

"Your Camp Shall be Holy": Halacha and Modern Plumbing

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Introduction

The 20th century is characterized by its many high tech innovations that confront the halachic community with new and interesting challenges. Indoor plumbing is a relatively low tech innovation that has nevertheless re-vitalized many age-old halachic questions and raised new "modern" ones. Possibly the most significant improvement is the disappearance of the communal restroom or outhouse that was shared by an entire courtyard of people. Each family now has its own facilities, usually (at least in the USA) in the same room with the sink and bath/shower. In addition to being private, it is much more sanitary and odor free than in the past because the waste is immediately flushed out and removed from the room and the house. This room that combines a toilet, sink and bath/shower is commonly referred to as a *bathroom*. In some places, homes also have a room with just a shower/bathtub and a sink. This room will be referred to as a *washroom*.¹ The modern rooms referred to by these terms are distinct from the *beit*

1. A room with just a sink, medicine cabinet, etc. but no bath/shower or toilet, even if it is adjacent to a room with a toilet, has few of the questions raised in this article. This room will be briefly discussed in the conclusion.

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ha'merchatz and *beit ha'kisay* that are dealt with in the traditional halachic literature, and a distinction between the four terms will be preserved in all discussions in this article.

The status that halacha accords the modern bathroom has bearing on many questions. In order of increasing "cleanliness", some of these questions include: Is there a requirement to wash one's hands if one has merely entered the room and done nothing else? May one fulfill one's obligation to wash for ritual purposes (e.g., upon awakening,² before *davening*, before eating bread, after relieving oneself) by washing in a bathroom? May one think Torah thoughts in such a room? May one verbalize *davening*, the *shema* or Torah thoughts there? May one wear *tefillin* there?³ Additional issues include: Is there a requirement of *Kavod Harav* in the bathroom? Is a modern bathroom required to have a *mezuzah*? These questions, as well as several others relevant to the modern bathroom, will be discussed in this article.

Because the modern bathroom functionally replaces two distinct facilities of the past, it will first be necessary to understand the halachot of these two entities. They are a *beit merchatz* – a "bathhouse", and a *beit kisay*, literally a "house of the chair" – an outhouse. These two rooms or buildings have clear and well-defined halachot. The task will then be to fit the modern bathroom or washroom into

2. *Shut ha'Radbaz* 1:38 states that if one sleeps in pajamas there may be no need to wash before saying *berachot* upon arising in the middle of the night.

3. Today, when *tefillin* are not worn all day, this question is less relevant than in the talmudic period. However, its importance is that the laws of putting on and removing of *tefillin* are often used in the traditional literature as a barometer of the "cleanliness" of a room.

the classical categories. This paper will, therefore, first examine the classical definitions and halachot, and then discuss the contemporary issues.

Beit Ha'merchatz

In talmudic times a standard *beit ha'merchatz* consisted of three rooms,⁴ each governed by its own set of laws. In the outer room people were almost completely dressed and were never completely undressed. It was a place for people to complete dressing and to relax before leaving.⁵ In this room there are no restrictions on "higher order activities", and one is permitted to say the *shema*, to *daven*, to don *tefillin*, etc.⁶

The middle room was entered upon leaving the actual bath to begin dressing.⁷ In it one may not *daven*, say the *shema*, nor don *tefillin*. However, it is permissible to think Torah thoughts⁸ or greet someone with the word "*shalom*"⁹

4. *Shulchan Aruch* OC 45:2.

5. Rashi on *Shabbat* 10a; *Shulchan Aruch* OC 45:2; *Mishnah Berurah* *ibid.*, s.k. 4.

6. *Tosefta Berachot* ch. 2; *Shabbat* 10a; Maimonides, *Mishneh Torah*, Hil. *Tefillin* 4:22; *Shulchan Aruch* OC 45 and 84.

7. Rashi, *Shabbat* 10a.

8. Ran on *Avodah Zara* 44b; Ramo, *Shulchan Aruch* OC 84; *Shach* YD 246 s.k. 28, GRA OC 84 s.k. 2. (Tosafot, *Avodah Zara* 44b, disagree and say that the statement in *Shabbat* 150a (see below) applies to the middle room, and that there too it is prohibited to think Torah thoughts.) The permissibility of thinking Torah thoughts exists even if there are undressed people present, since that does not add any further restrictions as far as the *beit ha'merchatz* is concerned. It simply adds regulations that standardly pertain to an exposed *ervah*, and *hirhur* (thought) is permitted in the presence of an *ervah* (*Shabbat* 150a; *Mishnah*

in the middle room. Since the room *per se* is not unseemly, if there is currently nobody undressed in the room there are some *poskim* who permit reciting *berachot*¹⁰ and putting on *tefillin*.

The third room is the inner room. This is where the actual bath was located. In it most people were fully unclothed and would perspire heavily.¹¹ In this room it is forbidden even to think Torah thoughts,¹² to greet someone with the word "*shalom*", or to wear *tefillin*.¹³

The classic *beit ha'merchatz* was not considered a

Berurah OC 84 s.k. 2). (Thus, one may think Torah thoughts while naked.) The Meiri (*Shabbat* 10a) seems to disagree and maintains that these leniencies apply only if there is presently no one undressed.

9. Considered to be one of G-d's names. See: *Sefer Shoftim* 6:24; *Shabbat* 10b; Tosafot, *Sota* 10a; *Teshuvot ha'Rosh* III:15; Ramo, YD end of 276; Radvaz, *Teshuvot* 202; *Iggerot Moshe*, OC IV, 410:3; *Mishnah Berurah* 84:6; *Torah Lodaat*, XVII:44, English side.

10. *Mishnah Berurah* OC 84 s.k. 3 in the name of *Beit Yosef*; however, the *Bach* and the *Prisha* disagree.

11. Rashi, *Shabbat* 10a. See note 64 for the two possibilities of what the deciding factor is regarding the *halachot* of the inner room of a *beit ha'merchatz*.

12. *Shabbat* 150a. This is true even according to those who maintain that thought is not the equivalent of speech (*hirhur lav k'dibbur damet*). See *Yabia Omer* 6:OC:15, who quotes *Shut Zecher l'Avraham Avigdor* as saying that the inner room is equivalent in halacha to a *beit ha'kisay* and therefore, among other things, it is prohibited to think Torah thoughts in there. For discussion as to the types of *p'sak* one may give while in a *beit ha'merchatz* and *beit ha'kisay* and under what conditions see: *Avodah Zara* 44b; Ran, *ibid.*; Tosafot, *ibid.*; Ramo *Shulchan Aruch* OC 85:2; and *Baba Kama* 17a.

13. See sources in note 5.

dignified place (lit. place of honor).¹⁴ Since the Gemara¹⁵ understands the verse (*Leviticus* 19:32) that teaches the mitzvah of *kimah v'hiddur* (honoring a wise/old person) to be applicable only in a dignified place, a *beit ha'merchatz* is excluded. This exclusion applies to the inner room but not to the outer room.¹⁶

Similar reasoning is used to exempt a *beit merchatz* from the obligation of *mezuzah*. The verse (*Deuteronomy* 6:9) that teaches the commandment of *mezuzah* states "your house", which the Gemara interprets to mean that just as your house is designed for honor, so too any place designed for honor requires a *mezuzah*. This excludes a *beit merchatz*.¹⁷

There are two principles operating here: One that governs the laws relating to *mezuzah* and *kimah v'hiddur* stems from a subjective assessment of the *beit ha'merchatz* as a place devoid of honor. The other, that limits activities of *kedushah* in the *beit ha'merchatz*, is derived from the verse

14. See Rashi *Baba Kamma* 86b, s.v. *beit ha'merchatz*.

15. See *Kiddushin* 32b and 33a for some stories relating to this. This is cited as the halacha in *Mishneh Torah*, *Hilchot Talmud Torah* 6:2 and *Shulchan Aruch* YD 244:4.

