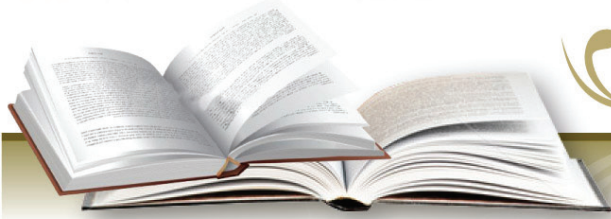




# TORAH & HORAHAH



Shofetim 5771

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This week's article continues the discussion of the laws of *yichud*. From what age does the prohibition apply? What are the parameters and the conditions of the leniency of an 'open door'? Who are *yichud shomrim* and when do they help? Is *yichud* in an elevator prohibited? These questions, and more, will be discussed in this week's article. This week's Q & A deals with the question of completing the 248 words of the Shema.

## Shoftim: Halachos of Seclusion (2)

In last week's article we began to discuss the prohibition of *yichud*, seclusion with women with whom union is prohibited. We discussed the basic nature of the prohibition of *yichud* (Torah or rabbinic; essential or protective), and elaborated on the leniency concerning a woman whose husband is in town.

This week, we will continue to discuss the *halachos* of *yichud*. In particular, we will focus on the important leniency of *pesach pasuach*, a doorway that opens onto the public domain. We will also consider which circumstances of seclusion constitute *yichud*, and we will dwell on precisely whom the *yichud* prohibition applies to, on the matter of *shomrim* ('guards'), and on the question of *yichud* in an elevator.

### Yichud of Children

As we have already seen (in the previous article), there is no prohibition of *yichud* between a man and his mother, or between a father and his daughter. Likewise, the generally accepted opinion is that the prohibition does not extend to grandparents and their grandchildren (see *Bach, Even Ha'ezer* 22:1).

With regard to brothers and sisters, authorities are lenient for a short period of time, but not for a lengthy period of time (see *Beis Shmuel* 22:1). Concerning the extent of a short time,



### Dear Reader!

The Midrash (*Eichah Rabbah*) writes that at the time of the Destruction, the Ministering Angels asked Hashem three terrible questions.

"Master of the World! You have commanded in Your Torah that the blood of a slaughtered animal must be covered with earth. But here, the blood of Israel is spilled like water, and they are not brought to burial? You have commanded in Your Torah that a plagued house should be emptied of its contents before the Kohen sees it (to ensure that the contents escape the possible fate of the house). But here, the Temple and all its fine contents go up in flames. You have commanded in Your Torah that a mother and its son must not be slaughtered on one day.

But here, Hannah and her seven children are killed on one day?"

The Midrash does not reveal the answer to these frightening questions. However, we find an answer in the Likkutei Torah of Rav Chaim Vital: It is because of "a dispute in your cities" (Devarim 17:8).

The verse writes: "If a matter of judgment is hidden from you, between blood and blood, between verdict and verdict, between plague and plague, matters of dispute in your cities."

"Between blood and blood," explains Rav Chaim Vital, refers to the spilling of Jewish blood as water, unlike the blood of slaughtered animals that is covered by earth. "Between judgment and judgment" refers to the murder of Jewish mother and son, in contrast to prohibition of doing so to animals. "Between plague and plague" refers to the destruction of the Temple and its contents, unlike the plagued house that is emptied before destruction. Why does all of this come upon us? Because of "matters of

some write that this is up to three days. Others write that only thirty days is considered a lengthy time (see *Torah Yichud* Chap. 2, no. 19). It is therefore permitted for parents to leave a brother and sister home for a few hours in a *yichud* situation, though *Iggros Moshe* (*Even Ha'ezer* Vol. 4, no. 65, sec. 11) writes that this should not be done on a regular basis.

The prohibition of *yichud* applies to young girls from the age of three, and to boys from the age of nine (*Shulchan Aruch, Even Ha'ezer* 22:11; see *Nitei Gavriel* 11:1).

The question of children is especially pertinent with regard to babysitters, and it is important to be aware of the halachic issues that can arise. However, there is no problem if a boy and girl who are both beneath the age or bar/bas mitzvah (*Devar Halachah* 2:8; however, see *Sheraga Ha-Meir* 8:126) are secluded together.

