

# INSIGHTS INTO HALACHA

## The Dating/Davening Dilemma

*Rabbi Yehuda Spitz*

Many are familiar with the Mishna[1] that declares that there was no day of rejoicing in Israel like Tu B'Av due to the unique manner of attaining shidduchim on that day. Yet, for many single girls of marriageable age in the Greater New York area nowadays, the day of greatest joy might actually be Tu B'Shvat. On that day annually, the largest Yeshiva in America, Lakewood, New Jersey's B.M.G., "opens its freezer", and hundreds, if not thousands, of Bochorim are now permitted to date.[2]

These Bochorim rent cars, drive into New York, and seek out their future life partner. Lounges across the city (Brooklyn Marriot, anyone?) are taken up by black-hatted and jacketed young men and their dressed-up date. After dropping their date back off at home, many of our earnest young men rush to catch Maariv at Boro Park's landmark "minyan factory", the Shomrei Shabbos Shul (Maariv Minyanim at least up until 2:30 A.M.), before grabbing a bite to eat at Amnon's up the block (before he closes at 2 A.M.) and ultimately heading back to Lakewood.

But the question is not necessarily if there is a Maariv Minyan that late; the question is whether one should daven Maariv that late. It turns out, as with many issues in halacha, that there is no simple answer. But first, some background is necessary.

### **Back to Basics**

The very first Mishna in Shas[3] records a 3-Way halachic dispute about the final time one is allowed to daven Krias Shma B'Arvis (or B'Arvin). R' Eliezer ruled until the "end of the first watch", meaning either a third or a quarter of the night. The Chachamim ruled until "Chatzos", referring to halachic midnight, while Rabban Gamliel ruled until amud hashachar, daybreak. The Mishna then relates a story about Rabban Gamliel's sons who came home from a Simcha after midnight and told their father that they had not yet davened Maariv (Krias Shma). He replied that since it was not yet daybreak, they were still required to daven Maariv. He added that the Chachamim only ruled that one may not pray after midnight in order to "distance people from transgression" and ensure that they pray at the proper time and not be preoccupied and possibly fall asleep without davening.

The Gemara later rules[4] that the halacha follows Rabban Gamliel's opinion. This seems to imply that one may daven Maariv all night long. However, in practice, this is not so straightforward, as there is a huge machlokes Rishonim as to the Gemara's proper intent with its ruling.

### **Rulings of the Rishonim**

The Rambam,[5] as well as many other Rishonim including the Rif, Ramban, and SMaG,[6] rule that one must daven Maariv before Chatzos. If for some reason one did not, he still has until daybreak to fulfill his obligation for the evening prayer. Although this seems to sharply contrast with the Gemara's conclusion, the Beis Yosef[7] explains that this is truly the Gemara's intent. Although the halacha follows Rabban Gamliel's shittah, this is only b'dieved, when for some reason or another one did not end up davening

Maariv before midnight. Yet, he maintains that lechatchilla, Rabban Gamliel would agree to the Chachamim that one needs to daven before Chatzos. In fact, this is how he himself codifies the halacha in the Shulchan Aruch.[8]

Yet, other Rishonim, including the Rashba, Rosh, Sefer Hachinuch, and the Tur,[9] all maintain that the Gemara's intent follows its basic understanding. Meaning, that the Chachamim were of the opinion that Maariv must be prayed before midnight, while Rabban Gamliel disagrees, maintaining that one has until daybreak to do so. Since the Gemara concludes that Rabban Gamliel's opinion was the correct one, they rule that one may therefore daven Maariv lechatchilla any time he wants, all night long.

There is even a third minority opinion, that of the Talmidei Rabbeinu Yona.[10] They assert that one is prohibited to daven Maariv after Chatzos. They explain that since a related Gemara states that one who transgresses the words of the Chachamim is 'chayav missa', worthy of the death penalty, the Gemara intended to change the bottom line.[11] Although me'ikar hadin one may technically daven afterward, once the Chachamim ruled that one may only do so until halachic midnight, they aver that that has since become the new halacha.