16. *Kiddushin* 33a; *Ramo* op. cit. Maimonides omits this law. see *Kesef Mishneh*, op. cit. Cf. *Pitchei Tshuva* (244:3) on the inner room. On differing opinions regarding the middle room see: *Shach*, *Shulchan Aruch* YD 244:3; *GRA* OC 84:2; *Aruch HaShulchan* 244:6.

17. *Yoma* 11b; Maimonides, *Mishneh Torah*, *Hilchot Mezuzah* 6:9; *Shulchan Aruch*, YD 286:4; *Sifri* on *Deuteronomy* 6:9. The hall leading to a *beit ha'merchatz* or *beit ha'kisay* is exempt for a different reason (*Drisha* 286:6; *Piskei Uziel*, *She'elot Hazman*:30).

"your camp shall be holy",¹⁸ and has additional ramifications that will be explained in the following section.

None of the above stated restrictions relating to a *beit ha'merchatz* are to be construed in any way as denigrating the role of the *beit ha'merchatz*. Despite all the criticism it received from the rabbis, Rome¹⁹ was praised for building *batei merchatz* in Israel (*Shabbat* 33b), and Hillel told his disciples that bathing is a religious duty (*Lev. Rabbah* 34:3). In talmudic times, it was forbidden for a scholar to live in a city that did not have a public *beit merchatz* (*Sanhedrin* 17b).

"Your Camp Shall Be Holy"

The verse "your camp shall be holy"²⁰ is the source of the biblical prohibition against reciting the *shema*, praying, speaking or thinking words of Torah if one's "camp" is not "holy". Both of these terms ("one's camp" and "holy") require clarification. Lack of holiness results, for example, from the

18. *Deuteronomy* 23:15. See *Sifri*, *Deuteronomy* 6:9 and *Shabbat* 150a. The preceding verse, "You shall have a place outside the camp, where you shall withdraw yourself: and you shalt have a spade among your weapons, and it shall be, when you will ease yourself outside, you shall dig with it, and shall turn back and cover your excrement" (*Deuteronomy* 23:14) also teaches the importance of having a "bathroom" outside of the camp and maintaining purity and cleanliness even while in a military camp. This verse and the preceding one are treated as two distinct biblical commandments in the compilations of the 613 commandments, highlighting the importance of this area of halacha. See *Sefer ha'Chinuch* 566 and 567.

19. See *Megillah* 6b regarding bathhouses in Rome.

20. See introduction of *Mishnah Berurah* to OC 79 for this and the next group of laws. See also: *Encyclopedia Talmudit* entries on *beit ha'kisay* (3:206-210) and *beit ha'merchatz* (3:242-244) for discussions of many of the laws found in these first few sections.

presence of *tzo'ah* (excrement)²¹ within the person's "camp" or domain. Four *amot* (cubits) is generally considered the size of a person's "private camp". Hence, this verse teaches that there must be no *tzo'ah* within a four *amah* radius to be permitted to engage in religious activities.

If *tzo'ah* is in front of a person, in the same domain and visible, even if it is outside the immediate four *amot*, the recitation of holy matters is forbidden. In addition, the type of *mechitzah* (separation) required for *tzo'ah* is different than that required for *ervah*. Two distinctions are noteworthy. Unlike *ervah*, where a glass partition is not sufficient to permit holy matters (e.g., a man may not recite the *shema* or *daven* while observing women in a pool even through a glass partition), it is sufficient with regard to *tzo'ah*. The reason for this is that *tzo'ah* needs only to be covered in order for it to not prohibit.²² However, water, which in

21. *Tzo'ah* of an infant does not fall in this category. The age that one is no longer an infant for these laws is defined as the time that a child can really start eating solid food (grains). The *Kaf ha'Chaim*, quoting the *Migdal Oz* and others, notes that in practical terms this means at about one year of age (OC 81:6) (cf. *Beit Yosef* YD 265 and GRA s.k. 39).

Animal excrement has a different set of laws and is in general less problematic. Assuming there is no foul odor, one may recite holy matters in its presence, with the exception of excrement or urine from a donkey recently returned from a journey, or excrement of a cat, leopard or "red" chicken (*Shulchan Aruch*, OC 79:4-7, MB 79:25).

NOTE: An important consequence of this is that if not everything in a cat litter box is covered over, it would have the law of human *tzo'ah* and one may not recite *birchat ha'mazon*, *daven*, etc., while the litter box is within four *amot* to the side or back or in visual range in front. On owning a cat, see *Baba Kamma* 80b.

22. See Rav Avraham M'Sokotchov, *Shut Avnei Neizer* 19, for a discussion of why a glass *mechitzah* is sufficient. Since the

general is a good partition with regard to *ervah*,²³ is not sufficient for *tzo'ah*.²⁴ Thus, *tzo'ah* fully submerged in water but visible would prohibit one from praying, etc. However, if the water used is cloudy or colored it is considered a sufficient covering even for *tzo'ah*.²⁵

Under the rubric of this prohibition is also included the prohibition of prayer, etc. in the presence of foul odors.²⁶ Foul odors fall into two categories: those with a specific, discernable, present source, and those without. If a foul odor has a source, it is categorically identifiable with *tzo'ah* with respect to the biblical laws. One must, therefore, be beyond four *amot* from the place where the smell terminates, and if not, the prayer must be repeated. If the foul odor is

tzo'ah only has to be covered it can even be covered by a part of the body (OC 76:1-2,4).

An interesting proof may be brought from *Nedarim* 49b: R. Yose and R. Yehuda were eating out of the same bowl and one of them was eating with his fingers. The other said to him: "How long will you make me eat your *tzo'ah*?" [that was under his fingernails]. It must be assumed that they both made *brachot* and yet did so with *tzo'ah* under one of their nails! (However, the statement may have been merely a sharp, insulting retort and not a statement of fact, in which case no proof can be brought.)

23. See *Berachot* 25b; *Shulchan Aruch* OC 74; *Magen Avraham* s.k. 8. See also *Mishnah Berurah*, *ibid*, s.k. 7 who points out that this is only in so far as not being in the presence of the exposed *ervah*. However, it is still necessary that one not look at the *ervah* and, as such, water is not like an actual *mechitzah*.

24. OC 76 *Magen Avraham* s.k. 9. Thus, one needs to be careful around children's soiled clothes when they are soaking in water. This is opposed to *mei raglayim* to which one can add water and "nullify" it (*ibid* 77:1) (see *Aruch HaShulchan*, OC 77:4).s.k.

25. *Aruch HaShulchan* 76:4; *Sha'aray Halacha* by Rabbi H. Myski, Vol. 1, 7:4:8.

26. See *Shulchan Aruch*, OC 76 and 79 and commentators.

(halachically) sourceless, then biblically it is not a problem, and rabbinically one need only remove oneself from the actual area of the odor before reciting holy matters. This discussion includes any source of foul odor, not only *tzo'ah*. A garbage pail, decaying foodstuffs, or carcasses that are producing a foul odor would biblically prohibit one from reciting holy matters.

Mei raglayim (urine) only removes the "holiness" from one's "camp" and causes a biblical prohibition at the time that it is in a steady stream from the body. If it is only dripping, and certainly once it is on the ground, it only raises a rabbinic concern.²⁷ Rabbinically one is required to treat it as *tzo'ah*.²⁸ Distancing only helps if the *mei raglayim* does not omit a noxious odor. If it does, then like any other foul odor with a source, it causes a biblical prohibition.

27. *Shulchan Aruch* OC 76:7. See also *Minchat Chinuch*, Mitzvah 567 and *Iggerot Moshe*, OC:1:27. A person with urinary incontinence is permitted to perform his religious duties provided he does not sense the actual passage of urine and his outer garments are clean. Such a person can receive an *aliyah*, and, if he is a *kohen*, may *duchan* (*Tzitz Eliezer* 11:7). Similarly, a person with a urinary catheter through which urine passes continuously may perform his religious duties (*Tzitz Eliezer* 8:1; *The Comprehensive Guide to Medical Halacha*, Abraham S. Abraham, Feldheim, 1990).

