Dovid Cohen, *Hafrashat Ḥallah* (Chicago, 2021), pp 59–61.

continues to experience a feeling of at least partial satiation resulting from the food he has eaten. Thus, a *berakhah aḥaronah* certainly cannot be recited when food is no longer present in the digestive organs and can no longer give rise to an accompanying feeling of even partial satiation. *Magen Avraham* himself observes that a person who inhales tobacco smoke immediately expels the smoke by exhaling. Since tobacco smoke is immediately exhaled, there could never be sufficient time for recitation of a *berakhah aḥaronah* while yet "satiated" by the tobacco.

However, according to Rashi, who maintains that the consideration is that olfactory gratification is ephemeral, a different conclusion may follow. *Magen Avraham* describes the pleasure of smoking as an enduring satiation comparable to eating and drinking. If so, according to *Magen Avraham*'s explanation of *Niddah* 51b, a *berakhah aḥaronah* might well be required after smoking. Thus, the result would be a controversy between Rashi and *Magen Avraham* with regard to a requirement for a *berakhah aḥaronah* subsequent to smoking.

However, *Taz*, *Oraḥ Ḥayyim* 116:1, understands Rashi's use of the term "*hana'atah mu'etet*" differently. According to *Taz*, the *de minimis* nature of the pleasure described by Rashi is not a qualitative description of pleasure but a temporal description. According to *Taz*, Rashi is not portraying the intensity of the experience of olfactory pleasure but its duration. Thus, *Taz*, quite independently, reads *Magen Avraham*'s explanation of the Gemara into the words of Rashi. If so, both Rashi and *Magen Avraham* express an identical rationale and perforce both would agree that smoking tobacco does not require a *berakhah aḥaronah. Ketav Sofer* inclines toward *Taz*' interpretation of Rashi because he regards the alternative notion of a *de minimis* qualitative pleasure as imprecise and elusive and, consequently, finds such a rule unlikely to be posited as a halakhic definition. On the other hand, the notion of satiation is relatively straightforward: A person experiences a sense of satiation upon eating and recognizes when that feeling has dissipated, leaving him feeling no different from prior to having eaten.[17]

[17] *Ketav Sofer* understands this analysis to be inherent in the statement of the Gemara, *Yoma* 80b, explaining why there is culpability for eating on *Yom Kippur* only if the quantity of food consumed is the equivalent of a *kotevet*, or date. The Gemara explains that every person's hunger is at least partially assuaged by consuming an amount of food equal to a *kezayit* regardless of the person's height or weight. The difference between a person of normal height and weight and a giant of gargantuan stature such as Og, King of Bashan, is that the hunger of ordinary people becomes "much" assuaged upon eating a *kotevet* whereas Og, King of Bashan, becomes only a "bit" (*purta*) satiated. *Tosefet Yom ha-Kippurim*, in his commentary on *Yoma* 8:2, questions the logic of that explanation. If a giant is obligated to recite

Ketav Sofer expresses some perplexity regarding *Magen Avraham*'s comparison of smoking and inhaling a pleasant aroma as it bears upon the question of a *berakhah aḥaronah*. Smoking tobacco is described by *Magen Avraham* as leaving a continuing feeling of satiation. In contrast, fragrances quickly dissipate, leaving nothing from which continued pleasure can be derived. Moreover, contends *Ketav Sofer*, tobacco contains "moisture" "emitted by the plant that permeates the body and remains briefly," i.e., moisture released in the course of burning pipe tobacco is absorbed by the body much as a beverage is absorbed and consequently, unlike a fragrance, its effect endures for some period of time.

As has been noted, *Magen Avraham* considers the possibility that tobacco should be classified as a food because "many are satiated" by smoking more so than by eating. The argument presented by *Magen*

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a *berakhah aḥaronah* even upon becoming only a "bit" satiated upon consuming a *kotevet* then others should also be liable for eating any quantity of food that renders them a "bit" satiated. For normal people, a quantity much less than a *kotevet* would yield that result.

Tosefet Yom ha-Kippurim explains that less than a *kotevet* yields no cognizable degree of satiation for any person. A *kotevet* is the smallest quantity of food capable of causing a possible sense of satisfaction to any person. Culpability for eating on *Yom Kippur* requires a minimum degree of satiation. The sole difference between Og and normal people is the duration of satiation that is engendered by a *kotevet*. Normal people experience such satiation for a somewhat extended period of time whereas the same quantity of food engenders satiation in a giant for only the briefest period of time. Consumption of less than a *kotevet* results in no cognizable satisfaction in any person for even the briefest period of time.

Ketav Sofer is fully aware that some foods are more filling than others. Logically, each food product should require a *berakhah aḥaronah* upon consumption of a quantity that would vary in accordance with the amount necessary to achieve a certain degree of satiation. Nevertheless, for practical considerations that are readily apprehended, the Sages established a uniform *shi'ur* for all foods. However, *Ketav Sofer* points to a celebrated controversy between *Taz*, *Oraḥ Ḥayyim* 210:1, and *Magen Avraham*, *Oraḥ Ḥayyim* 190:4, regarding a *berakhah aḥaronah* following consumption of alcohol. *Taz* maintains that the established standard *shi'ur* of a *revi'it* does not apply to whisky; rather, the quantity requiring a *berakhah aḥaronah* is the minimum quantity generally consumed at one time even though it is far less than a *revi'it*. *Ketav Sofer* applies the same reasoning to fragrances but explains that with regard to beverages there is a definable minimum quantity whereas it is impossible to quantify with regard to a fragrance. *Magen Avraham* disputes *Taz*' position with regard to whiskey but, contends *Ketav Sofer*, *Magen Avraham* does not necessarily disagree with *Taz*' underlying assumption, *viz.*, every type of pleasure that requires a *berakhah rishonah* also requires a *berakhah aḥaronah*. *Magen Avraham*'s disagreement with *Taz* lies in his assumptions that a *shi'ur* allows for no exception. Therefore since a *shi'ur* of a beverage is a *revi'it* that *shi'ur* applies even to whiskey. However, since it was impossible for the Sages to establish a minimum *shi'ur* for aromas, the fallback rule would be that even a *de minimis* quantity of aroma requires a *berakhah aḥaronah*.

Avraham against positing a requirement for a blessing is that the act of smoking is comparable to that of a person who is "*to'em u-polet*," i.e., a person who "tastes and expels." Tasting on the palate and then expelling from the mouth cannot possibly be categorized as "eating" unless that which is taken into the mouth is a foodstuff. The same is true of *Magen Avraham*'s counterargument in favor of categorizing tobacco as a food. The thrust of *Magen Avraham*'s argument is: "For many become satiated [by tobacco] as if they had eaten and drunk." Ostensibly, that observation serves to establish that tobacco is a food and hence smoking tobacco requires prior recitation of a blessing as is the case with any foodstuff. That is certainly how *Magen Avraham* was understood by R. Mordechai Benet and *Maharam Ash*, who recited a blessing over water in order to discharge a possible obligation with regard to tobacco. That was also the assumption of *Ketav Sofer* in his discussion of a possible obligation with regard to a *berakhah aḥaronah*.[18]

If that is the import of *Magen Avraham*'s statement, it is entirely contrafactual. Tobacco has no nutritional value. Nor does it give rise to feelings of satiety. Nicotine does not satiate; rather, it is an appetite suppressant and diminishes hunger pangs[19]—a fact presumably unknown to *Magen Avraham*. The latter phenomenon is quite different from satiation. Tobacco has been popularly used as an aid to dieting because it diminishes appetite, not because it causes a feeling of fullness as, for example, is the case with regard to drinking water. Presumably, *Magen Avraham* would not claim that a chemical used to suppress appetite is to be considered a food requiring a blessing.

Even granting credence to *Magen Avraham*'s depiction of tobacco, there is no reason similarly to classify marijuana as a food and hence, *Magen Avraham* cannot serve as a precedent for requiring a blessing over marijuana as a foodstuff. The effect of marijuana is the opposite of that of tobacco. Marijuana does not assuage hunger; on the contrary, it stimulates appetite.[20] One of marijuana's medicinal uses is as an appetite stimulant employed to restore appetite in patients who experience diminished desire for food and resultant weight loss as a result of an illness or treatment of an illness.

[18] For all alternate understanding of *Magen Avraham* see *infra*, section II.

[19] Cf., R. Jacob Prager, *Teshuvot She'ilat Ya'akov*, II, no. 73, sec. 3, who reports in a brief parenthetical comment that he heard from an "expert physician" that tobacco does not satiate but serves as an appetite suppressant. See also R. Eliezer Waldenberg, *Ziz Eli'ezer*, IX, no. 33, sec. 3.

[20] See Janet E. Joy, Stanley J. Watson, Jr., and John A. Benson, Jr., eds., *Marijuana and Medicine: Assessing the Science Base* (Washington. D.C., 1999), p. 156.

2. Smoking on Fast Days

If tobacco is to be considered a food for purposes of reciting a blessing it should also follow that smoking on fast days must be prohibited. Of course, smoking tobacco on a fast day can be banned only if "tasting and expelling" actual food is prohibited on a fast day. That question is a matter of dispute between *Shulḥan Arukh* and Rema, *Oraḥ Ḥayyim* 567:1. Thus, *Darkhei No'am*, no. 9, permits smoking on a fast day, *inter alia*, because he regards "tasting and expelling" to be permissible as well.