### **So...What Do We Do?**

Many later authorities, most notably the famed Shaagas Aryeh,[12] question the Beis Yosef's understanding of the Gemara, due to a variety of concerns. Chief among their issues is that if the Gemara explicitly concluded that the halacha follows Rabban Gamliel's opinion, then one should be able to daven all night long. The ruling that one needs to daven before Chatzos (even if b'dieved one may still do so later) is essentially the Chachamim's opinion. They argue that if that is truly the Gemara's intent, it would have concluded simply that the halacha follows the Chachamim. The Shaagas Aryeh therefore rules that the psak of the Tur and Rosh is the correct one, and one may therefore daven Maariv up until Alos HaShachar.

Other halachic decisors, however, defend the Shulchan Aruch's position and rule accordingly,[13] while several poskim, including the Chayei Adam and the Kitzur Shulchan Aruch, simply and straightforwardly rule like the Shulchan Aruch.

The Mishna Berura[14] cites many Rishonim on both sides of the dispute, and concludes that if at all possible, one must follow the ruling of the Shulchan Aruch and daven before Chatzos. Yet, under extenuating circumstances, for example one who is busy teaching others Torah (perhaps a late night Daf Yomi shiur) may rely on the lenient opinion and daven Maariv after midnight.

### **Contemporary Rule**

So with so many differing opinions to follow, how do contemporary poskim rule?

Well, the Yalkut Yosef [15] understandably follows the Shulchan Aruch's ruling. In fact, Rav Ben Tzion Abba Shaul rules that since Bnei Sefard follow the Shulchan Aruch's ruling ('ain lanu elah divrei HaShulchan Aruch'), one should rather daven Maariv b'yechidus (in private) before Chatzos than with a minyan after Chatzos!

But, that psak is not reserved for Sefardim. Indeed, Rav Shlomo Zalman Auerbach is quoted as holding similarly. The Ishei Yisrael also rules this way, quoting Rav Chaim Kanievsky, as does the Avnei Yashpei,[16] maintaining that it is preferable to daven Maariv b'yechidus before Chatzos than with a

minyan after Chatzos. They cite proof from the Elyah Rabba and Derech Hachaim who write that the zman for all of Maariv follows the zman of Krias Shma, and only up until Chatzos is considered the zman for all of Tefillas Maariv.[17] Additionally, if one delays his davening Maariv until after Chatzos he is “transgressing the divrei Chachamim”.[18] They therefore maintain that one must daven Maariv lechatchilla before Chatzos, even b’yechidus if need be.

On the other hand, it is known that the Brisker Rav would often daven Maariv after Chatzos.[19] Rav Yosef Shalom Elyashiv[20] is quoted as ruling that if the only minyan applicable is after Chatzos, then one should make sure to recite Krias Shma before Chatzos (as that was main issue in the Mishna in the first place). Once one does that, he may then may daven the full Maariv with the minyan after Chatzos. This was also the opinion of Rav Yehuda Tirnauer, long time rabbi of the aforementioned Shomrei Shabbos Shul. There is a sign posted there that one who wishes to daven Maariv after Chatzos should lechatchilla recite Krias Shma before Chatzos.[21]

Back to our baffled and befuddled Bochor. Although some may argue that a date (especially a bad one) would be considered an extenuating circumstance, nevertheless, it just might be worthwhile for him to end the date a tad early and try to manage Maariv before midnight. Undoubtedly, his morning chavrusa will thank him too.

This article was written L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga and Reb Chaim Baruch Yehuda ben Dovid Tzvi, L'Refuah Sheleimah for R' Shlomo Yoel ben Chaya Leah and l'zechus for Shira Yaffa bas Rochel Miriam v'chol yotzei chalatzeha for a yeshua teikif umiyad!

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[http://ohr.edu/this\\_week/insights\\_into\\_halacha/](http://ohr.edu/this_week/insights_into_halacha/).