28. The *Aruch HaShulchan* (OC 76:21) contends that this rabbinic enactment is not specific to *mei raglayim* and that any "disgusting" item has the same laws. Thus, the laws that apply to *mei raglayim* would also apply to vomit, large quantities of phlegm, etc. *Ben Ish Hai* (1:Toledot:9) adds that water that one used to wash and that is now sitting in another utensil is even more "tamei" than *mei raglayim* and hence prohibits at least as much.

Mei raglayim is considered especially lacking in *kavod*. For example see *Kritot* 6a on not using *mei raglayim* in the preparation of the incense in the Temple, and *Aruch HaShulchan* OC 586:37 on not using it in cleaning out a *Shofar*.

The foregoing summary of the laws directly related to *tzo'ah*, *mei raglayim* and foul odors have relevance in many areas of practical halacha. In addition to the cases already mentioned, other areas of concern include the permissibility of *davening* in rooms with dirty diapers or in hospital rooms, and questions regarding people with colostomies²⁹ or urine bags *davening*, saying *berachot*, putting on *tefillin*, etc.

In a discussion of the modern bathroom two additional ramifications of "your camp shall be holy" are relevant. These are a *g'raf shel re'i* and an *avit shel mei raglayim*. These are loosely translated as chamber pots, respectively for excrement and for urine,³⁰ and will henceforth be referred to simply as *g'raf* and *avit*.

Both a *g'raf* and an *avit* generate the above stated biblical prohibitions, even if they are at present empty of all offensive matter.³¹ However, this is only if they are made of pottery or wood, i.e., materials that are considered porous and absorbent. If they are made of metal, glass³² or lined pottery it is permitted to recite holy passages in their presence so

29. A person with a colostomy or ileostomy may engage in religious duties if the external opening is clean and covered (*Tzitz Eliezer* 9:6; *Minchat Yitzchak* 6:11-12).

30. Rashi, *Berachot* 25b, indicates that they are similar items but have different names based on their different functions.

31. *Berachot* 25b; *Shulchan Aruch* OC 87. Rabbi Akiva Eiger on *Shulchan Aruch*, OC 87, points out that an *avit* carries biblical prohibitions even though its offensive content, *mei raglayim*, is only prohibited rabbinically.

32. The *Aruch HaShulchan* (OC 87:2) says this is true even according to those who say that glass cannot be kashered. (On kashering glass see: H. Jachter, "May Glass Utensils be Kashered?", *The Journal of Halacha and Contemporary Society*, XXVI, Fall 1993.)

long as they are washed out well.³³ The rationale for this prohibition, even for a clean *avit*, as well as for a clean *beit ha'merchatz* and *beit ha'kisay*, is based on their designation for a specific, "unclean" purpose. This similarity in rationale is important since some of the lenient halachot pertaining to an *avit*, presented next, might prove useful in analyzing a modern bathroom.

The *Magen Avraham* provides two possibilities³⁴ (other than that of non-porous materials) when an *avit* might not carry the usual prohibitions. The first is a vessel that has an additional use beyond serving as an *avit* for *mei raglayim*. Thus, it is no longer specifically designated only for the "unclean" purpose and does not acquire the status of an *avit*. Rather, it is like any other neutral receptacle; if it is clean from *tzo'ah* and *mei raglayim* and has no foul odor it would not prohibit. The second case occurs if whenever the *avit* is used a *revi'it* of water is immediately poured into it as well.³⁵ In presenting the rationale for this, the *Biur*

33. These rules have ramifications for a person who uses a bedpan or a urine bottle. If it is made of wood or unglazed pottery it is treated like *tzo'ah*. If it is made of metal, glass, glazed pottery or plastic and is clean and odorless, no distancing from it is required.

34. OC 87. Both of these are discussed in the *Mishnah Berurah* *ibid*, s.k. 2. and the second in the *Biur Halakhah* s.v. *g'raf* as well, where the Chofetz Chaim seems to accept both possibilities. *Zkan Aharon* (1:1) posits that the *Bach* and the *Prisha* would disagree.

35. Most modern toilets contain more than a *revi'it* of water in the bowl at all times, and then upon flushing additional water, also more than a *revi'it* is added. However, no distinction seems to be made between adding the water second or having it originally present.

*Halacha*³⁶ explains that this too prevents it from taking on the unique designation of an *avit* (and, as will be seen later, possibly this would prevent a room from taking on the designation of a *beit ha'kisay*).

Beit Ha'kisay

An additional application of the verse "your camp shall be holy" is a *beit ha'kisay*. It should be kept in mind that this discussion applies to the *beit ha'kisay* in use in the talmudic period. It may be that some of it does not apply to the modern bathroom.

In a permanent *beit ha'kisay*³⁷ it is prohibited to read the *shema*, pray, say words of holiness, think about such matters, or wear *tefillin*³⁸ even if there is no *tzo'ah* present.³⁹

36. *Ibid*.

37. There are two types of *beit ha'kisay* discussed by *Chazal*. A *beit kisay kavua* (a permanent *beit ha'kisay*), was a designated area that was regularly used as a place to relieve oneself. The wastes all remained in that area. In modern terms it is most similar to a permanent outhouse, as is found on some hiking trails. In addition, something like a "Port-o-John" which is found at construction sites and parades might have a similar status since the waste is not removed. (Although since it is covered over it might not be identical to a *beit kisay kavua*. It would probably not have the status of a "mini-*beit ha'kisay*" (see text accompanying note 42) due to its greater permanence.)

The second type was a *beit kisay arai* (a temporary *beit kisay*). This was not an area designated as a place to relieve oneself, but a place where someone who needed to use the facilities picked an isolated area and used it as a *beit kisay*. By virtue of using it he created a *beit kisay arai*. This is less common today, at least in populated areas, but the condition does sometimes arise in the army or while one is camping.

38. For details on *Tefillin* and various activities in and around

The prohibitive effect of a *beit ha'kisay* is so strong that it is even forbidden to recite the *shema* outside but opposite a *beit ha'kisay*.⁴⁰ It is also prohibited to carry *tefillin* into a *beit ha'kisay*. If, however, they will be endangered by being left outside, one may wrap, or in some cases double wrap them, and take them into the *beit ha'kisay*.⁴¹

Whether a "mini-*beit ha'kisay*" (i.e., a portable "pottie") is categorized as a *beit ha'kisay* is the subject of a dispute. The *Aruch HaShulchan* (OC 83:10) determines that it is,⁴² and he, therefore, states that if people have portable "potties" for children who are of the age when their *tzo'ah* makes a

a *beit ha'kisay* see: *Berachot* 23a; Rambam, *Mishneh Torah*, *Hilchot Tefillin* 4:17; *Shulchan Aruch* OC 43 (specifically 43:1, 43:5) and 62; *Mishnah Berurah*, *ibid* (specifically 43:12 and 62:5); *Aruch HaShulchan* OC:43:6.

A person in a hospital room who has *tefillin* with him should be careful to keep them double wrapped (and one of the wrappings should be other than its usual wrapping, such as a desk drawer) if he relieves himself in that room. (R. Shimon Eider, *Halachos of Tefillin*, p.128)

39. *Berachot* 26a; Rambam, *Mishneh Torah*, *Hilchot Kriat Shema* 3:2-4, *Shulchan Aruch*, OC 83:1.

40. *Ibid*.

41. *Shulchan Aruch*, OC 43:6,7; *Mishnah Berurah*, 43:24; *Aruch HaShulchan* 43:13; *Sefer ha'Trumah* 213; *Rabbenu Yeruchum* 19:5. On practical applications such as in an airport or train station (where one should wrap his *tefillin* bag in a coat or place them in another bag and then hold it while using the bathroom) see R. Eider, *op cit*. p. 136.

42. This is against the *Shulchan Aruch*, OC 83:5, who says that these items do not have the status of a *beit ha'kisay*. The *Kaf Hachaim* (83:13) brings many opinions on both sides of the debate and concludes strongly that one should be stringent in this matter, and not follow the *Shulchan Aruch*. (See also *Taz* OC 83:3; *Biur Halacha* 83:Ein Hag'raf and *Minchat Yitzchak* 1:60:6.)

location "unclean",⁴³ all the laws of a *beit ha'kisay* apply to them and these potties need to be removed from the room or be covered to *daven*, etc. in that room. This also applies to portable toilets used by the elderly. These items are like a *beit ha'kisay* and, therefore, even when clean still carry the relevant prohibitions.