The question of whether tobacco is a "food" forbidden on fast days and, in the form of snuff, on *Yom Kippur*, is addressed by R. Moshe Ḥagiz, *Leket ha-Kemaḥ*, *Oraḥ Ḥayyim* (Bnei Brak, 5743), p. 62 and *hashmattot*, cited by R. Chaim Joseph David Azulai, *Maḥazik Berakhah*, *Oraḥ Ḥayyim* 210:7 and by *Sha'arei Teshuvah* 210:9. Those authorities permit smoking tobacco and use of snuff on *Tish'ah be-Av* because tobacco is not a food. It would stand to reason that, if tobacco is categorized as a food for purposes of a blessing, it should also be considered a food that may not be "consumed" by means of smoking on a fast day. Conversely, if it is not deemed to be a food there is no apparent reason to forbid smoking on a fast day. Nevertheless, those authorities state that a person who assumes smoking to be forbidden on *Tish'ah be-Av* should continue to act in that manner and should not be informed that use of tobacco on *Tish'ah be-Av* is permissible. R. Samuel ha-Levi of Bialystok, *Teshuvot Biġdei Yesha*, no. 20, followed by *Orḥot Ḥayyim* 560:5, permits smoking on fast days because he deems "smelling" not to be comparable to eating or drinking. *Maḥazik Berakhah*, *Oraḥ Ḥayyim* 210:10 and 210:14, cites authorities who prohibit use of tobacco on *Tish'ah be-Av*[21] but not on other fast days.

[21] There are many latter-day sources that decry smoking on *Tish'ah be-Av* without finding a firm basis for the prohibition. See, for example, *Mishnah Berurah* 555:8 who forbids smoking on fast days and *a fortiori* on *Tish'ah be-Av*. *Mishnah Berurah* cites *Knesset ha-Gedolah* who declares that a person who smokes on *Tish'ah be-Av* is deserving of excommunication. Citing *Knesset ha-Gedolah*, *Ḥayyei Adam* 135:27 similarly forbids smoking on *Tish'ah be-Av*. *Mishnah Berurah* does permit a person who is "exceedingly habituated" to tobacco to smoke in private after midday. See *Sha'arei Teshuvah* 559:3.

Knesset ha-Gedolah's comment regarding excommunication may be based upon a dream reported by R. Chaim Joseph David Azulai, *Maḥazik Berakhah*, *Oraḥ Ḥayyim* 210:13. *Maḥazik Berakhah* relates that his great-grandfather, R. Isaac Azulai, was visited in a dream by a deceased colleague, who acceded to his demand to reveal what is said in Heaven regarding smoking. R. Isaac Azulai was told, *inter alia*, that a person who smokes on *Yom Tov* is placed under a ban and one who smokes on *Tish'ah be-Av* is cursed. See also *idem*, *Moreh be-Ezba*, no. 7, sec. 210. A report of that dream also appears in the addenda to R. Eliyahu ha-Kohen ha-Itamari's *Shevet Musar*.

Even according to *Magen Avraham*, who considered the possibility that tobacco is a food, there is no reason to include snuff in that categorization since snuff does not create a feeling of satiety. Accordingly, *Leket ha-Kemaḥ* reports that he used non-aromatic snuff on *Tish'ah be-Av*. *Leket ha-Kemaḥ* regarded the practice of inhaling snuff to be permitted on *Yom Kippur* as well. He insisted, however, that the ruling not be publicized in locales in which the practice was presumed to be forbidden. He further advised that public use in the synagogue on *Yom Kippur* should be prohibited because such practice leads to levity.

R. Chaim Sofer, *Teshuvot Maḥaneh Ḥayyim*, III, no. 41, sec. 3, reports that, although he personally refrained from smoking on the first day of *Yom Tov* and on both days of *Rosh ha-Shanah*[22] as well as on fast days, he considered use of tobacco as basically permissible on all of those occasions. That position may appear to be contradictory in nature. *Maḥaneh Ḥayyim* assumes that, if smoking is permitted on *Yom Tov*, it must be because of the consideration advanced by *Magen Avraham*, i.e., that it is a food because it assuages hunger. But, by the same token, if tobacco is a "food," it should be forbidden on every fast day. *Maḥaneh Ḥayyim* advances the curious contrafactual position that tobacco fosters a sensation of fullness only after one has eaten because it aids in digestion but smoking on an empty stomach during the course of a fast day has no similar effect and hence is not to be treated as a foodstuff for purposes of observance of a fast.

Darkhei No'am, no. 9, does discourage smoking on *Tish'ah be-Av* but for an entirely different reason. Smoking will generate a *hese'aḥ ha-da'at*, i.e., it will interfere with concentration upon mourning and the sadness of the day. He also forbids smoking on all fast days for yet another reason.

R. Joseph Zachariah Stern, *Zekher Yehosef*, no. 198, speculates that *Knesset ha-Gedolah* was stringent regarding smoking on *Tish'ah be-Av* because he had earlier given credence to Shabbetai Zevi's claim that observance of *Tish'ah be-Av* was to be abrogated and, when Shabbetai Zevi was later discredited, *Knesset ha-Gedolah* instituted a stringency regarding smoking on *Tish'ah be-Av* in order to "dispel the error of Sadducees." Stringency with regard to smoking on *Yom Tov* may also have been instituted to counteract the Sabbatian elimination of observance of the festivals.

[22] The stringency was limited to the first day of the festival on which "labor" is biblically forbidden. R. Ephraim Zalman Margolies, *Matteh Efrayim* 599:1, states that it is proper for a *ba'al nefesh* to refrain from smoking on both days of *Rosh ha-Shanah*. The practice of refraining from smoking on *Rosh ha-Shanah* is rooted in the consideration that smoking is essentially frivolous in nature and thus incongruent with "fear of judgment." See also R. Shimon Sofer, *Hitorrerut Teshuvah*, III, no. 63.

Muslims refrain from smoking during the month of Ramadan[23] and were practicing Jews to smoke on a fast day the result would be a desecration of the Divine Name because non-Jews will assume that Jews are lax in observing the fast day. Little wonder, then, that later Ashkenazic writers who lived in Christian lands make no mention of refraining from smoking on fast days other than *Tish'ah be-Av.*

3. *Mishloaḥ Manot* – Purim Gifts

Another ramification of *Magen Avraham*'s possible categorization of tobacco as a food is identified by R. Ezekiel Michelson, *Teshuvot Tirosh ve-Yiẓhar*, no. 171. The issue is whether cigarettes or cigars may be used as one of the mandatory gifts of edible items required on Purim as *mishloaḥ manot.* If regarded as "food," cigarettes and cigars would satisfy the requirement of a species of food as one of those gifts.[24]

Tirosh ve-Yiẓhar assumes that the *miẓvah* of *mishloaḥ manot* can be fulfilled only by a gift of items of food or drink[25] and that tobacco is not a food. Indeed, it may be assumed that chemical extracts or compounds that provide no nutrients,[26] e.g., black coffee, tea, saccharine, cyclamate

[23] Islamic scholars have long disagreed with regard with whether to smoking is forbidden or permitted as a form of self-harm or because of its addictive nature comparable to that of alcohol. With increased evidence of the harmful effects of tobacco, a growing number of Muslim authorities have pronounced tobacco to be *haram* or prohibited. See *Islamic Ruling on Smoking*, ed. N. H. Khayat, 2nd ed. (Alexandria, Egypt, 2000). Earliest Islamic opposition to smoking dates from 1602, when the king of Morocco travelled to Fez and requested a ruling regarding the permissibility of tobacco. The scholars of Fez ruled that it was forbidden in Islam and that all tobacco in Morocco should be destroyed. See *ibid.*, p. 13. Smoking during Ramadan is forbidden by all Muslim legal authorities, apparently because of the erroneous assumption that minute particles of tobacco make their way into the stomach. See Muhammad al-Munajjid, "Smoking in Ramadaan - Islam Question & Answer," Islamqa.info, August 12, 2011, https://islamqa.info/en/answers/37765/smoking-in-ramadaan. One Egyptian scholar who permits smoking in Ramadan is regarded as a maverick. See NBCUniversal News Group, "Ramadan Fast Means Hard Times for Smokers," NBC News, September 20, 2008, https://www.nbcnews.com/id/wbna26805845.

[24] Tobacco is a single species that may be smoked in different forms. Hence, no matter its variety or quantity, tobacco may possibly be considered a food for satisfying the requirements for only a single gift but not for two gifts.

[25] See Rambam, *Hilkhot Megillah* 2:15.

[26] If so, black coffee and tea should also not be classified as foods. Cf., however, *Teshuvot Panim Me'irot*, I, no. 95, regarding the blessing appropriate for tea and *ibid.*, II, no. 67, regarding coffee brewed by a non-Jew as well as the many discussions of the suitability of those beverages for *havdalah.* It is quite possible that, although those authorities recognized that tea and coffee were cultivated for taste rather than nutrients, they nevertheless assumed that tea and coffee did have some nutritive value.

and aspartame are not regarded as foods for halakhic purposes. Thus, if it is the case that tobacco is an appetite depressant of no nutritional value it should not be regarded as a food for purposes of *mishloaḥ manot*.

