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CLIMATE CHANGE, PART II: WHO RULES THE WINDOWS?

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article surveyed various positions on how to resolve disputes about whether windows in a shared space—a shul, a bus, an office—should be open or closed. This article continues that discussion. R' Yaakov Yeshayah Blau (author of *Pis'chei Choshen* and many other contemporary classics on halacha) writes:

It would appear reasonable that we follow the wishes of a majority of the daveners and consider the weather. If someone is concerned about illness, it is possibly better that he remain at home than cause distress to the other daveners. Obviously, if it is possible to open the windows in a part of the shul and close them in another, they need to do so. And it is better that someone give up his regular spot than cause distress to others. On a bus, the matter is more difficult, but when each one understands and considers the position of the other, it is possible to find a solution that satisfies everyone.¹

R' Yitzchak Zilberstein discusses the case of a student that suffered from a condition (Raynaud's syndrome, apparently) that rendered him very sensitive to cold. If windows were opened and a breeze would touch his hands, he would experience pain. But the other

students complained that closed windows made the room stuffy. Rav Zilberstein initially argued that they had to accept minor discomfort to save their classmate from pain, citing the *issur* of "*lo sa'amod al dam reiecha* (you shall not stand aside while your fellow's blood is shed)," which, according to some authorities, requires saving someone from even nonfatal harm.³ But his father-in-law, R' Yosef Shalom Elyashiv, disagreed:

He said that a school is built for students to study Torah *be'iyun* (in depth), and if we close the windows, we are depriving the healthy ones for whom the school was built of the ability to study Torah properly. If the child who suffers from freezing in his hands will not be able to participate in studies at the school, he should stay home.⁴

R' Shmuel Vosner discusses the related issue of disputes about fans or air conditioning in shuls:

Question: What is the *din* in a shul where part of the congregation desires fans in summer but this bothers another part; do we follow the

²Vayikra 19:16.

³See Meshech Chochmah ibid.: Chafetz Chaim Hilchos Rechilus perek 9 Be'er Mayim Chaim s.k. 1; Ahavas Chesed, Psichon se'if 3 and he'arah 5. Cf. R' Yitzchak Schiff, Ha'Im Mutar Lerofei Lita'ach Mirpachon Bevoys Meshurat Keshelashcheinim Mitzagdim, Choverese Asia 29-30 pp. 57-58 (also here and here).

⁴Chashukei Chemed, Bava Metzila 62a pp. 278-80 and Bava Basra 20a 115-17.

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NOT RIGHT

Excerpted and adapted from a *shiur* by Dayan Yosef Greenwald

And you shall place these words of Mine upon your heart and upon your soul, and you shall tie them as a sign on your arm (yedchem), and they shall be as ornaments between your eyes.

Dvarim 11:18

The Torah does not say explicitly on which arm *tfillin* are to be placed. There are two sources for the halacha that they go on the left. The first is that "*yadcha*" (in Parshas Va'es'chanan, referring to *tfillin*) alludes to *yad kei'ah*, the weak arm. The second is that the *pasuk* says *tfillin* go upon the heart, which is on the left side.

What about a left-handed person, whose right arm is the weak one? According to the Me'iri (Shabbos 103a), he puts *tfillin* on his left like everyone else. (He notes that this is different from other halachos that require the right hand, where a lefty uses his left.) A similar position is taken by the mekubalim (Sha'arei Teshuvah O.C. 27:11). This is very difficult to understand,

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majority of the daveners?

Answer: Today, depending on how hot the summer is, it is normal to alleviate the heat with fans. Particularly if the majority desires this, the

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In Gear

Q Is swimming gear like bathing suits, swim goggles, and pool floats *muktzeh*?

A There are two main categories of *muktzeh*:

- *Muktzeh machmas gufo*: a raw, unprocessed object like a stone or branch. (There are other types in this category, but they are beyond the scope of this article.)
- *Kli shemelachto le'issur*: a fashioned utensil whose designated use is an activity forbidden on Shabbos.

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¹Pis'chei Choshen, Hilchos Gneivah Ve'onah (5777) perek 15 he'arah 3 pp. 532-33.

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minority cannot, in my humble opinion, object... Rav Vosner is not entirely explicit on whether a majority may object to the minority's desire for fans in summer.

Question: What is the *din* if only part of the shul has fans and part does not? Is the *din* with those who desire them, because those who oppose them fall in the category of *midas Sdom* (refusing to waive their rights even where it would cost nothing to do so), as they could move elsewhere in the same shul rather than cause distress to those who shelter under the fans?

Answer: It is obvious that because there is a solution under which the fans won't harm those who oppose them, we do not deny fans to those that desire them.

The import of this Q&A is unclear in light of Rav Vosner's earlier statement that fans in summer are the norm, so halacha sides with those who want them. Perhaps the discussion here concerns a place where the heat is less intense, so that is not the default, as per the following question.

Question: What is the *din* if there are differing opinions about whether it is currently hot and fans are necessary? Similarly, is there a difference in all this between daytime—when it is very hot—and nighttime and early morning, when it is sometimes cooler but some are nevertheless interested in fans?

Answer: As long as it is possible to tolerate the heat naturally, being considerate of one's fellows falls under "ve'asisa hayashar vehatov (and you shall do what is fair and good)."^{5,6}

In another *teshuvah*, Rav Vosner discusses air conditioning in shul:

...Regarding installing air conditioning in a shul where most people benefit from it to be able to sit tranquilly while studying Torah and davening; but sometimes there are *talmidei* chachamim, old people, and sick people who cannot tolerate the cold of the air conditioning, so they open the windows and cause distress to others...