Most of the laws regarding a *beit ha'kisay* take effect as soon as it has been designated as such, even if it has never been used. Thus, if a room has been set aside as a *beit ha'kisay*, even if it has never been used, it is prohibited to recite the *shema* in that room, as it is no longer within the category of a "holy camp".⁴⁴ Additionally, upon leaving a *beit ha'kisay* one must wash one's hands.⁴⁵ From these last two halachot

43. At about one year old. See note 21 for details.

44. *Shulchan Aruch* OC 83:2. This is debated in *Berachot* 21a and decided stringently by, among others, Rambam, *Mishneh Torah*, *Hilchot Kriat Shema* 3:3; *ha'Itur*, *Tefillin* 6; *Ravya*, *Berachot* 77; *Ohr Zaruah* 1:134; *Rosh Berachot* 21a. There are, however, some who rule leniently, such as the Raavad on the *Mishneh Torah*, *ibid*. This halacha does not apply to a *beit ha'merchatz* (*Shabbat* 10a, *Shulchan Aruch* OC 84:1).

45. *Shulchan Aruch* OC 4:18. *Mishnah Berurah* s.k. 40 adds that this is true even if a person merely entered a *beit ha'kisay*, did nothing, and walked out. However, see discussion of this below.

This halacha applies equally to a *beit ha'merchatz*. However, the *Shulchan Aruch* does not specify which room in the *beit ha'merchatz*. It seems that it refers only to the inner room. (See *Shut Zkan Aharon* 1:1 who discusses whether it applies also to the middle room.)

This law of requiring one to wash one's hands is originally found in the *Zohar* (*Bereishit* 10b) and mentioned by the Chida on *Sefer Chassidim* 823, and is based on the idea of a *ruach ra* within the *beit ha'kisay* and *beit ha'merchatz*. See also *Sukkah* 46a and *Baba Kamma* 17a with regards a *beit ha'kisay* (and

– that mere designation causes the prohibitions associated with *tzo'ah*, and that mere entry requires a handwashing – we can sense the severity of the prohibitions related to a *beit ha'kisay*.

There are, however, also examples of what appear to be leniencies regarding even a *beit ha'kisay*. Although it is forbidden to think words of Torah in the *beit ha'kisay*, if a person is so involved with learning that he cannot help himself, it may be permitted.⁴⁶ Another, more relevant leniency, relates to what the Talmud refers to as a Persian *beit ha'kisay*. The special feature of this *beit ha'kisay* was that the refuse was always technically covered or not present within that room. Specifically, if a room is constructed with the hole into which the waste falls at an angle, such that the *tzo'ah* and urine always roll away, and with this drainage hole at least four *amot* long, it does not have any of the above stated laws of a *beit ha'kisay* and one is permitted to read the *shema* therein.⁴⁷ This very important leniency will be discussed again in regard to possible ramifications for the modern bathroom.

The Talmud, just as it does for the *beit ha'merchatz*, stresses the importance of a *beit ha'kisay*. Commenting on

where it seems that this washing is not linked to a *ruach ra*, and the *Avudraham* (quoted in the *Beit Yosef*, OC 4) with respect to a *beit ha'merchatz*. This *ruach ra* may be less potent than other *ruchot ra'ot*. (*Ben Ish Hai* 1:Toldot:16)

46. *Beit Yosef*, OC 85, based on *Zevachim* 102b. The *Prisha* there goes so far as even to permit verbalizing the words. However, the *Mishnah Berurah*, *ibid*, s.k. 8, disagrees and forbids verbalizing the words in a *beit ha'kisay*.

47. *Berachot* 26a; *Shulchan Aruch* OC 83:4. This assumes that one always makes use of the aforementioned hole and that there is no foul odor present in the room.

the verse in *Psalms* 32:6, the Talmud (*Berachot* 8a) offers many possibilities as to what the verse refers to when it speaks of a "time of finding". These include finding Torah, a good wife, etc. Mar Zutra proposes that it refers to finding a *beit ha'kisay*, and the Talmud concludes that: "This interpretation of Mar Zutra is the best of all".⁴⁸

The importance of the *beit ha'kisay* is further illustrated by the story told in *Berachot* 55a: "A certain matron said to R. Yehudah b. R. Ill'ai: 'Your face is [red] like that of pig-breeders and usurers [both of whom lived well]'. To which he replied: 'On my faith [I swear], both occupations are forbidden to me, but there are 24 *batei kisay* between my lodging and the *beit ha-midrash*, and when I go there I test myself in all of them.'"⁴⁹

The Mishnah (*Tamid* 1:1, *Tamid* 26a) sometimes even attaches the word "honor" to a *beit kisay* and refers to the facilities in the *Beit ha-Mikdash* as a *beit kisay shel kavod*. Its status of honor was due to the fact that it could be locked, and thus one would know if someone else was in the room.

48. See also in *Baba Metzia* 107a, R. Yochanan's explanation of *Deuteronomy* 28:3, "Blessed shall you be in the city," that a *beit ha'kisay* should be near your table, and Rashi's explanation there.

49. This story is found also in *Nedarim* 49b. There the questioner is a *min*, the questioned is R. Yehuda, and he replies that, corresponding to the 24 *batei kisay*, he visited one an hour. The same story seems to be repeated in *Yerushalmi*, *Pesachim* 10:1, with a very different answer. The questioner there is a matron, the questioned is R. Y[eh]uda b. R. Ilai, and the question includes a third option, that he was drunk. In the answer he curses her, and then tells her it is neither of those three options, but rather that he is always studying Torah, as the verse (*Kohelet* 8:1) states: "A man's wisdom makes his face shine."

Summary: Laws of Pre-Modern Times

Before attempting to examine the laws relating to a modern bathroom, we have summarized the sources relating to the classical situations. The issues center around a number of concerns. The primary one is the need for "your camp to be holy." This verse teaches that in the environs of *tzo'ah*, *mei raglayim*, a foul smell, or any utensils customarily used with any of them, one may not occupy oneself with holy matters. In addition, this prohibition places certain restrictions on a *beit ha'kisay* and a *beit ha'merchatz*. There are specific laws relating to the various rooms within a *beit ha'merchatz* and to various constructions of the *beit ha'kisay*. Finally, there are two other properties ascribed to the *beit ha'merchatz* and the *beit ha'kisay* – the presence of a *ruach ra*, necessitating handwashing, and a designation as a place used for an undignified function, exempting the room from *mezuzah* and certain other laws.

The questions with regard to the modern bathroom and washroom to be considered now include: Which, if any, of the three rooms in a *beit ha'merchatz* do they parallel? Does a bathroom have all the laws of a *beit ha'kisay*? Do they contain a *ruach ra*? Are they rooms whose functions are deemed to be undignified? It is important to keep in mind that the majority of this discussion centers around a clean bathroom/washroom. While one is performing one's bodily functions, all of the above stated laws regarding *tzo'ah*⁵⁰

50. The fact that the *tzo'ah* is fully covered with water is not sufficient, as discussed above. Questions regarding bringing items like Columbia University's logo (on a sweatshirt) which contains G-d's name (in Hebrew letters) into a bathroom while using the facilities are therefore not dependent on the status of the room, but would depend on whether the Name written by a non-Jew with no holy intent has holiness. This is an entirely separate

and *mei raglayim* are fully applicable, no matter what kind of bathroom one is using.

Ruach Ra

Before discussing whether one is allowed to use a modern bathroom for ritual purposes, such as washing one's hands before *davening* or eating bread, a broader question needs to be asked: Does merely entering a *beit ha'merchatz*, *beit ha'kisay*, or bathroom and then leaving without using the facilities still convey a *ruach ra* that necessitates washing one's hands? The *Shulchan Aruch* cited above does not address this issue, and the opinion of *Mishnah Berurah* that a handwashing is required is not universally accepted. Rav Shalom Mordechai b. Moshe Shvadron (*Maharsham*)⁵¹ cites a strong proof from *Magen Avraham*⁵² that simply entering and leaving a *beit ha'kisay* does not require washing. Based on this *Magen Avraham*, *Match Efrayim* rules that if one

question, and will not be discussed here.