Tirosh ve-Yiẓhar does cite the discussion among latter-day authorities with regard to whether the gift must be an item desirable or suitable to the donor or to the recipient. It is highly unlikely that one would wish to bestow a gift of tobacco or snuff upon a nonuser; but a nonsmoker might certainly wish to present a smoker with an expensive box of cigars as a Purim gift. R. Shlomoh Kluger, *Ḥokhmat Shlomoh*, *Oraḥ Ḥayyim* 695:2, rules that the gift must be an item that might be enjoyed by the donor.[27] R. Moshe Schick, *Teshuvot Maharam Shik*, *Oraḥ Ḥayyim*, no. 341, responds to an anonymous interlocutor who apparently maintained that the Purim gift must be something that would be enjoyed by the recipient but regarded the status of the donor *vis-à-vis* the gift as irrelevant. *Maharam Shik* cites *Shulḥan Arukh*, *Oraḥ Ḥayyim* 696:6, who rules that the obligation is discharged even if the donee refuses acceptance of the gift. *Maharam Shik* deduces that only the recipient's recognition of the good intentions of the donor is required.[28] Although *Maharam Shik* does not say so explicitly, it is certainly possible that feelings of friendship and amity can be conveyed even by means of a gift that the donor himself would not enjoy.

R. Israel Veltz, pre-World War II head of the *bet din* of Budapest, as cited in the same issue of *Tel Talpiyot* (Adar 5699), adopts an entirely different position. Rabbi Veltz points to the various reasons given in explanation of why it was ordained that gifts be presented on Purim by "each person to his fellow" (Esther 9:22). The famed author of the liturgical poem "*Lekha Dodi*," R. Shlomoh Alkabets, in his *Manot ha-Levi* (Esther 3:8), points to Haman's depiction of Jews as a people "scattered

Minimally, of course, coffee or tea are water. The question is whether they should be considered a food or beverage. That, in truth, is contingent upon whether a food or beverage must have nutritional value or whether possession of taste is itself a sufficient criterion for such classification.

[27] A contemporary ramification of that issue would be whether a container of artificial nutrition might be utilized for purposes of a Purim gift by someone who himself is not a consumer of such a product. Moreover, many such products are ingested only through a tube which is not deemed to be a form of "eating." If so, such a form of nutrition probably should not be categorized as a foodstuff. See J. David Bleich, "Artificial Feeding on *Yom Kippur*," *Contemporary Halakhic Problems*, III (New York, 1989), 129–136.

[28] In rebuttal it might be argued that declining to accept a gift does not mitigate the good feeling evoked by its presentation and that such emotions are aroused even by an attempted presentation but only of an item from which the recipient would derive pleasure.

and spread out among the nations" accusing them of being a contentious and quarrelsome people. Bestowal of gifts (*mishloaḥ manot*) gives the lie to that canard. *Mishloaḥ manot* was instituted as an overt demonstration of the antithesis, namely, that friendship and amity reign among Jews. A gift of tobacco, argues Rabbi Veltz, is exquisitely suitable for that purpose. Maharal of Prague, *Or Ḥadash* (Esther 9:2), asserts that the purpose of Purim gifts is to demonstrate the joy of the Jewish people who are presumed to enjoy a comfortable and expansive lifestyle to the extent that they seek to share their bounty with others in stark contradiction to Haman's diabolical plan to annihilate them. Hence, that purpose of *mishloaḥ manot* is eloquently demonstrated by making gifts of expensive luxury items to others. R. Israel Isserlein, *Terumat ha-Deshen*, no. 111, writes that the purpose of *mishloaḥ manot* is to enhance the recipient's Purim feast. Accordingly, concludes Rabbi Veltz, "Behold it is known by all that in our day there is no festive meal at which the table is not also set with various forms of tobacco . . . when the table is set with various foods and beverages, different cigars are also placed on the table and on Purim people also smoke in the course of eating and drinking."[29]

R. Joseph Leib Sofer, the author of the aggadic compendium *Ya'lkut Sofer*, writing in the same issue of *Tel Talpiyot* (Adar 5699), disagrees and emphatically denies that tobacco items may be considered edible products.[30] Acknowledging that, technically, *mishloaḥ manot* must consist of food products, Rabbi Veltz obliquely dispenses with the objection that there is controversy with regard to whether tobacco requires a blessing as a foodstuff in stating that smoking is "a pleasure that induces eating," i.e., smoking is comparable to a foodstuff in that it induces a desire for food. Rabbi Veltz' comment with regard to tobacco as an appetite stimulant may be a miscategorization or contrafactual in whole or in part. Indeed, although there is a plethora of sources describing a list of health benefits associated with smoking, there is no evidence that rabbinic commentators ever considered tobacco to be an appetite stimulant. They did, however, recognize a relationship between tobacco and food as a *digestif* or as an accompanying pleasure. Were there no other objection to use of

[29] R. Shemayah Lev, *Bnei Shemayah*, no. 25, states that a gift of tobacco is not an acceptable means of satisfying the requirement for *mishloaḥ manot*. He also finds it necessary to add that "words of Torah" similarly do not qualify as *mishloaḥ manot* despite the depiction in *Ethics of the Fathers* 3:3 of a meal devoid of Torah as tantamount to an idolatrous offering. The title page of the earlier-cited *Manot ha-Levi* by R. Shlomoh Alkabets stating that the book was sent to his father-in-law as *mishloaḥ manot* is to be understood metaphorically.

[30] See also *Bnei Shemayah*, addenda, no. 26.

marijuana, Rabbi Veltz' comment might find application with regard to cannabis in at least some social strata. The counterarguments would be that a) only the practices of the dominant sector of society can be considered in establishing definitional criteria of halakhic norms and that b) only an actual food product qualifies for use as *mishloaḥ manot*.

4. Aromatic Tobacco on Passover

Magen Avraham, *Oraḥ Ḥayyim* 467:6, ruled that tobacco and snuff must be sequestered with *ḥameṣ* products during the Passover holiday because, at the time, the practice was to soak or moisten those substances with beer. *Bet Me'ir*, *Oraḥ Ḥayyim* 467:8,[31] and *Leket ha-Kemaḥ*, *Oraḥ Ḥayyim*, p. 52a, compare such soaking to the permitted procedure of converting *ḥameṣ* into the equivalent of inedible charcoal for use as fuel during Passover as is the ruling of *Shulḥan Arukh*, *Oraḥ Ḥayyim* 442:15. R. Moshe Schick, *Teshuvot Maharam Shik*, *Oraḥ Ḥayyim*, no. 242, was asked why *ḥameṣ*-infused products might not be retained over *Pesaḥ* since the beer used in moistening the tobacco is rendered inedible before *Pesaḥ*.[32] Were *Magen Avraham* speaking of tobacco soaked in beer his ruling might be considered consistent with his earlier discussed comment, *Magen Avraham*, *Oraḥ Ḥayyim* 209:9, in which he expresses doubt with regard to whether tobacco is to be considered a food. If tobacco is a food, it would be quite reasonable to conclude that beer that is absorbed in tobacco does not lose its status as a food. However, *Magen Avraham* omits any discussion of that point. Accordingly, *Ketav Sofer* correctly understands *Magen Avraham* as referring to snuff rather than to smoking-tobacco. As explained earlier, *Magen Avraham* certainly did not consider snuff to be a foodstuff.

Ketav Sofer explains that *Magen Avraham* must maintain that a food product that is not simply rendered inedible but instead transformed into a substance to be used for sniffing and inhaling cannot be regarded as "destroyed" but as designated for a use comparable to eating and drinking (*aḥshevei*) and hence retains its status as *ḥameṣ*.

Maharam Shik also addresses the status of snuff steeped in wine that has been handled by a non-Jew. Use of snuff infused with wine was ruled permissible by *Sha'ar ha-Melekh*, *Hilkhot Ma'akhalot Assurot* 11:3.[33]

[31] *Bet Me'ir*, *Oraḥ Ḥayyim* 467:8, states that because of the "stringency of *ḥameṣ*" smoking tobacco should be considered as tantamount to eating and hence tobacco soaked in beer during Pesaḥ should not be smoked during the holiday.

[32] Cf., *Maḥazik Berakhah*, *Oraḥ Ḥayyim* 210:10.

[33] See also, *Maḥazik Berakhah*, *Oraḥ Ḥayyim* 210:15.

Maharam Shik suggests that wine-soaked snuff is permissible because wine handled by a gentile is forbidden only by virtue of rabbinic decree, and for purposes of rabbinic legislation a food product converted to any other use may be regarded as "destroyed." *Maharam Shik* is hesitant with regard to the sufficiency of that explanation because he assumes that soaking snuff in alcohol represents an "unusual form of benefit" insofar as the alcohol is concerned and, according to many authorities, benefitting from a forbidden substance in an unusual manner constitutes only a rabbinic infraction even if the forbidden substance is *ḥameẓ*. If so, *Ketav Sofer*'s point is that the normal use to which beer is put is consumption as a beverage; any other use would be "unusual." If so, moistening snuff with beer should not pose a problem with regard to use on *Pesaḥ*. Nevertheless, although unlikely, it may have been the case that in the days of *Magen Avraham*, moistening or soaking snuff in beer was a normal and usual practice.[34]

II. Fragrance

Ketav Sofer draws a comparison between tobacco and pleasant fragrances in explaining why the *berakhah aḥaronah* recited after partaking of food is not recited subsequent to smoking tobacco. Nevertheless, *Ketav Sofer* and most latter-day authorities seem to understand *Magen Avraham*'s expression of doubt as referring to the blessing pronounced before partaking of food. However, *Magen Avraham*'s comments are somewhat enigmatic, to say the least. In speaking of the need for a blessing before smoking, does *Magen Avraham* question the possible need for the blessing pronounced before partaking of food or is he referring to the blessing pronounced before smelling fragrant plants?