### **Pesach Pasuach: An Open Door**

Chazal teach that if the room has a door which is open to the public domain there is no *yichud*. This principle is known as "*pesach pasuach lireshus harabim*," an open doorway to the public domain. The *Shulchan Aruch* rules (*Even Ha'ezer* 22:9), based on the Gemara (*Kiddushin* 81a): "If the door is open to the public domain, there is no concern of *yichud*."

The reason for this is that if the door is open, the people in the room will fear being seen by passers-by, and there is therefore no concern that there will be improper conduct.<sup>1</sup> The leniency also applies if a window opens onto the public domain, provided that the entire room can be seen through the window (*Noda Biyhudah Kamma, Even Ha'ezer* 71; see *Devar Halachah* 3:13).

Based on the rationale above, it follows that the leniency will not apply at all times. For instance, late at night, when there are no passers-by on the street and little or no chance that the people in the room will be seen, the leniency does not apply (*Pischei Teshuvah* 9, citing from *Keneses Ha-Gedolah*).

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1 According to Rashi (see last week's article), it is possible that under circumstances of an open door, the situation is not defined as seclusion at all. ➤➤

Although the *Keneses Hagedolah* is only lenient for the first half-hour of the night, Rav Vosner (*Shevet Halevi* Vol. 5, no. 203, sec. 5) explains that even later than that one can be lenient provided that there are still people passing by the open door. He adds that one must be stringent in places where people are generally afraid to go out at night.

The *Devar Halachah* (3:14) cites the *Chazon Ish* that in Bnei Braq (of his day), the leniency of *pesach pasuach* applied until ten at night, but in a large city (15) the leniency applies during the entire night, provided that the door is literally open (see below). This will not apply to every large city, and the halachah depends on the actual presence of passers-by on the streets.

Some rule (see *Dvar Halachah* 3:15, *Minchas Ish* 13:24) that if a room is fully illuminated, and the door to the room is literally open (see below), there is no prohibition of *yichud*, even late at night. Under difficult and extenuating circumstances a rabbi should be consulted concerning reliance on this leniency.

### Closed but not Locked

Authorities dispute the status of a door that is closed but not locked, so that the door can be opened from the outside. According to Rabbi Akiva Eiger (100) and the *Beis Meir* (49), if the door is closed the leniency of an open door to the public domain does not apply. However, according to the *Binyan Tzion* (138) and a number of other authorities, the leniency applies even with a door that is closed but not locked.

The *Devar Halachah* (3:2) cites a source in the name of the *Chazon Ish* that one may rely on the leniency of an open door to the public domain even if the door is closed (but not locked), and that the *Chazon Ish* relied on this (in practice) even for a door that opens to the hallway of an apartment building on the second and third floor. When the person in question asked the *Chazon Ish* that surely people knock before coming in, the *Chazon Ish* replied that the chance of ill-mannered people walking in without knocking is sufficient to alleviate concerns of improper behavior.

*Shut Dovev Meisharim* (Vol. 1, no. 5) addresses the question of a door-to-door salesman who makes his living by selling goods in people's houses: Is it permitted for the salesman to be secluded with a woman behind a closed door? His reply was that the leniency of an unlocked door can be relied on only ➤➤

dispute in your cities".

Such is the terrible power of rift and conflict. When Israel is not at peace with itself, Hashem judges them not with compassion, but with strict judgment. Indeed, Chazal state that "one who is not particular about his honor, is forgiven for all his sins." Hashem deals with us as we deal with our fellow Jews.

In the month of Elul, as we prepare ourselves and mend our ways towards the great Day of Judgment, let us not neglect "matters of dispute in your cities." If we do our part towards finding Shalom among ourselves, Hashem will do His part in judging us with corresponding compassion.

Thus may we speedily see the fulfillment of the verse, read in this week's Haftarah (Yeshayah 52:8): "The voice of your watchmen—they lift up their voice; together they sing for joy; for eye to eye they see the return of Hashem to Zion."



in case the woman's husband is in town.