51. *Sefer Da'at Torah* OC 4, quoted in *Yabia Omer* 3:OC:1, and *Tzitz Eliezer* 7:2.

52. *Siman* 227. The *Shulchan Aruch* (based on *Yerushalmi*, *Berachot* 9:2) states: "If one is sitting in the *beit ha'kisay* and hears thunder or sees lightning, if one can get up and out [within the time allotted to say the *beracha* (*toch k'dai dibbur*)] one should do so, and say the *beracha* then." The *Magen Avraham* explains that this refers to a situation where the person can either wash or where he has not yet used the facilities or touched unclean parts of his body. Thus, according to the *Maharsham*, it is clear that the *Magen Avraham* was of the opinion that just entering a *beit ha'kisay* did not necessitate washing one's hands. (The *Mishnah Berurah*, 227:11, who holds that just entering a *beit ha'kisay* requires a handwashing, rejects this proof and explains that in this case we make an exception so that the person does not forfeit the opportunity to say the *beracha*.) See *Yabia Omer* 3:OC:1 for a lengthy discussion of this topic.

merely entered and then exited a *beit ha'kisay* on Yom Kippur, one should not wash one's hands.⁵³ *Tosafot Yeshanim* in *Yoma* 30a also indicate that one is not required to wash for only entering a *beit ha'kisay*. Among the reasons for this, Rav Ovadia Yosef (*Yabia Omer* 3:OC:2) quotes *Eliyahu Rabbah* (1:4) that the *ruach ra* of the morning does not apply today, and therefore certainly the *ruach ra* of a *beit ha'kisay* does not apply, and the *Magen Avraham* (OC 173:1) suggests that maybe "nature has changed" and *ruach ra* in general no longer poses the same danger it once did. The *Lev Chaim* quotes a list of authorities who concur and also do not require a handwashing but adds that since it is disputed, one should nonetheless always wash one's hands.⁵⁴

The same question can be asked with regard to a traditional *beit ha'merchatz*: If one enters for a purpose other than to bathe, is one required to wash one's hands upon exiting? *Shem mi'Shimon* and *Yavetz*⁵⁵ both exempt washing in this situation. Even those who would be stringent with regard to a *beit ha'kisay* might be more lenient in the

53. *Mateh Efraim* 613:7. *Elef L'Mateh* elaborates and says that all that can be learned from the *Magen Avraham* is that the *ruach ra* does not preclude one from saying a *beracha*. But there still might be a requirement to wash one's hands at the earliest opportunity. The problem with this is that the *Zohar* seems to equate washing and the prohibition of saying a *beracha*.

54. This is the standard practice, following the *Mishnah Berurah*, the *Chida* (*Sefer Brit Olam* on *Sefer Chassidim* 823), the *Pri Megadim*, the *Malbim* (*Artzot Ha'Chaim* 4:75), the *Ben Ish Hai* (1:1:16), and others. This stringent view is a leniency on Yom Kippur.

55. OC 9 (although *Tzitz Eliezer* quotes others who say OC 8) and in his *Siddur*, section on rising:19, respectively. Cited in *Tzitz Eliezer* 7:5.

case of a *beit ha'merchatz*.⁵⁶

Although many authorities are lenient, it is our custom to require a washing for merely entering a *beit ha'kisay*, and if possible also for merely entering a *beit ha'merchatz*, unless there is a good reason not to, such as its being Yom Kippur, and the washing is a matter of dispute. Regarding modern bathrooms, the story is a little different. The *Zkan Aharon* (1:1) rules that any room not used solely for a degraded purpose does not acquire a *ruach ra*, and because our bathrooms and washrooms are not used exclusively for those purposes there is no *ruach ra* present. Hence, there is no need to wash if one entered there for another purpose. Rav Aryeh Tzvi Frumer (*Shut Eretz Tzvi* 110 and 111), using that argument, as well as others, concurs. In summary, most authorities agree that simply entering a modern bathroom does not necessitate a handwashing.⁵⁷

There is no disagreement, however, that one is required to wash one's hands after using the facilities, bathing, or showering, even in today's clean environment. A corollary question then arises: After one has flushed or when the

56. See the comment in the *Shut Afarsaksa Da'Aniya* 133 (quoted in *Tzitz Eliezer* 7:5) with regard to the Chida's position.

57. Rav Ovadia Yosef, *Yechave Daat* 3:1 disagrees with this, and in the name of *Chelkat Ya'akov* 1:205 as well, compares a modern bathroom to a *safsal nakuv* (OC 83:5). Rav Yosef maintains that a modern washroom would certainly not have a *ruach ra*, but, a bathroom does. He would thus require washing one's hands even if one entered a bathroom only to get a tissue or the like. I do not know what he would rule regarding Yom Kippur – whether he would require washing of one's hands – for merely entering a bathroom. However, see *Sefer Ta'amei ha'Minhagim u'Mkorei ha'Dinim* (Eshkol, Jerusalem, 1982) p. 335, that cites the *Mikdash Melech* on *Parshat Truma* that the *ruach ra* (at least in the morning) is much attenuated on Yom Kippur.

room is not steamed from the shower, may one perform the requisite washing in the bathroom/washroom itself? Actually, the question is whether any ritual washing may be done in these rooms, and that is the topic of the next section.

Washing Hands For Ritual Purposes

There are numerous circumstances which require ritual washings of the hands. These include: upon rising, before eating, before *davening*, and a Kohen before *duchaning*. Each of these has its own reason and has to be analyzed separately.⁵⁸ Rav Moshe Feinstein (*Iggerot Moshe, Even Haezer* 1:114), in discussing a bathroom that is clean of all wastes and has no foul odor, rules that one can wash there only for *davening* but not for eating. He says that washing for *davening* is less strict than for eating and that he is unsure whether our bathrooms have the status of a Persian *beit ha'kisay* or not, but gives no further rationale for his position. Even with regard to washing for *davening*, he maintains that it is only permissible if no other choice exists and that the hands should be dried outside the bathroom.⁵⁹ He therefore urges that

58. All of these washings need to be done with a utensil. Whether paper bathroom cups may be used see: *Tzitz Eliezer* (12:23) (yes); *Shraga Hameir* (55) (no); *Iggerot Moshe*, OC 3:39 (may not use a paper cup for kiddush, does not address the washing issue); *Tvilat Kelim* by R. Zvi Cohen, p. 58, footnote 10.

59. Rav Moshe Feinstein does not seem willing to use the procedure of drying the hands outside of the bathroom, when washing for bread. Rav Moshe Sternbuch (*Moadim U'zmanim* 8:249) quotes the Chazon Ish to the effect that washing in a *beit ha'merchatz* and then drying them outside would be of no avail. Rav Sternbuch is hesitant about this position and quotes *Ayelet Hashachar* that such a procedure may be effective. This discussion is independent of the *beracha* issue; it is simply a question of whether having wet hands in a place where washing is permissible will effectuate

shuls be careful to provide a place to wash other than the bathroom.

A possible problem with washing in the bathroom, not mentioned by Rav Moshe Feinstein, is raised by the *Shem Mi'Shimon* (OC 9) with respect to washing in a washroom, and leads him to forbid it. Because this washing is a mitzvah, one might (or should!!) be cognizant of its purpose, and thus it will be as if he is thinking about Torah in an inappropriate place.⁶⁰ In addition, it may simply not be proper to do a mitzvah in an "unclean" place.

Rabbi Eliezer Yehuda Waldenberg (*Tzitz Eliezer* 7:5) concludes that the problems raised by the *Shem mi'Shimon* are not applicable to the issue of washing in an "unclean" place and permits ritual washing in a washroom.