Magen Avraham can, and perhaps should, be read in a different manner, *viz.*, as raising the possibility of a requirement for pronouncing the blessing appropriate for smelling a pleasant aroma before enjoying the pleasure of the tobacco's fragrance. The objection of *Pri Megadim*, *Eshel Avraham* 210:9, that tobacco is "bitter" is even more telling if it is

[34] *Teshuvot Maharam Shik*, *Oraḥ Ḥayyim*, no. 242, notes that *Shulḥan Arukh*, *Oraḥ Ḥayyim* 442:1, rules that it is permissible to retain ink over *Pesaḥ* even if *ḥameẓ* is one of the ingredients of the ink. *Maharam Shik* cryptically explains that *ḥameẓ* used in production of ink loses its "significance" (*ḥashivut*). It may be presumed that the import of that comment is that beer mixed with snuff is not "destroyed" because the purpose of that procedure is to produce a substance that will provide a form of physical pleasure analogous to eating and drinking whereas, upon being mixed with other ingredients in making ink, the *ḥameẓ* loses its "significance" and is deemed to have been destroyed because it provides no benefit comparable to eating or drinking.

understood as an argument against requiring recitation of the blessing pronounced before smelling a pleasant aroma. As earlier noted,[35] that understanding of *Magen Avraham* is certainly what prompted *Maharam Ash* to sniff spices and to recite the appropriate blessing before ingesting snuff. Understood in that manner, *Magen Avraham* states initially that food which is only "tasted and expelled" does not require a blessing. He then comments that tobacco, since it is "inhaled" and "exhaled," is comparable to a fragrance which does require a blessing. *A fortiori*, concludes *Magen Avraham*, tobacco from which the body derives pleasure and from which many become satiated as if they had eaten and drunk should certainly require a blessing. If so, *Magen Avraham* is arguing that a smell that satiates necessitates a blessing even though the fragrance is exhaled. Left unstated in that reading of *Magen Avraham* is identification of the blessing required as being the blessing ordained for smell, i.e., "… Who has created sweet-smelling plants." *Magen Avraham*'s *a fortiori* "proof" is that smell that satiates should require a blessing *qua* smell because of its satiating property rather than because of its fragrance.[36]

Putting aside *Magen Avraham*'s intent in those comments, are there grounds for requiring a blessing prior to smoking tobacco on account of tobacco's inherent odor or when it is infused with an extraneous pleasant fragrance, e.g., aromatic pipe tobacco?

Maharam Ash, who recited the appropriate blessing over spices before inhaling snuff, must have regarded snuff as aromatic and the physiological reaction to its smell to be pleasant and pleasurable in a manner comparable to sweet-smelling fragrances. The editor of *Halakhot Ketanot* (R. Moshe Ḥagiz, who was a son of the author, R. Jacob Ḥagiz) in a note to volume I, no. 101, similarly reports there were "pious individuals" (*anshei ma'aseh*) whose practice was to recite the blessing on some other pleasant fragrance before taking snuff.

A number of the discussions concerning the requirement for a blessing upon smelling the aroma of tobacco occur in the context of sniffing tobacco rendered sweet-smelling by admixture of an aromatic substance. R. Isaac Lampronti, *Paḥad Yiẓḥak*, s.v. *Birkhat ha-reiaḥ ve-dineha*, reports that in

[35] See *supra*, note 14.

[36] A literal translation of *Magen Avraham* reads:

Reflection is necessary regarding those who place the plant known as '*tubak*' in a pipe, light it and draw of the smoke into their mouths and then expel it. Investigation is necessary [to determine] if [that practice] is comparable to tasting and expelling food that does not require a blessing or perhaps it is comparable to smell that necessitates a blessing. *A fortiori*, here that the body also benefits from it [in that] many become satiated from it, it is as if they ate and drank. Reflection is necessary.

Ferrara tobacco was steeped in a small quantity of musk which permeated the tobacco and emitted a strong odor to the extent that the aroma was sensed by all persons in proximity to the tobacco. Accordingly, *Paḥad Yiẓḥak* recited the appropriate blessing.

Mor u-Keẓi'ah, *Oraḥ Ḥayyim* 210, s.v. *ve-ulam*, also rules that a blessing must be recited upon smelling tobacco to which a fragrance has been added.[37] *Mor u-Keẓi'ah* further comments that tobacco itself

> is known not to have a pleasant odor. To the contrary, its smell is burdensome even to those who inhale it. And if some few enjoy its smell their opinion is of no account because that occurs only by virtue of their habituation and constancy [in its use]. To what is that comparable? To a tanner who derives pleasure from the odor of tanning hides which for others is a foul odor.

However, *Halakhot Ketanot*, I, no. 101, followed by a host of other authorities,[38] regards the smell absorbed by tobacco as "*reiaḥ she-ein lo ikkar*—aroma that has no substance," i.e., an ephemeral fragrance in the sense that it is disassociated in its origin from any tangible substance. Such a smell does not occasion a blessing.[39] That rule is codified by *Shulḥan Arukh*, *Oraḥ Ḥayyim* 217:3, with regard to a piece of material that has been perfumed but the perfume has evaporated, leaving behind an aroma-permeated dry cloth. The aromatic agent mixed into the tobacco similarly evaporates and leaves only dry tobacco. Some authorities maintain that even if the tobacco remains moist the residue is so minute as to constitute an aroma *she-ein lo ikkar*.[40]

[37] See also *Eshel Avraham* (Butchach), *Oraḥ Ḥayyim* 215:10 and *Birkhat ha-Bayit*, *sha'ar* 26, sec. 47, who rules that a blessing should be recited provided that the tobacco remains moist. Cf., *Halakhot Ketanot*, I, no. 101.

[38] See sources cited by *Halakhah Berurah*, *Oraḥ Ḥayyim* 160:30, *Sha'ar ha-Ẓiyyun*, no. 59 and *Birur Halakhah*, sec. 35. See also *Birkhat ha-Bayyit*, *sha'ar* 26, sec. 47.

[39] See *Halakhah Berurah*, *Oraḥ Ḥayyim* 160:30. It is indeed the case that forbidden ingredients designed to impart a fragrance are not nullified even in an overwhelming quantity of permissible food. *Halakhot Ketanot*, I, no. 101, states that, nevertheless, for purposes of a blessing, the fragrance has the status of a "*reiaḥ she-ein lo ikkar*."

[40] Whether two separate blessings are necessary to satisfy the possibility that tobacco requires a blessing for a foodstuff and/or a fragrance is also a matter of dispute. Many authorities maintain that, just as the blessing "by Whose word all things come into being" satisfies, at least *post factum*, the requirement for a blessing associated with any type of food, so does that blessing satisfy the requirement for a blessing for any type of fragrance. Some authorities point out that there is no source indicating that the blessing "by Whose word all things come into being" can serve as a substitute for the blessing ordained upon sighting the ocean, seeing a deep

It should also be noted that only naturally-grown fragrances such as spices, flowers and fruits require the blessing "Who creates sweet-smelling etc." Synthetic fragrances generated by compounding chemicals are regarded as man-made and hence do not occasion the blessing acknowledging the Deity "Who creates." Many, if not most, fragrances and perfumes presently marketed, and presumably also used in manufacturing aromatic pipe tobacco, are synthetic rather than natural.

Various latter-day authorities advance other considerations auguring against pronouncing a blessing upon smelling aromatic tobacco. Rema, *Oraḥ Ḥayyim* 216:14, cites two opinions with regard to whether a blessing in the form of "… Who instills a pleasant aroma in bread" is to be pronounced upon smelling freshly-baked bread. *Mishnah Berurah* 216:55 asserts that the controversy is with regard to whether the smell of fresh bread is a "*reiaḥ ḥashuv*" or "significant aroma." However, *Mishnah Berurah*, *Sha'ar ha-Ẓiyyun* 216:14, cites *Bi'ur ha-Gra* 216:14 in presenting a different explanation of the reasoning of the authorities who maintain that a blessing is not recited upon smelling freshly-baked bread. An individual who intends to use a sweet-smelling object solely as a source of fragrance is always obligated to pronounce the appropriate blessing. *Bi'ur ha-Gra* explains that, unless the intention is solely for use as a fragrance, the blessings acknowledging divine beneficence in creating fragrances were ordained to be pronounced only upon smelling plant species cultivated to be used primarily for enjoyment of their aromatic quality but not upon smelling vegetation grown primarily for food and the like or to be utilized to dispel an unpleasant odor.[41] It is on the basis of that rationale that many authorities maintain that a blessing is not pronounced upon smelling ground coffee.[42] *Shulḥan Arukh ha-Rav*, *Seder Birkhat ha-Nehenin* 11:9, and *Ḥazon Ish*, *Berakhot* 35:5, both rule that in consideration

canyon, an exotic animal or the like. They similarly argue that, "by Whose word all things are created" was instituted to be pronounced only in conjunction with partaking of a food and cannot under any circumstance be recited in lieu of a blessing required when smelling a pleasant fragrance. See *Mishnah Berurah* 216:13. For a survey of those sources see R. Yechiel Abraham Zilber, *Birur Halakhah*, *Tinyana*, *Oraḥ Ḥayyim*, I, 216:2.