In the case he discusses, the leniency of the woman's husband being in town does not fully apply since the husband allowed his wife to be secluded with a stranger. As noted in the previous article, where the husband gives his wife permission to be secluded with others, the *Binas Adam* rules that one must be stringent. Nonetheless, he rules that one may be lenient because of the fact that the door is unlocked. Even in this case, which merges together two distinct reasons for leniency, the *Dovev Meisharim* is only lenient because the matter is required for the sake of *parnasah*.

In a similar vein, the *Shevet Halevi* (*op. cit.* sec. 4) rules that one must take into account the stringent views mentioned above, but one can be lenient when the leniency of an unlocked door is joined with the leniency of a woman's husband being in town (the same will apply for other factors of leniency). Others rule that where necessary the leniency of an unlocked door can be relied on without additional factors (*Nitei Gavriel* 1:10; 33:3; 32:7), but if possible the door should be literally open.

Certainly, where the person in question is *libo gas bah* (has warm and cordial relations with the woman in question; see the previous article for details and examples), one cannot rely on the leniency of an unlocked door, but must ensure that the door is literally open to the public domain (see *Shevet Halevi op. cit.* sec. 7).

### Giving the Key to Others

Authorities rule that when others have the key to the door (or the lock is a combination lock and others know the numbers), and are liable to enter without warning, even a locked door is considered an open door onto the public domain, thereby permitting *yichud* (*Dovev Meisharim, loc. cit.*; *Tzitz Eliezer* Vol. 6, no. 40; *Devar Halachah* 3:3; *Shevet Halevi* Vol. 9, no.

261). However, if the people inside are able to see a person approaching the door through a camera, the element of surprise is lost, and the fact that others have a key will not permit *yichud* (see *Shevet Halevi* Vol. 6, no. 191, sec. 3; *Mishnah Halachos* Vol. 4, no. 187).

*Toras Ha-Yichud* (5:18) writes that several people should be given the key, so that those in the *yichud* situation will be afraid of being disturbed.

Based on the reasoning above, many give a key to a neighbor in order to avert situations of *yichud*. However, it is important to realize that giving a key to a neighbor is not sufficient to permit *yichud* unless the neighbor is specifically told to come in at any time. Most people who give keys to a neighbor do so in order that if they ever get locked out, a spare key will be available at the neighbor's house for them to use. This does not create a *pesach pasuach* situation, because there is no concrete fear of the neighbor coming in (*Nitei Gavriel* 42:6).

Giving a key to a neighbor is a useful method of preventing *yichud* for a babysitter who is in a situation of *yichud* with the children she is babysitting. She should ask the neighbors to come in from time to time, hence creating a *pesach pasuach*.

### Shomrim: Yichud Guards

In general, a woman is allowed to be in seclusion with a man when a *shomer*, a 'guard,' is present (*Shulchan Aruch, Even Ha'ezer* 22:3).

Such situations of *yichud* are permitted because the man or woman will be ashamed to perform improper acts in the presence of the *shomer*, and also fear that the *shomer* will reveal the conduct to others. The *shomer* does not literally have to be with the man and the woman in the room the whole time. As long as the *shomer* can enter freely as he wishes, he serves to ➤➤

permit *yichud*.

The presence of a single *shomer* is effective during the day. At night, however, a single *shomer* is not adequate because the *shomer* may fall asleep. Therefore, two *shomrim* are required at night. Two *shomrim* are adequate even if both are sleeping, for the man and woman will fear that one *shomer* might awaken and discover any improper conduct.

A special *shomer*, which applies even at night, is a person's wife. A woman may be in seclusion with any (Jewish) man whose wife is present with him, for his wife guards him from any improper conduct (*Even Ha'ezer* 22:3). Some rule that this *halachah* is not limited to cases where the wife is in the same house as her husband, but applies even when the wife is in close proximity, and comes in and out of the house. Others, however, require the wife to be literally present in the house (see *Devar Halacha* 6:2, 4; *Nitei Gavriel* 41:6).