Rav Waldenberg proceeds to further analyze a washroom. He quotes Rav Aharon Walkin (*Zkan Aharon*, 1:1)⁶¹ who determined that a modern washroom is the equivalent of a middle room in a *beit ha'merchatz*. In addition, he cites *Shut Yaskil Avdi* OC 6:13 and *Yabia Omer*, 3:OC:1-2 who permit washing in a washroom. They reason that the room is not used solely for bathing and unclean purposes,⁶² and

a "new" washing. *Har Tzvi* OC:1:50 is also of the opinion that it is of no avail.

60. This assumes that a bathroom or washroom is a place where it is prohibited to think words of Torah. Those who regard modern facilities otherwise will not have this problem.

61. See *Taz*, OC 84:2 for a precedent to this.

62. It seems from this that a room used solely for bathing or showering, i.e., a military style shower, would indeed have the status of an inner room of a *beit ha'merchatz* and, for example, *hirhur* would indeed be prohibited. This would be true if the sole problem with an inner room is that it is used for naked bathing (Rashi, *Avodah Zarah* 44b; one opinion in Meiri, *Shabbat* 10a).

therefore does not acquire the status of a *beit ha'merchatz*.⁶³ Rav Waldenberg, therefore, concludes that a modern washroom is not like a *beit ha'merchatz* and one may wash there for bread, and, according to the letter of the law, even say the *beracha* in there. But he maintains that it is best not to rely on this and, where possible, to avoid washing in a washroom. In addition, he stresses that all of this is not applicable to a bathroom and apparently forbids washing in there.

Harav Yosef Eliyahu Henkin (*Eidut L'Yisroel* 1) takes Rav Walkin's logic one step further and, based on the two facts that modern bathrooms expel the waste immediately and that they have other functions, maintains that our bathrooms have the actual status of a middle room of a *beit ha'merchatz*. Therefore, *shema* and prayer are prohibited there, but washing for *davening* or eating is permitted.

This question is also discussed by Rav Mordechai Ya'akov Breisch (*Chelkat Ya'akov* 1:205, 2:162) who uses similar logic, which he applies to the bathroom as well, and says that one may perform ritual washings there.⁶⁴

Going one step further, the *Levushei Mordechai* (OC:1)

If sweat and grime are also problematic, then this would not be true. Meiri (*Berachot* 26a), Rav Manoach (cited in *Kesef Mishneh*, *Hilchot Kriat Shema* 3:3) *Magen Avraham* (OC 45:2) and *Zkan Aharon* (1:1) all seem to follow the latter option. (See also *Tzitz Eliezer* 7:5 and *Yabia Omer* 5:11 regarding saying a *beracha* in a *mikvah*.)

63. This logic is based on the *Magen Avraham*, discussed above, with regard to an *avit*.

64. *Chelkat Ya'akov* 1:205 discusses the more extreme case of the halacha with regards to bathrooms on trains, which are less clean than a bathroom in a house, and yet he permits washing there.

uses the logic that since our toilets immediately expel the waste, they are even better than a Persian *beit ha'kisay* (which is "cleaner" than a "middle room") and he therefore permits washing in a bathroom. Taken at face value this conclusion results in a tremendous leniency, for, as discussed above, one is even permitted to read the *shema* in a Persian *beit ha'kisay*.

Rav Ovadia Yosef (*Yabia Omer* 3:OC:1-2, *Yechave Daat*, 3:1) analyzes the issues of washing in a bathroom and washroom separately. He quickly reaches the conclusion that a mere presence in a *beit ha'merchatz* (and certainly a washroom) does not require one to wash unless one bathed there. Based on this, and eight concurring authorities,⁶⁵ he concludes that one may wash in a washroom before *davening*, eating, and upon awakening. However, since there are others who disagree with his arguments, he concludes that one should preferably not wash in a bathroom if it can be avoided; but if there is no other choice and the bathroom is always kept clean, he allows it.

The Chazon Ish⁶⁶ similarly differentiates between our bathrooms and a Persian *beit ha'kisay*, but offers an alternate rationale to be lenient; our toilets are made of porcelain and are rinsed out after every use. It is possible that just as the innovation of the Persians prevented their bathrooms from acquiring the legal status of a *beit ha'kisay*, so too our "innovations" would prevent our bathrooms from acquiring that status. Nonetheless, he concludes that one should be stringent because of doubt.

65. *Shem Mi'Shimon* OC:9, *Chelkat Ya'akov* 1:205, *Zkan Aharon* 1:1, *Maharam Brisk* 3:39, *Tzitz Eliezer* 7:5, *Yeshuat Moshe Aharonson* 31, *Yaskil Avdi* 6:OC:13:8, *Netzer Matai* 2.

66. *Hilchot Kriat Shema* 17:4, end of 17:11 and OC 14:4.

Shut Ohel Moshe,⁶⁷ Rav Yitzchak Ya'akov Weiss (*Minchat Yitzchak*, 1:60), *Shut Eretz Tzvi* (110–111) and Rav Henkin have no doubt, and all conclude that one may wash one's hands in a bathroom, certainly when there is no other choice, for both *davening* and eating.⁶⁸

The *poskim* cited in this discussion selectively deal with the issues of washing one's hands upon awakening, for *davening*, for eating, or after using the bathroom.⁶⁹ Each *posek* has omitted certain types of washing from his discussion. In addition, there are various religiously mandated washings that were not discussed by any of those cited. It therefore might be useful to "rank order" the different washings.

Washing after using the facilities is included in a long list of required washings (OC 4:18) that are needed to remove a *ruach ra*.⁷⁰ The *Shulchan Aruch* also informs us (OC 4:12) that there are types of washings that may suffice for *davening* but not for removing a *ruach ra*. In the ranking, therefore, the rules for any washing for *ruach ra* should be more

67. Rav Moshe Yonah Halevi Tzvig, second volume 126:3, in the name of Rav Yosef Eliyahu Henkin in *Sefer Eidut L'Yisrael* 1.

68. This does not imply that they are like any other room. Rav Henkin concludes that it is still prohibited to recite the *Shema* or to *daven* in them, and the *beracha* for washing hands must be said outside.

69. The issues discussed in connection with washing would also apply to the not uncommon situation of someone washing for *hamotzi* on *Shabbat* and, while waiting for others to wash, getting a tissue from the washroom/bathroom. In such a situation, certainly according to the more stringent opinion, the person probably should wash again, although without a *beracha*.

70. *Mishnah Berurah*, OC 4:38.

stringent than those for washing before *davening*.⁷¹ In addition, the requirements for washing for bread serve as a set of sufficient though not necessary requirements for washing in the morning (*Shulchan Aruch* OC 4:7). Hence, the order of declining stringency is as follows: before a meal, for *ruach ra* (including after using the facilities and upon awaking), and in preparation for *davening*. It is not clear whether those who permit washing for *davening* but not for bread would permit washing in a bathroom upon rising. Finally, one of the types of washing that was not discussed at all by the *poskim* is the washing of *Kohanim* in preparation for *duchening*. It seems that this is probably comparable to washing for *davening* and, in a situation where a shul is inadequately equipped with sinks, most *poskim* would permit washing for *duchening* even in a bathroom just as they permit washing before *davening* in a bathroom.

Reciting Berachot

As a rule, it is prohibited to recite blessings opposite a *beit ha'kisyay*, or even opposite the walls of the *beit ha'kisyay*. However, Rav Moshe Feinstein (*Iggerot Moshe, Even Haezer* 1:114) writes that since the walls of our bathrooms are also an integral part of the house, we can ascribe the same status to the door and doorframe as to the walls and consider them to be part of the structure of the house and not part of the bathroom. Therefore, he rules that although one may not wash for a meal in a bathroom, much less recite the *beracha* there, one may recite a *beracha* opposite and outside a

71. This proof is not irrefutable since it is possible that each type of washing has stringencies (*chumrot*) that the others do not. But it is clear that there are stringencies to *ruach ra* washings that do not apply to washing for *davening*.

bathroom even when the door is open.⁷² This issue has also been considered by Rav Tzvi Pesach Frank (*Har Tzvi* OC:1:48) who reached a similar conclusion.