[41] Those authorities acknowledge that a blessing is recited upon intentionally smelling a fragrant fruit because fruits intrinsically serve a dual purpose, i.e., for consumption and for enjoyment of fragrance while eating the fruit. See *Sha'ar ha-Ẓiyyun* 216:46 and *Seder Birkhat ha-Nehenin*, 2nd edition (Brooklyn, 5759) 11:8, p. 26.

[42] See *Mishnah Berurah* 216:15; R. Yechiel Michel Epstein, *Arukh ha-Shulḥan* 216:14; R. Ya'akov Chaim Sofer, *Kaf ha-Ḥayyim, Oraḥ Ḥayyim*, 216:86; and *Birkhat ha-Bayit*, *Sha'ar* 26, sec. 39.

of those opinions recitation of a blessing should be restricted to smelling items used only for their aroma.[43]

A person who has no desire to smell the pungent aroma of cannabis has no intention to smell a fragrant object and hence has no cause to consider the need for a blessing. The situation is comparable to that of a person who does not recite a blessing upon entering a room in which fragrances are stored.[44] However, intentional smelling of cannabis does present a quandary. It is not clear to this writer that smelling the cloying odor of marijuana is an olfactory pleasure. Nevertheless, prior to the advent of the 5775 *shemittah* year a rabbinical symposium was held in Holon to address laws of *shemittah* applicable to cannabis. The civil authorities permitted a quantity of cannabis to be displayed under security guard for edification of the participants. It is reported that, upon spelling the aroma of cannabis, R. Yitzchak Zilberstein "and other scholars present" recited the prescribed blessing.[45]

Cannabis is designed for smoking or ingestion when added to a food product. It is not commonly used for its fragrance. As discussed, the need for a blessing upon intentionally smelling an object generally used for other purposes is a matter of controversy. It is apparently the consensus of halakhic opinion that no blessing should be recited and, moreover, that a person should not place himself in halakhic quandary by intentionally smelling a substance of that nature.

III. Smoking on *Yom Tov*

The practice of smoking on *Yom Tov* has long been fraught with controversy. The topic was discussed in detail in a Hebrew article by this writer in *Or ha-Mizraḥ* (Tishrei 5744) and later included in *Be-Netivot ha-Halakhah*, II (New York, 5759), 30–35. A review of that material appeared in this column in *Tradition*, vol. 21, no. 2 (Summer, 1983), pp. 167–172. Since then numerous further discussions have been published.

Many forms of "labor" which are forbidden on *Shabbat* are permitted on *Yom Tov*. Those activities are not, however, permitted for any and all purposes. An exception to the general prohibition against work on the festivals is found in Exodus 12:16, "… no manner of work shall be done

[43] See also *Pitḥei Teshuvah*, *Oraḥ Ḥayyim* 216:7.

[44] See *Mishnah Berurah* 217:1.

[45] See *Vavei ha-Amudim ve-Ḥashukeihem*, no. 7 (Tammuz 5774), p. 62 and *Yated Ne'eman*, *Shabbat Kodesh*, *Parashat Beshalaḥ*, p. 32. See also R. Yitzchak Zilberstein, *Ḥashukei Ḥemed*, *Yevamot* 122a.

on them, except that which is eaten by every person, that alone may be done by you." Thus, various forms of labor required for the preparation of food are permitted on *Yom Tov*. The Gemara, *Beiẓah* 12a, indicates that activities associated with the preparation of food are permitted even when such activities are not undertaken for culinary purposes. However, the Gemara, *Ketubot* 7a, declares that the example of food preparation found in Exodus 12:16 and described in that verse as required by "every person" is paradigmatic in the sense that the permitted forms of labor may be performed only for similar purposes, i.e., for needs that are "common to all persons" (*davar ha-shaveh le-khol nefesh*). Thus, for example, although cooking and the burning of fuel is permissible on festivals, spices or incense may not be placed over burning coals. Since relatively few persons experience a need or desire for the aroma produced by incense, the burning of incense is not deemed to constitute an act which yields a benefit "common to every person."

If indeed, as discussed earlier, smoking tobacco were to occasion the blessing pronounced in conjunction with partaking of food because tobacco has satiating qualities it would seem to follow that tobacco itself is a foodstuff and, as such, may be "cooked," i.e., smoked, on *Yom Tov*. The very same biblical passage that forbids labor on the festivals, "Do not perform any labor" (Exodus 12:16) also sanctions preparation of food: "but that which is to be eaten by every person that alone may be done by you" (Exodus 12:16). As elucidated by the Gemara, *Ketubot* 7a, the regulations governing forms of labor that are permitted on *Yom Tov* for human benefit provide that those forms of labor are permitted not only for preparation of food but also for all physical benefits that are "*shaveh le-khol nefesh*," i.e., "common to all people." Yet it is permissible to cook all foodstuffs on *Yom Tov*, including foodstuffs that are consumed only by a small segment of the populace. The rationale is that the basic benefit derived from cooked food, i.e., physical sustenance, is a generic benefit universally enjoyed by all persons and hence whether a particular cooked product is enjoyed by all persons or only by a minority is of no consequence.

The Gemara, *Ketubot* 7a, questions the permissibility of slaughtering a deer on *Yom Tov*, because it is not "*shaveh le-khol nefesh*," i.e., it is not "common to all people." Presumably, due to that fact that deer are not domestic animals venison was not a commonplace food. The Gemara's response is that the accurate formulation of the principle is not "a benefit common to all people" but a "*ẓorekh*" or a benefit that satisfies a "need" common to all people. Venison may not be "common" to all people but it satisfies a "need" of all people, i.e., venison is a food and all people require food. Smoking tobacco, at present, is certainly not "common to

all people"—and probably never was[46]—but eating cooked food in general is certainly a benefit enjoyed by all. The fact that most people would refrain from overly spiced or overly sweetened foods does not mean that those who enjoy such food may not cook a spicy dish on *Yom Tov*.[47] The same is true of foods that are eschewed by most persons because of their expense. All persons would find such foods enjoyable. The fact that the food is not sought by most people because of an extrinsic reason unrelated to the nature of the food itself is irrelevant.[48] Particular food products that are disdained by most people are nevertheless *shaveh le-khol nefesh* because food itself is *shaveh le-khol nefesh*.[49] Some few authorities do maintain that only cooked foodstuffs enjoyed by a majority of the populace may be prepared on *Yom Tov*.[50] According to the majoritarian opinion, it is at least conceivable that smoking on *Yom Tov* might be sanctioned on the grounds that the practice is to be considered a permissible form of "cooking" food.[51]

The primary issue with regard to smoking either tobacco or marijuana on *Yom Tov* is whether the practice is common to all persons.[52] The definition of "common to all persons" is somewhat elusive. It is quite unlikely that the term "all persons" is to be understood literally. *Darkhei No'am*, no. 9, understood it to connote a majority of all persons on the assumption that a majority is generally equated with the entirety (*rubo ke-kulo*). *Pnei Yehoshu'a*, *Shabbat* 39b, however, implies that the term connotes "virtually all" or a supermajority but provides no explicit defi-

[46] R. Moshe Sternbuch, *Mo'adim u-Zemanim*, IV, no. 298, permits smoking on *Yom Tov* for a person who is in great distress because of nicotine withdrawal on the grounds that the need to relieve pain is *shaveh le-khol nefesh*. See also *Mor u-Keẓi'ah*, *Oraḥ Ḥayyim* 511, s.v. *ve-tu*.

[47] See R. Sholmoh Zalman Auerbach, letter of approbation to R. Dov Ettinger, *Pe'er Taḥat Efer* (Jerusalem, 5748), p. 4.

[48] See R. Ben-Zion Rabinowitz, *Piskei Teshuvot*, *Oraḥ Ḥayyim* 511:2.

[49] Nevertheless, edible species entirely disdained in a particular locale are not *shaveh le-khol nefesh*. See *Piskei Teshuvot*, *ibid*.

[50] This issue is the basis of the controversy cited by Rema, *Oraḥ Ḥayyim* 511:1. See *Piskei Teshuvot* 511:2, note 8.

[51] R. Jonathan Eybeschutz, *Binah le-Ittim*, *Hilkhot Yom Tov* 4:6, rules that smoking on *Yom Tov* is permissible on entirely different grounds. Rambam, *Hilkhot Yom Tov* 4:4, rules that acts of "burning" may be performed on *Yom Tov* even if not for purposes *shaveh le-khol nefesh*. Consequently, Rambam, *Hilkhot Yom Tov* 4:6, rules that burning incense on *Yom Tov* is forbidden only because it involves an act of "extinguishing" fire. *Binah le-Ittim* asserts that smoking does not entail extinguishing a flame, as did *Darkhei No'am*, and rules that one may rely on Rambam's opinion to smoke on *Yom Tov* even though smoking is not *shaveh le-khol nefesh*.

