



Parshas  
Pinchas  
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## Intriguing Questions & Answers



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### **Children Who Can't Sleep Without Music — The Three Weeks**

**Q:** May one play music for small children who are used to falling asleep to recorded songs during the Three Weeks?

**A:** There is a dispute among Poskim whether mourning laws apply to children. The Taz (*Yoreh Deah* 340:15) writes that the reason we tear *kriah* for a child is because of *agmas nefesh*—to cause people to become sad and contribute money to the orphans. This would imply that there is no consideration of *chinuch* regarding *aveilus*. *Maharitz Giyus*, however, says that the reason we tear for a child is based on *chinuch*, clearly indicating that it does apply to mourning. The Shach (*Nekudos HaKesef*) writes clearly that there is no *chinuch* of *aveilus* regarding a *katan*.

All the above applies to personal mourning. Regarding public mourning (such as the Three Weeks), the Magen Avraham (*Orach Chaim* 551:38) cites *Terumas HaDeshen* (152) that there is *chinuch* for children—either for *aveilus* or *agmas nefesh*.

The Magen Avraham explains that this is because we are more stringent for public mourning than we are for personal mourning. *Chikrei Lev* (*Orach Chaim* 99) explains that this is because the purpose of *chinuch* is to train children when they are young so they are prepared when they become older. To train them young in *aveilus* would be a “*siman ra*,” and therefore, even if in private mourning there is no *chinuch*, in the Three Weeks there is.

**Nevertheless**, in our case, leniency is justified. First, the intent here is not for joy or pleasure, but to help the child sleep. This is based on *Teshuvos Maharshag* (4:125) permitting a depressed person to listen to music to lift their mood. Likewise, *Halichos Shlomo* (Ch. 12) permits listening to recorded music to alleviate loneliness, since the intent is not to bring joy.

Accordingly, we may say that for a child who cannot sleep without music, it would not be an issue, since the intent is not for joy.

Furthermore, this would also not pose an issue of *sefiyah b'yadayim*, lit. handing a child something that is forbidden, for

a number of reasons: Many hold this only applies to Torah-level prohibitions, and not *issurei d'rbananan*—and certainly not *minhagim*. Furthermore, according to many, this prohibition only applies when it is inherently forbidden (e.g., something that is not kosher), and not something that is prohibited only for the time being.

**In Conclusion:** A child accustomed to falling asleep to music may continue to do so during the Three Weeks, and even if they have reached the age of *chinuch*, it is permitted if they otherwise cannot fall asleep.

### **Renting Cars to Non-Jews over Shabbos-Avodah Zarah 21b**

**Q:** May a Jewish-owned car rental company rent a car to a non-Jew on Friday for several days, when it is clear the non-Jew will use it on Shabbos?

**A:** The Gemara (*Avodah Zarah* 21b) rules, and this is codified in Shulchan Aruch (*Orach Chaim* 243:1), that one may not rent a bathhouse to a non-Jew since it is publicly known to be owned by a Jew, and the non-Jew uses it on Shabbos and Yom Tov. Although the work is done entirely for the benefit of the non-Jew and not for the Jew, nevertheless, since people know it belongs to a Jew, Chazal were concerned that people might wrongly assume the non-Jew is acting as the Jew's worker or agent.

However, the Poskim explain that this concern only applies to properties like bathhouses that are not typically rented out, and therefore there is a greater concern of *maaris ayin* (appearance of impropriety). In contrast, items or properties that are commonly rented do not carry this concern, and thus renting them to a non-Jew is permitted (see Shulchan Aruch 243:2).

Regarding renting tools and the like, the Magen Avraham (246) writes that *maaris ayin* applies to them as well, and not just land.

From the Gemara and Rishonim it is evident that there are cases where *maaris ayin* is not a concern: if it is common practice in the city to rent such items, or if it is not known to be the Jew's, e.g., if the Jew does not personally own it but rather rents it from a different non-Jew, then renting to a non-Jew is



permitted. See Rema 243:2 and Mishnah Berurah there (14).

Additionally, we also find in Shulchan Aruch (246:2), that if it is publicly known that the Jew has for years rented out the property, the rental is permitted, since everyone knows that this is what he does.