As stated above, some *poskim* liken a bathroom to the middle room of a *beit ha'merchatz* or to a Persian *beit ha'kisay*. It is therefore conceivable that when a bathroom is clean they would actually permit *berachot* to be recited there!⁷³ However, *Minchat Yitzchak*⁷⁴ quotes the *Zkan Aharon* as maintaining that one may not speak holy matters in a bathroom. The *Eretz Tzvi*,⁷⁵ however, notes that theoretically one may indeed recite holy matters in a clean bathroom, but in practice one should refrain from doing so.

The Rosh (*Berachot* 3:36) cites Rabbenu Tam who used to simply make a separation between his upper and lower

72. This is true even if there is someone using the facilities and there is *tzo'ah* present. As far as the *tzo'ah* is concerned it is in a different domain. This is important in the case of a child using the bathroom who leaves the door open. This would not preclude someone in the hall or a facing room from *davening* or saying *berachot*.

However, shuls should be designed so that this question does not arise. And if the situation does exist that a bathroom faces the room in which the *davening* occurs, the bathroom door should always be closed, and preferably there should be a double door. In this responsum, Rav Moshe Feinstein was clearly referring to modern bathrooms since it was written in 1959, and yet he advises that synagogues be careful in their construction regarding the placement of bathrooms. Regarding the problem of a shul bathroom within which one can still hear the *davening*, see *Tzitz Eliezer* 13:1:2, where he permits using them and gives suggestions to minimize the problem.

73. See text accompanying note 11.

74. Op. cit.

75. Op. cit.

body while in a hot bath and then make a *beracha* and take a drink.⁷⁶ That was presumably stated with regards to a *beit ha'merchatz*; the halacha would be at least as lenient with regards to a washroom. As such, *Shut Netzer Matai* (2) actually permits one to recite a *beracha* in a washroom. Rav Ovadia Yosef (*Yabia Omer* 5:OC:11) does not go as far, but equates a washroom to the middle room of a *beit ha'merchatz* wherein Torah thoughts, but not speech, are permitted. One may, therefore, bring a radio or tape recorder into the washroom and listen to *divrei Torah* while showering or bathing. Listening to these devices involves only *hirhur* – thought – which is permitted, and not speech, which is prohibited.⁷⁷ However, he stresses that if the room is a *bathroom*, rather than just a washroom, it is more restrictive than a middle room of a *beit ha'merchatz* and thinking Torah thoughts is prohibited. In fact, even if the bathroom is clean and one is only showering, one may still not think about matters of Torah.⁷⁸

76. This is cited as the halacha in *Shulchan Aruch*, OC 74:2, minus the hot water. It may be therefore that this did not take place in a *beit ha'merchatz* and the only issue was one of *ervaah*, and there was no inherent problem of saying a *beracha* in the particular room used by Rabbenu Tam. This seems unlikely, however, since a bath would usually be in a *beit ha'merchatz*, and if it was not and the circumstances are thus unusual ones, then the Rosh or the *Shulchan Aruch* should have mentioned that.

77. This is assuming one agrees with Rav Ovadia Yosef's position regarding radio and tape recordings that maintains that they are not usable for *megillah*, *berachot*, etc. One who disagrees with that opinion would also disagree with his permissibility of bringing these items into the washroom.

78. This is similar, he notes, to *Chelkat Ya'akov* 205 and *Yaskil Avdi* OC:6:13.

Food In A Bathroom

Assuming that one may not make the *beracha* in the bathroom, may one recite the *beracha* outside and then drink water from the bathroom sink, or is there a problem of *ruach ra*? Based on *Shabbat* 41a and the *Sefer Ha'agadah*,⁷⁹ where it is noted that one may make a *beracha* outside a *beit ha'merchatz* and then drink even within the inner room, it seems that in a washroom it is certainly permitted to do so.⁸⁰ In addition, if one accepts either the position that our bathrooms are equivalent to a middle room of a *beit ha'merchatz* or that regardless of their classification they do not have a *ruach ra*, as discussed above, then it also would not be a problem and one would be permitted to drink in the bathroom after having said the *beracha* outside.

If one is permitted to eat or drink in a bathroom then the next set of questions is irrelevant. However, according to those opinions that a bathroom does have a *ruach ra*, can one take a cup into the bathroom, draw water from the sink and then take it out of the bathroom to drink? Is this considered exposing food to a *ruach ra* or not? Similarly, may one bring wrapped food into the bathroom, either when using the bathroom or when merely entering the room? How many coverings, if any, are required? Rav Tzvi Pesach Frank (*Har Tzvi* OC:1:50) declares that we find nowhere that *ruach ra* of a *beit ha'kisay* can affect food. Therefore, one may certainly take water out of a bathroom⁸¹ and use it to

79. This is quoted as the halacha in the *Magen Avraham*, end of *siman* 166, and discussed by *Kaf HaChaim* 84:12.

80. Based on this, it seems that even in talmudic times it was only prohibited to eat in a *beit ha'kisay* where there was a strong *ruach ra*. See *Shabbat* 10a for this distinction between a *beit ha'kisay* and a *beit ha'merchatz*.

81. Although preferably not in a utensil specifically designated

wash or drink. Furthermore, food brought in certainly does not become prohibited.

Rav Shalom Yitzchak Halevi (*Divrei Chachamim* OC:65) discusses whether meat may be soaked for kashering in a bathtub (in a washroom). He concludes that preferably it should not be done because of *ruach ra*, but it would not prohibit the food *post facto*.

Rav Ovadia Yosef (*Yabia Omer* 4:OC:5) also discusses the issue of bringing food into a bathroom and concludes that if the food is wrapped in plastic or is in one's pocket, it does not become prohibited. If, however, the food is such that it will not be ruined by washing, it should be rinsed three times before use. This halacha applies as well to food that one touched after emerging from the bathroom but before washing the hands.

Rav Waldenberg (*Tzitz Eliezar* 14:2), permits bringing medicines into a bathroom and also deals with the issue of food. He demonstrates that there is little basis for a prohibition of bringing food into a bathroom, even among the kabbalistic sources. The only problem might possibly be that of *ba'al t'shaktzuh* (treating food in an inappropriate or disgusting manner). Hence, while not a good idea to bring covered food into a bathroom, it is certainly not prohibited, and even when brought in, uncovered, does not become prohibited.⁸²

for use in the bathroom because of the problem of *ba'al t'shaktzuh*.

82. A time when almost all authorities permit bringing food into the bathroom is when *erev pesach* falls out on *Shabbat*. Most authorities say that one may flush leftover crumbs down the toilet (*Mishnah Berurah*, OC 444:21), although some authorities prefer other solutions, for reasons not related to this discussion (*Chazon Ish*, *Laws of Pesach*, 116:16 and 118:3).

Books In The Bathroom

It has been noted above that it is in general prohibited to bring *tefillin* into a *beit ha'kisay*. This also applies to any book containing the name of G-d, although some opinions only require a single wrapping for other books.⁸³ A *Sefer Torah*, as well as any of the books of *Tanach* when written as scrolls, may never be brought into a *beit ha'kisay*, even with many coverings; they require a complete *mechitzah*.⁸⁴ That this rule may apply to other "religious texts" is clear in the Talmud.⁸⁵ It is, therefore, important to clarify which materials may not be brought into a *beit ha'kisay*, and then decide whether the rules may be relaxed for a bathroom.

First, it is clear that simply because something is written or printed in a particular language (i.e. Hebrew) or script (i.e. *Ktav Ashurie*) does not necessarily give it a level of holiness that would preclude its being brought into a *beit ha'kisay*.⁸⁶ Conversely, written material may have a level of holiness even if printed on paper and not written as a Torah on parchment.⁸⁷ Thus, any book containing G-d's name, such as a siddur, *chumash*, etc., cannot be brought into a *beit ha'kisay* without a single, and according to some authorities a double, cover.⁸⁸ This would apply to a bathroom while in use. If it is clean and empty, the same issues as discussed above would apply. If it is halachically compared

83. *Mishnah Berurah* OC 43:25, 240:29.