[52] For a comprehensive discussion of the halakhic concept of *shaveh le-khol nefesh* see the earlier discussion in *Tradition*, vol. 21, no. 2, pp. 167–172.

nition. R. Ishmael ha-Kohen, *Teshuvot Zera Emet*, no. 73 and *Mahazik Berakhah*, *Oraḥ Ḥayyim* 210:14, suggest that some authorities maintain that a practice cannot be regarded as "common to all persons" in the presence of an identifiable minority who do not engage in that practice.

It is also unclear whether "all persons" means all living persons or all persons residing in a particular locale and establishes permissibility of the practice only in that locale. *Maḥazik Berakhah*, *Oraḥ Ḥayyim* 210:14; *Sha'arei Teshuvah*, *Oraḥ Ḥayyim* 210:9; and *Mishnah Berurah*, *Bi'ur Halakhah* 511:4, clearly rule that the definition of *shaveh le-khol nefesh* is relative to time and place. *Pri Megadim*, *Eshel Avraham* 511:9, tentatively rules that "common to all persons" is determined by the practice of "a majority of the world" rather than a majority of the locale.

Another possibility is that *shaveh le-khol nefesh* should not be understood as constituting "every person" literally but as a large identifiable group. *Teshuvot Ketav Sofer*, *Oraḥ Ḥayyim*, no. 66, notes that, customarily, women did not smoke. Hence, perforce smokers were always a minority. That seems to be the view of *Korban Netanel*, *Beiẓah* 2:22, who speaks of smoking as *shaveh le-khol nefesh* because "many are accustomed to it." If so, again, the problem is how large a minority constitutes *shaveh le-khol nefesh.*

Pnei Yehoshu'a, *Shabbat* 39b infers that *Tosafot* imply that any activity undertaken for therapeutic purpose is "common to all persons." There is some ambiguity with regard to *Pnei Yehoshu'a*'s inference from *Tosafot* that healing and good health are considered to be *shaveh le-khol nefesh. Teshuvot Ketav Sofer* assumes that inference to be quite general: Anything designed for purposes of health is *shaveh le-khol nefesh* just as all food is regarded as *shaveh le-khol nefesh.* In effect, because the result is desired by all,[53] the categorization is teleological in nature. A second possibility is that products designed for *refu'ah* are *shaveh le-khol nefesh* in a particular, more limited sense, i.e., not because everyone requires a cure and restoration to good health but because every person, were he to become ill, would avail himself of the cure in question just as food is *shaveh le-khol nefesh* even if, at present, not every person is hungry.[54]

The difference between the two formulations is relatively narrow. There might be a medicament that is suitable for treatment of a particular malady but contraindicated for use by a person suffering from an allergy.

[53] See *Teshuvot Ketav Sofer*, *Oraḥ Ḥayyim* no. 66. See also R. Abraham Bornstein, *Avnei Nezer*, *Oraḥ Ḥayyim*, no. 394.

[54] This issue will be the subject of further discussion in the forthcoming Part 2 of this article.

Such a product is designed for an end required by all, *viz.*, restoration to good health, but is of no use to an entire class of people allergic to that medicament and therefore not at all *shaveh le-khol nefesh*.[55]

In earlier times, authorities who permitted smoking on *Yom Tov* did so either because the practice was, in their opinion, sufficiently widespread to be considered *shaveh le-khol nefesh* or because tobacco was erroneously believed to possess healthful properties, primarily as an aid in digestion. Those authorities argued that, although only a minority of people may be smokers, every person would smoke if and when he found it beneficial for digestive purposes. The number of smokers has fallen drastically in recent years. At present, only 15.3 percent of U.S. males and 12.7 percent of U.S. females are frequent smokers.[56] It is also now known with certainty that tobacco provides no health benefit.[57] Consequently, both in *Be-Netivot ha-Halakhah* and *Tradition*, this writer advised that smoking on *Yom Tov* can no longer be sanctioned. That issue has been discussed at length by R. Dov Ettinger in a monograph titled *Pe'er Taḥat Efer* (Jerusalem, 5748), pp. 95–146, who reaches the same conclusion. A similar view has also been expressed by R. Shlomoh Fischer, R. Zalman Nechemia Goldberg, and others in their letters of approbation to *Pe'er Taḥat Efer* as well as by R. Yitzchak Glickman, *No'am* XXII (5740), 147–148. R. Moshe Feinstein and R. Chaim Pinchas Scheinberg, in their letters of approbation to *Pe'er Taḥat Efer*, accept that conclusion but decline to pronounce an unequivocal ban. A similar position is adopted by R. Yechezkel Roth, late *dayyan* of the Satmar community in Williamsburg, *Olat ha-Ḥodesh* (Iyar, 5740).[58]

Strangely, R. Ovadiah Yosef, *Yabi'a Omer* V, *Oraḥ Ḥayyim*, no. 39, sec. 3, examines the permissibility of smoking on *Yom Tov* in light of the now-recognized unhealthful effects of tobacco but nevertheless declines to forbid the practice. Rabbi Yosef cites the oft-quoted words of Ramban to the effect that any drug potent enough to cure one patient may cause the death of another.[59] He further cites *Teshuvot Levushei Mordekhai*, *Mahadura Batra*, no. 105, who describes tobacco as "unhealthful and

[55] Cf., *Pe'er Taḥat Efer*, pp. 96–97.

[56] Centers for Disease Control and Prevention, "Smoking and Tobacco Use Fast Facts," June 2, 2021, https://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/.

[57] Tobacco is of value in treating ulcerative colitis. However, the associated risks in such patients are of a magnitude that precludes actual use. See M. Guslandi, "Nicotine Treatment for Ulcerative Colitis," *British Journal of Clinical Pharmacology*, vol. 48, no. 4 (October 1999), pp. 481–484.

[58] See also R. Mordecai Halperin, *Emek Halakhah: Assia* (Jerusalem, 5746), p. 307.

[59] See *Kitvei Ramban*, ed. R. Charles B. Chavel (Jerusalem, 5724), II, 43.

injurious to the lungs, but yet healthful for the body." Accordingly, argues Rabbi Yosef, smoking may yet be regarded as therapeutic in nature, i.e., although it may cause certain harmful effects, it is nevertheless useful as an aid in digestion. In his letter of approbation to *Pe'er Taḥat Efer*, p. 23, Rabbi Yosef, without discussion, reiterates his position and peremptorily dismisses the objections raised by the author of that work. Rabbi Yosef's position is based upon the erroneous presumption that use of tobacco is beneficial in some ways and unhealthful in others. As already stated, in point of fact, tobacco serves no medicinal purpose whatsoever. There is absolutely no evidence indicating that smoking serves as an aid in digestion or in any other useful pharmaceutical capacity.

As has been shown earlier, cannabis does not satiate and hence is certainly not a food; cannabis is clearly not smoked by the majority of the populace. But if marijuana is at times used for therapeutic purposes it might be argued that the authorities who maintain that smoking tobacco on *Yom Tov* is—or was—permissible because if, and when, needed for reasons of health, all persons would use it therapeutically, would also make the same claim with regard to marijuana. The counterargument is that there is a factual distinction. In earlier generations no one would have rejected medicinal use of tobacco. But it is uncertain that, even in the absence of halakhic objections, all persons would engage in medicinal use of marijuana. That is certainly the case in jurisdictions in which medical marijuana remains illegal. There are also individuals who doubt its therapeutic efficacy or who are concerned with regard to possible side effects as well as those who are concerned with the social opprobrium associated with its use. Thus, therapeutic use of marijuana is probably not a benefit "common to all people."

A further distinction must be drawn between tobacco and medical cannabis. There is a rabbinic prohibition against use of therapeutics on *Shabbat* and *Yom Tov* lest the patient or his apothecary grind a medicament on *Shabbat* or *Yom Tov*. That prohibition is suspended not only in the case of a patient who suffers from a possibly life-threatening illness but also for a person afflicted by a malady that renders him a "*ḥoleh kol gufo*," i.e., his entire body is affected, even if the sickness is not life-threatening. Any patient taken to bed or rendered physically dysfunctional is included in that category. In addition, all food products are excluded from the prohibition, even if they are not commonly consumed by healthy persons and hence may be eaten on *Shabbat* and *Yom Tov* even if the intent is solely therapeutic.

Were tobacco to be regarded as a food because it satiates, it would not be included in the class of a therapeutic agents forbidden on *Yom Tov* even if the intended purpose were solely medical in nature. Even if

tobacco is not categorized as a food, its use would not be restricted on *Yom Tov* as a medicine because its use is enjoyed by healthy persons as well. Tobacco would then be categorized as a *ma'akhal bari*, a "food for the healthy" that is permitted on *Yom Tov* even for therapeutic purposes. However, since cannabis is not a food and recreational marijuana is not *shaveh le-khol nefesh*, use of medicinal marijuana on *Yom Tov* by patients whose lives are not endangered would be restricted to patients who seek its use in order to alleviate pain, nausea or the like, the intensity of which renders the patient dysfunctional.