When a wife is present, the leniency applies even if the wife is sleeping (*Nitei Gavriel* 41:4), though *Shevet Halevi* (*op. cit.* sec. 4) notes that if the wife took a sleeping pill, and it is highly unlikely she will wake up during the night, then the leniency does not apply. The leniency does not apply to the wife of a non-Jew, and some add that it does not apply to a non-observant and promiscuous man, where even the presence of his wife will not deter him from improper conduct (*Nitei Gavriel* 40:11).

Another special case of a *shomer* who is effective even at night is a woman's son, who is deemed particularly vigilant in ensuring his mother will not fall to sin (*Devar Halachah* 9:17).

### Who Qualifies as a Valid Shomer?

A second man (but not a second woman) serves as a valid *shomer*. Therefore, during the day, it is

permitted for two men to be in seclusion with a woman, and during the night, it is permitted for three men (*Even Ha'ezer* 22:5). This applies only to men who are morally upright; men who are *perutzim* (promiscuous or susceptible to immoral conduct) cannot serve as *shomrim*. In general, a Torah-observant Jew is assumed to be a valid *shomer* (*Rema, loc. cit.*)

Where a second man is not present, children are often chosen as suitable *shomrim*, provided they are old enough to be aware of improper conduct and to report it to others. However, if the children are too old, they will not serve as valid *shomrim*, because they will themselves be included in the prohibition. The presence of a Jewish boy or girl from the age of six until nine thus often permits *yichud*. The child is old enough to recognize any improper conduct, yet too young to participate. During the day, the presence of a single child is sufficient, and at night two children are required.

Other valid *shomrim* are certain relatives. Some relatives are effective *shomrim* because they are vigilant that no improper conduct will transpire. Relatives of a man that permit *yichud* are: his mother; his daughter or granddaughter; his sister; his grandmother. Relatives of the woman who permit *yichud* are: her father; her son or grandson; her brother; her grandfather (see *Iggros Moshe, Even Ha'ezer* 2:15; concerning mother and daughter, see *Nitei Gavriel* 21:13, who quotes differing opinions).

Because of their family tie, these *shomrim* are valid even if they would not otherwise serve as valid *shomrim* (for example, for women, or for non-observant Jews). However, with the exception of a son, an additional *shomer* must be present at night.

Other valid *shomrim* are a woman's mother-in-law, daughter-in-law and sister-in-law. A person may not be secluded with two sisters. ➤➤

## Yichud in an Elevator

Several authorities have ruled that *yichud* is only prohibited when a man and woman are secluded for the duration of five minutes or more (see *Iggros Moshe, Even Ha'ezer* Vol. 4, no. 65, sec. 22; *Minchas Yitzchak* Vol. 4, no. 94), though other authorities mention shorter times (see *Minchas Ish*, Chap. 14, at length; he writes that one can certainly be lenient for less than one minute).

The *Minchas Yitzchak* discusses whether a prohibition of *chatzi shiur* (seclusion for a shorter time than this) can apply, and cites a debate between the *Imrei Eish* and the *Maharil Diskin* over the matter. However, Rav Shlomo Zalman Auerbach (*Minchas Shlomo* Vol. 1, no. 91; sec. 22) writes that there is certainly no prohibition of *yichud* for a very short time.

Yet, even opinions that mention a minimum time period for *yichud* agree that where the people involved are able to continue the *yichud* for a longer time, even momentary seclusion is prohibited (see *Minchas Shlomo, loc. cit. Devar Halachah* 15:2).

Concerning *yichud* in an elevator, some authorities write that one should only be lenient in difficult circumstances (see *Minchas Yitzchak, loc. cit.; Chelkas Yaakov* Vol. 2, no. 14). In principle, however, based both on the short time period and on the fact that the elevator can be stopped at any floor by those wishing to enter, many authorities are lenient (*Mishnah Halachos*

Vol. 4, no. 187; *Tzitz Eliezer* Vol. 6, no. 22, sec. 4; see *Minchas Ish* at length).

*Nitei Gavriel* 15:2 writes that this leniency will not apply late at night, when there is little chance that the elevator will be stopped.