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[1] Mishna Taanis (Ch. 4, 8; 26b).

[2] Yet, as recently pointed out to this author by R' Sam Neufeld, the Chazon Ish zt”l, as well as his nephew, Rav Chaim Kanievsky, were opposed to such a shittah, referring to an agreement with a Yeshiva not to date while immersing oneself totally in his learning, as ‘Masnah Al Mah Shekasuv B’Torah’, and not halachically binding. See Rabbi Yisrael Kalman Krohn’s Kuntress Torah B’Tahara (Ch. 3, 10 and 11, and footnote 19; citing Kovetz Mevakshei Torah, vol. 1, pg. 42), and sefer Toras HaYeshiva (Ch. 22, footnote 5).

[3] Brachos (Ch. 1, 1; 2a).

[4] Brachos 9a; statement of Shmuel.

[5] Rambam (Hilchos Krias Shma Ch. 1, 9).

[6] Rif (Brachos 2a), Ramban (Brachos 2a), SMaG (Positive Commandments 18). Other Rishonim who rule this way include the SMaK (Mitzva 104), Rabbeinu Yerucham (Sefer HaAdam Nesiv 3 Ch. 2) and the AbuDraham (Hilchos Krias Shma). Rav Ovadiah M'Bartenura and the Tosafos Yom Tov in their commentaries on the first Mishna in Brachos imply this way as well.

[7] Beis Yosef (Orach Chaim 235 s.v. aval & umashma).

[8] Shulchan Aruch (Orach Chaim 235, 3).

[9] Rashba (Brachos 2a s.v. Masnisin), Rosh (Brachos Ch. 1, 9), Sefer Hachinuch (Parshas Eikev, Mitzva 433 s.v. uzmanei), and the Tur (Orach Chaim 235, 3).

[10] Talmidei Rabbeinu Yona (Brachos 2a s.v. vkol ha'over). What this author finds interesting is that earlier Rabbeinu Yona (1a s.v. v'chachamim) is quoted as ruling similarly to the Rambam (although he maintained that both Rabban Gamliel and the Chachamim held that one must daven Maariv immediately after Tzeis Hakochavim). Yet, one daf later, he later qualified the ruling and effectively changed the halacha. It must be stressed that this opinion is a 'daas yachid' and many later authorities, including the poskim mentioned in footnote 12, argue quite vehemently against it. The halacha does not follow this opinion.

[11] Brachos 4a.

[12] Shu"t Shaagas Aryeh (4). Others who question the Shulchan Aruch's ruling include the Bach (Orach Chaim 235, end 3), Pnei Yehoshua (Brachos 9a s.v. sham b'Gemara), Sfas Emes (Brachos 2a s.v. ad), and the Beis Halevi (Shu"t Beis Halevi vol. 1, 34, 4). Although none of them seem to actively rule against the Shulchan Aruch (as opposed to the Shaagas Aryeh who does quite vigorously), it is interesting to note that the Torah Temima, in his autobiographical Mekor Baruch (cited in Shu"t Moadim U'Zmanim vol. 4, 269 footnote 1), tells a famous story about the Beis Halevi where he claimed (to a Maskil trying to woo him) that he ruled that one may daven Maariv lechatchilla all night long. Rav Moshe Sternbuch, in his sefer Hilchos HaGr"a U'Minbagav (120, pg. 134), cites this as proof that the Beis Halevi did indeed rule like the Shaagas Aryeh. Rav Yitzchak Isaac Chaver, in his Seder HaZmanim (2) defends the Shaagas Aryeh's shittah at length and concludes that he is indeed correct. Obviously, the poskim mentioned in this article offer much more halachic rationale and proofs to their opinions. However, the main thrusts of their views are presented here.