IV. Additional *Yom Tov* Problems

1. *Mekhabbeh* – Extinguishing

R. Chaim Benvenisti, *Knesset ha-Gedolah*, *Oraḥ Ḥayyim*, *Hagahot Bet Yosef* 608:3,[60] cited by *Magen Avraham* 514:4, forbids smoking on *Yom Tov* because of an extraneous reason, *viz.*, the likelihood that it will involve an act designed to extinguish the flame or particles of burning tobacco. Extinguishing burning tobacco does not satisfy any intrinsic need or provide any benefit and hence is forbidden on a festival. Nevertheless, *Darkhei No'am*, no. 9, declares smoking to be entirely permissible because, since there is intention neither to snuff out a fire nor to extinguish a burning particle of tobacco and, in addition, the effect of "extinguishing" tobacco is contrary to the smoker's desire, it is a *pesik reisheih de-lo niḥa leih*, i.e., a disdained secondary effect of smoking.

The issue is not that the smoker might extinguish his cigarette by snuffing it out upon a hard surface because a) the forbidden nature of such an act was well-known and hence the possibility of its occurrence would not have been a matter of concern[61] and b) presumably, the prevalent form of smoking was by means of a pipe rather than in the form of cigarette-smoking. Rather, extinguishing a burning substance is associated with smoking in a variety of other ways: 1) extinguishing the coal, paper or match used to transfer a flame in order to light a pipe; 2) adding tobacco to the bowl of the pipe with resultant extinguishing of some particles of tobacco yet burning in the bowl below; 3) tamping the bowl to facilitate drawing smoke through the pipe; 4) placing a cover, either solid

[60] See also R. Chaim Benvenisti, *Shi'urei Knesset ha-Gedolah*, *Oraḥ Ḥayyim*, *Hagahot Bet Yosef* 567:3, s.v. *nishalti*.

[61] R. Chaim Joseph David Azulai, *Birkei Yosef*, *Oraḥ Ḥayyim* 511:2, notes that in the post-talmudic period there is no longer authority to promulgate restrictive decrees in order to prevent infringement of biblical prohibitions. Accordingly, the practice can be banned only if actual infringement is involved.

or pierced by holes, over the bowl to prevent escape of burning tobacco; and 5) emptying the bowl and in the process extinguishing still-burning bits of tobacco remaining in the bowl or doing so when flicking ashes from a cigarette.

Mor u-Keẓi'ah 511, s.v. *u-mah*, finds no problem with regard to any form of *kibbuy*, or extinguishing, undertaken for the purpose of facilitating optimal smoking for two reasons: 1) Such acts involve only indirect, rather than direct, extinguishing of the fire and indirectly extinguishing a flame on *Yom Tov* is permissible. 2) Meat may be broiled over a fire and may be moved from place to place on the coals thereby disturbing the coals even though it is a certainty that some coals will be extinguished in the process. The principle is that such forms of *kibuy* are actually intrinsic to the act of cooking.

Teshuvot Ketav Sofer, *Oraḥ Ḥayyim*, no. 66, dismisses the concern regarding *kibuy* on the grounds that, under such circumstances, the resultant extinguishing of particles of tobacco, even if it is certain to occur, is unintended and undesired. Even though an act that will certainly yield such unintended and undesired results is nevertheless forbidden by rabbinic edict, R. Israel Isserlein, *Terumat ha-Deshen*, no. 64, regards an act to be entirely permissible when the act that would be caused as an unintended result is itself forbidden only by virtue of rabbinic decree.[62] The underlying rule is that there can be no biblical violation unless some intrinsic benefit results from the forbidden act. No positive benefit is derived from extinguishing stray strands of tobacco and hence the transgression is only rabbinic in nature. *Bet Yosef*, *Oraḥ Ḥayyim* 316:3, adopts a contradictory position in ruling that even a rabbinically proscribed act remains forbidden if it occurs as a *pesik reisheih de-lo niḥa leih*, i.e., as a secondary result that is both unintended and unwanted, albeit the necessary result of an innocuous act.

Be that as it may, the acts in question are reduced to a rabbinic, rather than a biblical, prohibition for a number of other distinct and disparate reasons: 1) an unintended and undesired effect, albeit necessary (*pesik reisheih de-lo niḥa leih*), is only rabbinically proscribed; 2) extinguishing tobacco that might yet be enjoyed by casting it aside is a destructive act (*mekalkel*); 3) an act performed in a "backhanded" (*ke-le-aḥar yad*) or unusual manner is forbidden only rabbinically. The described acts of extinguishing tobacco are reduced to rabbinic infractions by reason

[62] Rema, *Oraḥ Ḥayyim* 314:1, *Magen Avraham* 314:5 and *Mishnah Berurah* 314:11 rule such acts to be forbidden even with regard to matters prohibited by rabbinic decree.

of independent operation of each of those considerations. According to many authorities, an act that would be rendered forbidden only by an accretion of two separate rabbinic enactments is permissible. Arguably, an act that is prohibited only upon accretion of three rabbinic prohibitions (*telat de-rabbanan*) is rendered permissible according to all authorities. That is the position of R. Mordecai Brisk, *Teshuvot Maharam Brisk*, I, no. 23,[63] and appears to be the position of *Pri Megadim*, *Mishbeẓot Zahav*, *Hanhagot ha-Sho'el ve-ha-Nish'al* 1:14.[64]

2. *Moḥek* – Erasing

Some cigarette manufacturers identify their brand by imprinting the brand name along the length of each cigarette wrapper. Generally, the lettering begins in the proximity of the filter or at one end of the cigarette and extends over a third or a half of the length of the cigarette. Each puff on the cigarette consumes a small quantity of tobacco and with it a portion of the paper wrapper in which the tobacco is encased. Burning the paper involves destruction, or "erasure," of the inscribed lettering. "Erasure" is a form of "labor" forbidden on *Shabbat* and *Yom Tov*. Accordingly, smoking cigarettes on *Yom Tov* that bear lettering on the wrapper is prohibited, *inter alia*, by R. Chaim Joseph David Azulai, cited in R. Shalom Schwadron, *Da'at Torah* 514:1; *Pri Megadim*, *Mishbeẓot Zahav* 511:12; *Teshuvot Ketav Sofer*, *Oraḥ Ḥayyim*, no. 66; and R. Shlomoh Ganzfried, *Kiẓur Shulḥan Arukh* 98:32.

Indeed, it is not uncommon to observe individuals who smoke one of those brands of cigarettes on *Yom Tov* drawing on the cigarette only until the ash comes close to the lettering and thereupon allowing the remainder of the cigarette to smolder of its own accord. Alternatively,

[63] *Maharam Brisk* addresses use of talcum powder on *Shabbat*. *Maharam Brisk* permits such use because the act would be forbidden only the basis of combined application of three separate rabbinic decrees: 1) "dyeing" or coloring that is only transient in nature; 2) coloring human skin; and 3) merely enhancing already existing pigmentation as opposed to a change of color. Another example would be interdicted nullification of rabbinically forbidden *ḥameẓ* during the fifth hour of *erev Pesaḥ*. The act could be forbidden only by applying each of those rabbinic decrees concomitantly: 1) the prohibition against intentional nullification; 2) rabbinically proscribed *ḥameẓ*; and 3) *ḥameẓ* during the fifth hour of *erev Pesaḥ*. If *telat de-rabbanan* is permitted, nullification of *ḥameẓ* in such circumstances would be entirely permissible. See "Cosmetic Powder on *Shabbat*," *Contemporary Halakhic Problems*, IV (New York, 1995), 113–119.

[64] See also R. Shalom Schwadron, *Teshuvot Maharsham*, VII, no. 7; R. Ovadiah Yosef, *Yabi'a Omer*, V, *Oraḥ Ḥayyim*, no. 28; and R. Samuel ha-Levi Woszner, *Teshuvot Shevet ha-Levi*, II, no. 197.

it is reported that some persons were wont to use unembossed cigarette wrappers to roll their own cigarettes for use on *Yom Tov*, taking care to complete the fashioning of the cigarettes before *Yom Tov*.

There are, however, grounds to permit usual modes of smoking on *Yom Tov*. "Erasure" in the form of burning written material or letters constitutes a rabbinic, rather than a biblical, transgression for a number of reasons: 1) The biblical infraction is limited to erasure with intent to write a minimum of two letters upon the erased surface.[65] 2) Acts of "erasure" are forbidden only when undertaken for a constructive purpose. Burning is destructive in nature and hence prohibited only by virtue of rabbinic decree. 3) An act of labor is biblically forbidden only when carried out in a normal and usual manner. Burning is an unusual manner of erasure. Use of the mouth to erase writing is also a "backhanded" or unusual manner of erasure. 4) Erasure of the writing on a cigarette wrapper, although a necessary result of burning the cigarette wrapper, is unintended and undesired, i.e., a *pesik reisheih de-lo niḥa leih*. Thus, destruction of printed letters in the process of smoking is forbidden only by application of four separate and distinct edicts. As noted, many authorities maintain that an act that would be rendered forbidden only by applying a confluence of three distinct rabbinic decrees remains entirely permissible (*telat de-rabbanan lo amrinan*).