## Situations of Yichud

It is important to note that the prohibition of *yichud* is not limited to a man and woman in the same house. *Yichud* applies in any secluded area, such as a quiet country spot, beach, park or forest. As long as the man and woman cannot be seen by other people, and they are not afraid of intrusion, the prohibition of *yichud* applies.

Indeed, one of the sources (*Megillah* 14a) for the prohibition of *yichud* is from the choice by the prophetess Devorah to receive people underneath a palm tree. She chose that type of tree since it is tall and has no low foliage that cast shade, so that she would not be secluded with anyone. It is thus clear that *yichud* applies not only in an enclosed room, but even under a tree, or in any other private spot (See *Devar Halachah* 9, note 15; *Taharas Yisrael* 22:2).

It is important to be vigilant about *yichud*, whether at home, in the workplace or any other place. Although in our two articles we have tried to touch on many of the basic issues of *yichud*, there are many *halachos* that we have not discussed, and in practical questions one should always consult with a halachic authority.

## ✧ Halachic Responsa ✧

to Questions that have been asked on our website [dinonline.org](http://dinonline.org)



### Question:

When one says Shema it must contain 248 words. At times a person has to say Shema without a minyan. What is the best way *lechatchilla* to get the extra 3 words? Do we say “Kel Melech” ➤➤



Ne'eman" at the start, or do we repeat "Ani Hashem Elo-heichem" at the end another time?



### Answer:

Although the Rema writes (61:3) that one who is davening without a minyan should add the words "E-l Melech Ne'eman" before Shema, the more common custom is not to say these words, because of the concern that this constitutes a *hefsek* (interruption) between the blessings of the Shema and the recitation of the Shema. Rather, the words at the end "Hashem E-loheichem Emes" should be recited twice, completing 248 words.

Note that according to the Vilna Gaon (among others), the word *emes* is not recited twice.



### Sources:

There was an ancient custom for somebody davening alone to recite the words E-l Melech Ne'eman, and this is cited by the Rema as being the custom. However, the Beis Yosef writes that it is not the custom to recite these words, citing from the Zohar that the three words cannot be made up, and adding a different kavanah in the words of *emes ve-yatziv* that makes up (to some degree) the missing words. This ruling is mentioned by the Shulchan Aruch.

The Aruch Hashulchan writes that the missing words can be made up by repeating the words "Eschem Me'erezt Mitzrayim," and that he has seen righteous individuals doing so.

The Yerushalmi, however, writes that the last three words are repeated even by individuals, and this is mentioned by the Bach and the Peri Chadash, and by the Birkei Yosef in the name of the Arizal. This latter opinion is also ruled by leading Sephardi poskim (Kaf Ha'chayim (Falagi) and Rav Pe'alim; see also Yecheveh Daas 3:5).

The common custom (for Ashkenazim) is either to follow the ruling of the Rema, and say the words E-l Melech Ne'eman, which is the ancient custom, or to repeat the words Hashem Eloheichem Emes. According to many the second option is preferable.

It is possible that the reason we do not follow the ruling of the Rema concerning this issue is that the words "E-l Melech Ne'eman" are in place of answering amen. Since many are concerned not to answer amen before Shema (the common custom, based on Peri Megadim, is to complete the blessing before Shema together with the shaliach tzibbur), we also avoid saying "E-l Melech Ne'eman."

According to the Vilna Gaon, the Shaliach Tzibbur should not say *emes* before repeating the last three words. The reason for this is that by repeating the word '*emes*' twice one reaches 249 words rather than 248 (this rationale is advanced by Rama of Fano (Asara Ma'amaros 28:1), which is the source of the ruling, and this is ruled by the Mishnah Berurah (61:8).)

However, others write that the Shaliach Tzibbur repeats the three words after saying the word '*emes*' (Beis Yosef; Shulchan Aruch 61:3; see Peri Megadim who writes that this is the custom, as brought by the Mishnah Berurah; see Magen Avraham 61:1, citing from Maharam Alshaker 61; see also Shulchan Aruch Ha-Graz 3 who cites both customs, as does Aruch Hashulchan 11). According to this custom, some write that the first '*emes*' is part of the 248 words, and some write that the second '*emes*' is counted.