[13] See Shu"t Pri Yitzchak (vol. 2, 2), who attacks the Shaagas Aryeh's position at length, and concludes that the Shulchan Aruch was correct in his ruling. Other later authorities including the Chayei Adam (vol. 1, 34, 5) and the Kitzur Shulchan Aruch (70, 2) simply and straightforwardly rule like the Shulchan Aruch. The Aruch Hashulchan (Orach Chaim 235, 18) writes that it was the Shulchan Aruch's prerogative to rule like the Rambam and SMaG without even mentioning the dissenting opinion of the Rashba, Rosh, and Tur, as apparently that shittah is the "ikar one according to his great knowledge". [Although he does disagree with the Shulchan Aruch ruling like the minority opinion of the Talmidei Rabbeinu Yonah that one should ideally daven immediately after Tzeis Hakochavim, and concluding that perhaps this why we find that many are not too'medakdek' with this.] Oddly, this author did not find the Shulchan Aruch Harav, Ben Ish Chai, or Kaf Hachaim discussing this issue.

[14] Biur Halacha (235 s.v. uzmana). The Divrei Chamudos (Brachos Ch. 1, 45) and Shaarei Teshuva (ad loc. 7) rule this way as well. See also Shu"t Tzitz Eliezer (vol. 6, 2, 3) who proves from the Rambam (see

also Rema, Orach Chaim 106, 3) that one who is involved with Tzorchei Tzibbur has equal dispensation to one who is teaching Torah publicly.

[15] Yalkut Yosef (on Hilchos Brachos pg. 753 and Kitzur Shulchan Aruch - Orach Chaim 235, 3) and Shu"t Ohr L'Tzion (vol. 2, Ch. 15, 9).

[16] Halichos Shlomo on Tefillah (Ch. 13, footnote 51), Ishei Yisrael (Ch. 28, 15), and Avnei Yashpei (on Hilchos Tefilla Ch. 11, 11, pg. 158).

[17] Elyah Rabba (Orach Chaim 235, 4) and Derech HaChaim (Hilchos Tashlumin 5). However, it must be noted that the Pri Megadim (Orach Chaim 108, end Mishbetzos Zahav 3) does not accept this. See also Mishna Berura (ad loc. 15).

[18] See Elyah Rabba (Orach Chaim 275, 11), Mishna Berura (ad loc. 27), and Kaf Hachaim (ad loc. 25). However, the Butchatcher Rav (Eshel Avraham ad loc. Tinyana) proves that starting Maariv before Chatzos is sufficient not to transgress this.

[19] As related by Rav Aharon Leib Shteinman in his Kaayol Taarog (pg. 319), the Brisker Rav would often daven Maariv after Chatzos, as he felt that only then would he have the proper kavana. Thanks are due to R' Sam Neufeld for pointing this out. It seems that the Brisker Rav was following the shittah of his grandfather, the Beis Halevi, who was notteh to the Shaagas Ayreh's position in regard to this inyan. See footnote 12.

[20] Ashrei Halsh (Orach Chaim vol. 1, Ch. 42, 21). This author has heard similarly b'sheim Rav Yaakov Kamenetsky. This dispensation is because the first Mishna in Brachos is actually dealing with Krias Shma, which is a Chiyuv Deoraysa, and not the full Maariv, which is technically a Reshus that Klal Yisrael has collectively accepted as halacha. But that Mishna is clearly talking about Shma. Hence, according to this shittah, once one fulfills his nightly obligation of Krias Shma before Chatzos, he may daven the actual Tefillas Maariv afterwards. Indeed, as pointed out by R' Ovadya Wechsler, the Zmanim for Tefillah are not discussed until the 4th Perek of Brachos.

[21] Thanks are due to R' Yoel Rosenfeld for pointing this out and sending this author a picture of the sign.

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Disclaimer: This is not a comprehensive guide, rather a brief summary to raise awareness of the issues. In any real case one should ask a competent Halachic authority.

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L'iluy Nishmas the Rosh HaYeshiva - Rav Chonoh Menachem Mendel ben R' Yechezkel Shraga, Rav Yaakov Yeshaya ben R' Boruch Yehuda, and I'zchus for Shira Yaffa bas Rochel Miriam and her children for a yeshua teikef u'miyad!