The practice is permitted on the basis of one or more of those arguments by R. Shalom Schwadron, *Teshuvot Maharsham*, VII, no. 7; R. Shimon Grunfeld, *Teshuvot Maharshag*, II, no. 41; R. Ovadiah Yosef, *Yabi'a Omer*, V, *Oraḥ Ḥayyim*, no. 39, secs. 4–5; R. Nathan Gestetner, *Teshuvot Le-Horot Natan*, III, no. 27; R. Moshe Stern, *Teshuvot Be'er Mosheh*, VIII, no. 152; R. Ephraim Greenblatt, *Teshuvot Rivevot Efrayim*, II, no. 272; and R. Shlomoh Zalman Auerbach, cited in *Shemirat Shabbat ke-Hilkhatah* 13:7, note 30*.[66]

According to at least one latter-day commentator, burning an item upon which writing appears is never forbidden by virtue of *meḥikah*. R. Meir Simchah ha-Kohen of Dvinsk, *Or Sameaḥ*, *Hilkhot Shabbat* 23:2, formulates a cryptic "common sense" definition of the nature of the

[65] R. Shlomoh Zalman Auerbach is cited in R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilkhatah*, 2nd ed. (Jerusalem, 5739), 13:7, note 30*, as expressing doubt with regard to whether there is any problem associated with erasing when the erased surface cannot be used for subsequent writing. Cf., however, Rema, *Oraḥ Ḥayyim* 240:3; *Taz*, *Oraḥ Ḥayyim* 340:5; and R. Chaim Pelaggi, *Teshuvot Lev Ḥayyim*, II, no. 171. See R. Zevi Pesach Frank, *Teshuvot Har Ẓevi*, *Oraḥ Ḥayyim*, I, *Tal Horim: Moḥek*, no. 2.

[66] See also *Teshuvot Har Ẓevi*, *loc. cit.*

prohibited act of erasure. He offers a parallel example in explaining the nature of *soter*, i.e., "destroying" or rendering a vessel unusable as a utensil. Taking apart or separating a wooden box into its component parts on *Shabbat* is forbidden. Yet, *Shulḥan Arukh*, *Oraḥ Ḥayyim* 501:6, rules that utensils may be burned on *Yom Tov* as firewood.[67] Thwarting or nullifying use of the box as a container by casting it into a bonfire, contends *Or Sameaḥ*, is not at all an act of *soter* and hence is not subject to any prohibition on that score. The same is true, declares *Or Sameaḥ*, with regard to erasure as well. Erasure, by definition, asserts *Or Sameaḥ*, is limited to obliterating or removing writing from a substance to which the writing adheres.[68] *Or Sameaḥ* categorizes erasing letters by burning the substance upon which they are written or printed as a necessary effect that is of a status more innocuous than even a *mitasek*,[69] i.e., such an act

[67] Cf., however, *Magen Avraham* 501:13, who offers an entirely different explanation.

[68] See also R. Shlomoh Zalman Auerbach cited in *Shemirat Shabbat ke-Hilkhatah* 13:7, note 30*.

[69] There are various categories of inadvertent acts: 1) *Shogeg* is defined as an act performed in ignorance of the forbidden nature of the infraction, e.g., a person who creates a furrow in loose earth but is ignorant of the fact that the act is a forbidden form of "excavation" or is ignorant of the fact that it is the Sabbath; 2) *Mitasek*—a person who intends to perform only a totally innocuous act but inadvertently performs a forbidden act, e.g., a person who intends to slice a vegetable already removed from its place of growth but, in reality, the vegetable is still attached to the ground, or a person who desires to open a refrigerator door but is unaware that the lightbulb within the refrigerator has not been removed. Thus, such a person is completely unaware of any forbidden ramification of his act. The crucial distinction between a *shogeg* and a *mitasek* is that a *shogeg* is liable to the sacrifice of a *ḥatta't* in expiation of his sin whereas a *mitasek* has no such obligation. Whether *mitasek* is entirely innocuous or merely an infraction of lesser severity than *shogeg* is the subject of dispute between *Teshuvot Rabbi Akiva Eger*, no. 8 and R. Jacob of Lissa, *Mekor Ḥayyim*, *Oraḥ Ḥayyim* 431. See *Contemporary Halakhic Problems*, V (Southfield, MI, 2005), 154–156; 3) *Pesik reisheih*, i.e. a single act that produces two separate necessary effects (a double-effect), one intended and one unintended, but it is known in advance that both results will occur as a matter of certainty and both results are salutary in nature. For example, a person drags a heavy object over loose earth in order to transfer it from place to place but is fully aware of the fact that a pit will inevitably be excavated although that effect is entirely unintended and that he may avail himself of the resultant hole for some constructive purpose, i.e., one effect is intended and entirely innocuous whereas the second effect is prohibited but unintended although it will occur as a matter of necessity. Another example might be removing a glowing ember from a fire and thereby unintentionally but necessarily causing other pieces of wood to burn more rapidly with resultant increase in heat or hastening of the cooking process; 4) *Pesik reisheih de-lo niḥa leih*, i.e. a single act that produces a double-effect in which there are two separate necessary effects, one permitted and one forbidden, and the forbidden effect is necessary but unintended

is not regarded even as an undesired secondary effect of a permitted cause but a mere epiphenomenon not intrinsically related to the act of burning. Hence the act is distinct from both *mitasek* and *pesik reisheih* in which both the intended permissible effect and the unintended prohibited result are inherently equal results of a single act. *Or Sameaḥ* contends that "erasure" that occurs as an epiphenomenon arising from vaporization of the substance upon which the writing is embossed is not at all encompassed within the definition of erasure.

Or Sameaḥ regards his position as self-evident and hence as requiring no further elucidation. Most of the thirty-nine prohibited classes of labor forbidden on *Shabbat* and *Yom Tov* involve readily defined physical acts designed to achieve a specific purpose. Even when the prohibited effect is unintended (i.e., a *pesik reisheih* or "double-effect"), to the external observer, the effects are both equally and intrinsically related to the cause. For example, it is forbidden to pull a table over loose sand because creating a hole in the sand is an unintended effect of the act. Fashioning a hole in the ground is the intrinsic and necessary result of dragging a heavy object through sand. Whether intended or not, the necessary result of dragging a sufficiently heavy object through loose earth constitutes an act of excavation. The creation of a hole is the essence of the prohibited act. The intrinsic nature of the act of burning is to convert wood or a wooden object into fire, i.e., to convert fuel into fire. Nullifying the nature of a utensil as a durable object having utilitarian purpose by using it as firewood is not intrinsic to converting fuel into fire whether the burning is intended or unintended. Unlike the hole in the ground, which is intrinsically and inseparably related to dragging a table, nullification of a chair's status as a utensil when it is consumed by fire is an epiphenomenon, or side effect, not at all intrinsically related to the act of burning—not because of a lack of intention but by definition. Loss of status as a utensil is an "accident" quite unrelated to the general effect of

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and also of no benefit and undesired, e.g., transfer of a glowing ember from one fire and placing it in another place or merely stirring the embers. The unplanned, unintended, and undesired but necessary effect of the act is inadvertent increase of the rate of combustion. An act of that nature is rabbinically prohibited. A second example might be removing a cancerous uterus from a pregnant woman. Removal of the uterus is desired and beneficial; elimination of the fetus is necessary but (generally) unintended and not salutary. The intended effect is elimination of cancer; the necessary but undesired and unintended effect is elimination of the fetus.

[In] the Catholic tradition, the focus of the double-effect theory is upon the moral nature of each of the effects rather than upon subjective intention. For discussion of Jewish teaching regarding double-effect in the Noachide Code see "Nuclear War," *Contemporary Halakhic Problems*, III, 8–9.

fire and quite unlike creating a hole in the ground, which is intrinsic to pulling a heavy object over loose earth.

The same may be said with regard to untying a knot by means of burning the knot. Untying the knot is not a "consequence" of the fire. The fire does only one thing: it consumes the rope. "Untying" the knot is not a separate, independent effect of burning the rope; it is merely an epiphenomenon of destroying the rope. The same is true of use of written matter as fuel. Unlike pulling a table across sand and creating a hole, which are two separate and distinguishable phenomena arising from a single act, erasure of writing is not an independent effect separate and distinct from burning the paper. Erasure of writing is merely an "accident" arising entirely from vaporization of the substance upon which the writing is imposed.

3. *Molid* – "Giving Birth"

Some acts are forbidden on *Shabbat* and *Yom Tov* despite the fact that they do not involve any one of the thirty-nine prohibited forms of labor. The basis of the prohibition is that such acts suggest a creative activity akin to "giving birth," i.e., bringing something into existence. Simulative creation of a new entity in such a manner is suggestive of *creatio ex nihilo*. Acts of that nature are abjured in emulation of the Deity who desisted from acts of creation on the seventh day. Such acts are forbidden on *Yom Tov* even for purposes regarding which labor is permitted, e.g., preparation of food. Striking a match is the most obvious example; rendering fat so that it is reduced to a liquid and infusing a garment or a piece of cloth with perfume so that it can be used as a sachet are other examples.

It has been argued that converting tobacco into smoke is a form of *molid*; tobacco smoke is a newly-born entity and hence its generation on *Yom Tov* should be forbidden. R. Yechiel Heller, *Amudei Or*, no. 29, sec. 5, resolves the issue by postulating that *molid* applies only when a previously non-existent entity not inherently present in, or intrinsically connected with, its progenitor comes into being. Tobacco, however, he argues, has no purpose other than to be converted to smoke. Hence, smoke is not regarded as a new entity but simply as a natural transformation of the existing tobacco.[70]

[70] See, however, *Mordekhai, Shabbat*, no. 259, who regards juice that seeps from grapes on *Shabbat* as *nolad*. Apparently included in that categorization is juice derived from varieties of grapes used solely for production of wine. Cf., *Pe'er Taḥat Efer*, pp. 129–130.