There is also a separate halacha (Shabbos 19a) that one may not rent a tool to a non-Jew on Friday—even if it is not known to be owned by a Jew—because it appears that the Jew is sending the non-Jew to do work on Shabbos with his equipment. However, the Shulchan Aruch (246:1) indicates that renting on Wednesday or Thursday does not carry this concern.

**In Practice:** Some Poskim hold it is forbidden to rent a car to a non-Jew on Friday, even if the car is clearly labeled with the company name (indicating it's a rental car), for there remains a concern it appears as though the non-Jew is acting on behalf of the Jew. Some suggest as follows: allow the non-Jew to use the car for free on Shabbos. Since the Jew derives no benefit from the non-Jew's Shabbos use, the concern of the non-Jew "appearing as an agent" no longer applies.

However, several leading Poskim understand from the *Dibros Moshe* (Shabbos, *Ha'arah* 131) of Rav Moshe Feinstein zt"l a novel ruling: everything depends on when the work begins. If the non-Jew will begin using the item before Shabbos, the rental is permitted—even if he will use it on Shabbos. But if he will only begin using it on Shabbos, then it would be forbidden to rent it out even earlier in the week. Though this is not explicit in Shulchan Aruch, many leading Poskim in *chutz la'aretz* rely on this view.

### ***A Sephardic Girl Returning Late at Night from a Wedding by Bus with Many Other Men- Avodah Zarah 25b***

**Q:** We learn in Avodah Zarah 25b and Kidushin 80b: a man may not be secluded (*yichud*) with two women, but one woman may be with two men. However, if the men are promiscuous (*perutzim*), even ten are not enough.

Shulchan Aruch (*Even Haezer* 22:5) rules stringently: a woman may not be secluded even with many men, *even if they are kesheirim* (i.e., non-promiscuous). The Rema, however, is lenient, and permits one woman with two men in the city during the day, and at night only with three men. Ashkenazim follow this

leniency; Sephardim follow the stringent ruling of Maran. A case arose where a Sephardic girl attended a wedding far away, and at the end of the wedding, her only option back home would be with a bus full of Sephardic boys returning to their Yeshiva. May she rely on the lenient view of the Rema and go home on the bus with the boys?

**A:** In this case of significant difficulty, it would seem to me that there is room for leniency. In truth, it is difficult to understand why the Shulchan Aruch rules in accordance with the Rambam when both the Rif and Rosh disagree. For we know that the Beis Yosef himself writes in his introduction that the halacha should follow the majority of the following three authorities: Rif, Rambam, and Rosh. Here, it appears he contradicted his own principle. Moreover, many Rishonim rule leniently like the Rosh. If we follow the majority of Rishonim when it comes to questions of *issurei d'oraisa*, then certainly there is room to rely on the majority opinion regarding the *issur yichud* which is an *issur d'rabanan*. Since the prohibition of *yichud* here is Rabbinic, and most authorities are lenient.

Furthermore, the Shach (*Yoreh Deah* 242) notes that in cases of *sha'as hadechak* (pressing situations), even when most opinions rule strictly, one may follow a *daas yachid* (minority opinion) in matters of *d'rabanan*. All the more so here, where most Rishonim are lenient. Additionally, if the boys are *Bnei Torah* and *Yirei Shamayim*, even the Rambam might agree to permit.

A related question arose regarding two Ashkenazi men learning together in a home when a Sephardic cleaning woman arrived. Since Sephardim rule that one woman may not be secluded even with many men, may the Ashkenazim remain with her? Or perhaps do we would say that since it is forbidden for her, this would constitute *lifnei iveir* if they were to remain? Rav Shmuel Vosner zt"l ruled leniently, citing a dispute whether one who holds something is permitted transgresses *lifnei iver* by enabling one who holds it is forbidden. He also adds that some understand that the Rambam only meant this as a stringency, and not *m'ikar hadin*.

He further references Tzafnas Paneach, who explains that the Rambam's language indicates that in a case of one man and two women the prohibition is on the man, and in the case of one woman and two men, the prohibition is on the woman. Accordingly, an Ashkenazi woman with two Sephardi men would be permitted, and an Ashkenazi man with three women would also be permitted. However, this is difficult to accept, for according to this, two men would allow to be *meyached* girl until she turns twelve, or two women with a nine-year-old boy until he turns Bar Mitzvah—which most Poskim do not accept.



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