Rav Vosner initially argues that in principle, it is prohibited to do anything that will cause intolerable suffering to others and perhaps even make them ill, but he then rules that today, there is a right to install air conditioning. He adds, however, that those who cannot tolerate it have the right to open windows to mitigate its effect:

But today it would seem that it is impossible to object to the very installation of air conditioning, which has become in our time a normal aspect of residential living and maintaining large groups in shuls and *batei medrash*, and it is for the benefit of Torah and *tfilah*. But in my humble opinion it is also impossible to take from the sick person or elderly *talmid* chacham his right, because the

air conditioning harms him...sometimes to the point of actual illness, as is known. Even though by opening the windows he causes distress to the public, this is only distress and generally not illness; and if he only opens it a little, it helps him and does not harm others much. Therefore, if he is an actual partner in that shul, it is impossible to restrain him from opening a window so that he does not become ill, and we need to find something that works for both...^{7,8}

("If he is an actual partner in that shul" seems to imply that someone who isn't might not have the right to open a window even if he is concerned about illness.)

In summary, we have seen that *poskim* set forth three basic principles that are used either independently or in combination to resolve these disputes:

The preference of the majority is followed.

The preference that is considered the norm based on societal, seasonal, and climate factors is followed.

Concern for illness overrides discomfort.

Additionally, multiple authorities recommend going beyond the letter of the law and doing *hayashar vehatov*, being considerate, and attempting to find a mutually satisfactory solution wherever possible.⁹

We might consider the application of these principles to the Beit Shemesh Shabbos elevator dispute that opened the previous article:

According to the first principle, whether the elevator should run on Shabbos would depend on the preference of the majority of building residents.

According to the second principle, it might depend on whether Shabbos elevator operation is the norm in that community.

According to the third principle, even if there are no significant health concerns at play, it might be argued that the hardship of older people and families on high floors outweighs the concerns about an elevator's impact on the Shabbos atmosphere or *chinuch*; though it is certainly possible that the concern of the *poskim* for actual illness would not extend to mere hardship.

Another point made by proponents of the Beit Shemesh Shabbos elevator, cited in the article, was that the apartments were purchased with the agreement that there would be one, so they are entitled to it. That is a strong argument.

But regardless of the merits of these arguments, the *bais din's* compromise described there is clearly an attempt to comply with Rav Vosner's and Rav Blau's directives to find a mutually agreeable solution.

⁷See Sanhedrin 39a.

⁸Sheivet Halevi cheilek 8 siman 307.

⁹CF. Psichas Chalon Bemakom Tziburi Bacheil, R' Avishai Nesson Meitlis, Psichas Chalon O Mazgan Shemaria Lecheilek Meihanoachachim (also here); Hachoras Hahalacha Minmaran Shli"o Bevikua Shbein Hamispaileim Be'inyan Kirur Bais Hamidrash Bakayitz; R' Yair Hoffman, I'm Cold Well, I'm Hot Who Wins?, The Jewish Link, Mar. 9, 2023 (also, with slight variations, here); Din-Ask the Rabbi: here, here, and here; R' Yom Tov Zinger, Benosei Chalon Bevala Haknesses (audio) Psichas Chalon Bekalil O Bevala Haknesses Biras Hachonef, Vayigash 5778 (article).

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Objects in the first category may not be moved at all. Objects in the second category may be moved *letzorech gufo* (to use for a permitted purpose) or *letzorech mekomo* (if one needs to use the space they occupy). The second category is treated more leniently because the object is a *kli*.



Swimming is forbidden on Shabbos (Beitzah 36b) due to a *gzeirah* that a swimmer may inadvertently come to make a flotation device. Swim gear would thus seem to fall squarely into the category of *kli shemelachto le'issur*. But the picture is more nuanced, as swimming is actually permitted in certain instances; the Shulchan Aruch (339:2) permits it in a pool whose walls are high enough that water does not spill out during swimming, which describes most modern pools. Chazal's decree only includes places that resemble a river, like a pool whose water flows out.

Technically, then, swimming in a standard modern pool is permitted on Shabbos.

Still, the minhag across all of Klal Yisrael (Magein Avraham 326:8) is not to swim on Shabbos, due to various concerns—among them, that it may lead to *sechitah* (wringing out wet garments or hair). This raises an important question: If swimming is only forbidden as a communally-adopted *chumra* rather than strict halacha, does that suffice to render swimming supplies *muktzeh*? There is a reasonable argument that it does not (see Pri Megadim M.Z. 337:5).

In practice, the Piskei Teshuvos (308 fn. 76) leans toward considering such objects *melachto le'issur*, but he does not rule definitively. On the other hand, the Rivevos Efraim (4:97 section 55) says that a swimsuit is not *muktzeh*, and he cites a further reason for leniency from Rav Elyashiv: A bathing suit doubles as an undergarment, which isn't *muktzeh*. But this last rationale would not extend to goggles or floats.

⁵Dvarim 6:18.
⁶Shu"t Sheivet Halevi cheilek 9 siman 298.

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as the Gemara (Menachos 37a) states explicitly that a left-handed man places *tfillin* on his right arm, his own *yad keilah*. Perhaps one must explain the

Me'iri and the mekubalim to be referring to an ambidextrous person, who does not have a *yad keilah*, and saying that he should follow the secondary source and place his *tfillin* opposite his heart, on his left.



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