84. *Sanhedrin* 21b; *Mishneh Torah*, *Hilchot Sefer Torah* 10:6; *Shulchan Aruch* YD 282:3; *Mishnah Berurah*, 240:28.

85. *Berachot* 23a last few lines, *Yerushalmi*, *Berachot* 2:3. But see *Tzitz Eliezer* 12:11:2.

86. *Tzitz Eliezer* 15:6:1.

87. *Mishnah Berurah* 240:29; *Iggerot Moshe* YD 2:75 and 76.

88. See Eider, op. cit., p.130 and 137 for sources and details.

to a middle room of a *beit ha'merchatz* or a Persian *beit ha'kisay*, then such books may be brought in; if it is like a *beit ha'kisay*, they may not.

The situation is quite different if G-d's name does not appear in the text. After a lengthy discussion, the *Tzitz Eliezer* (11:5) concludes that it is permitted to enter a bathroom, even to relieve oneself, while carrying written Hebrew *divrei Torah* as long as the material is covered, even minimally, such as in a pocket. Thus, most Anglo-Jewish newspapers, such as the *Jewish Week*, *Jewish Press*, or *Jerusalem Report*, probably may be brought into a bathroom without creating a problem. Although normally the cover of a book is not considered sufficient coverage for a book⁸⁹ because it is an integral part of the book, in this case it is not the magazine per se that requires covering, just several of the pages; hence the cover together with the other pages may suffice.⁹⁰ Of course it is not permitted to read those *divrei Torah* while using the facilities because just thinking about Torah is then prohibited.

Biblical verses (in Hebrew) or parts of verses in any form, even those that do not contain G-d's name, such as the popular necklace inscribed with the words⁹¹ "If I forget thee O Jerusalem ..." (*Psalms* 137:5) may not be brought into a *beit ha'kisay* unless properly covered.⁹² Therefore, it should

89. *Mishnah Berurah*, 40:4.

90. A case could be made for being stringent since the cover and the pages are all part of one unit and are not separate, distinct items.

91. Having such a necklace even not in the bathroom may also be a problem. *Taz*, YD 283:3 and *Aruch Hashulchan* 283:13 maintain that it is a problem to write biblical verses on non-holy objects.

92. *Tzitz Eliezer* 16:30 based on YD 282:6 and 283:4. cf. *GRA*, YD 283:5.

not be worn uncovered while one is using the facilities or showering in a washroom or bathroom. Wearing it in a clean empty bathroom may not be a problem if the room is deemed a middle room of a *beit ha'merchatz*. However, to avoid having to remove these trinkets every time one uses the facilities, their wearing should be discouraged.

Secular magazines (such as Reader's Digest) that sometimes contain an English translation of a biblical verse can also present a problem, even if the isolated word "G-d" is not a problem.⁹³ This is based on the *Gilyon Maharsha* (YD 283:4), who cites a number of sources who maintain that the translation of a verse may not be brought into a *beit ha'kisay*.

Mezuzah

The Gemara in *Yoma* excludes⁹⁴ a *beit ha'kisay* and *beit ha'merchatz* from the mitzvah of *mezuzah*, based on the halacha that a *mezuzah* is only affixed in a place that is designated for dignified purposes. This exclusion is not specific to a *beit ha'kisay* and *beit ha'merchatz*, nor is it immutably applied to them; rather it requires a current objective assessment that a particular room is not dignified.⁹⁵

93. Since most authorities agree with this, it also explains why it is not a problem to bring US currency containing the phrase "In God we trust" into a bathroom. See however: *Shach*, YD 179:11; *Pitchei Teshuva*, YD 276:10-12; and *Shut Achiezer* 3:32.

94. There are really three levels of requirement with regard to *mezuzah*: obligation, (applies to most rooms in a house); exempt but permitted, (such as a synagogue); and exempt and prohibited, (such as a *beit ha'kisay*) (*Chovat Ha'dar*, Chap. 2, footnote 33 and 46). In this paper, "excludes" refers to this final category.

95. For a discussion of what removes the label of *dirat kavod* – dwelling of honor – see the explanation of *Piskei Uziel*, *She'elot*

The Gemara and *Shulchan Aruch* include other rooms in this category, such as a tannery and a *mikvah*. The inclusion of a tannery was due to the odor caused by the use of dog excrement in the tanning process in ancient times. Today, when dog excrement is no longer used, if the tannery does not have a vile odor, there are *acharonim* who maintain that it would require a *mezuzah*.⁹⁶ There are other rooms not included in the original talmudic list, that contemporary authorities have ruled are exempt from *mezuzah*. These include a room used exclusively for washing clothes⁹⁷ and a slaughter house, even one used only for fowl.⁹⁸

On the other hand, there are rooms that one might have thought were exempt but in fact are not. These include a room where women wash themselves while undressed (*Taz*, YD 286:5) and a bedroom where marital relations take place.⁹⁹ In addition, a room that has been used as a *beit ha'kisay*, though not specifically designated as such, and is subsequently cleaned out (*Da'at Kedoshim* 286:10), and even an actual *beit ha'merchatz* or *beit ha'kisay* that was transformed into

Ha'zman:30 of *Tur*, YD 286. The mere fact that a bathroom is now located in the house and used for "dwelling" may qualify it as not lacking in dignity in this regard and give it the quality of *dirat kavod*.

96. *Emek Halacha* OC 30. cf the *Chayei Adam* and others cited in *The Complete Mezuzah Guide* by R. Moshe Elefant and R. Eliezar Weinbaum, Fink Graphics, 5:15, p.55.

97. See *Kuntros Mezuzah*, 286 10, *Beirurei Halacha* p. 173.

98. See *Mezuzat Melachim* s.k. 147.

99. Although possibly affixed without a *beracha*. See YD 286:2; *Mikdash Me'at* s.k. 13 and 14; and *Chovat Ha'dar* 2:12 and note 44. In these two cases it is required that the *mezuzah* be covered with a non-transparent cover and/or be affixed on the outside of the door.

a dwelling room, require a *mezuzah*.¹⁰⁰

It is clear from the above that the overriding concern with regard to a *mezuzah* is totally different from that which governs *davening*, etc. in a bathroom, i.e., that of "your camp shall be holy".¹⁰¹ A *mezuzah* is certainly permitted, and often required, even if men and/or women will use that room while unclothed. In that case it is simply required that the *mezuzah* be properly encased. Rather, the exemption from *mezuzah* applies to rooms in which undignified activity takes place.¹⁰²

To determine whether modern bathrooms are permitted to have, or may even require, a *mezuzah*, it is not only necessary to evaluate their cleanliness, but also whether or

100. *Pitchai Teshuva siman 286 s.k. 6.*

101. The Gemara in *Yoma 11a* does cite the problem of *Zuhama* – uncleanness – in its discussion of which rooms are exempt from *mezuzah*. However, the conclusion relies solely on the textual reference that exempts undignified rooms. The *Shulchan Aruch* YD 286:4 actually quotes this reason when stating that a *beit ha'merchatz*, *beit ha'kisay*, tannery, and *mikvah* are exempt from *mezuzah*. The Meiri on that Gemara states that there are four or possibly five conditions that a room must satisfy to require a *mezuzah*. One of the requirements is that its purpose not be an undignified one. Conspicuously absent from the list is anything relating to *zuhama* or nakedness.

102. It seems to this author that there may be a question whether a doctor's examining room, particularly such specialties such as OB/GYN and proctology should have a *mezuzah*. Those rooms are designed for people to be undressed and in undignified positions and be subjected to undignified treatment. In addition, they are not used as dwelling rooms. I have not seen this discussed anywhere, but those *poskim* I have discussed it with have concurred. *Chovat ha'Dar* 2:12 also seems to imply this; cf Rav Yonah Metzger, *Mi'yam haHalacha* 4:14 who requires a *mezuzah* on an operating room.

not they are considered "honorable" rooms. In modern America it would seem that some bathrooms may very well be considered "honorable" rooms. Quality hotels invest as much money and glitter in the bathroom as in the suite. In many private homes as well, the bathroom is treated as a room like any other with respect to pride in its decor and interior design. In talmudic times one would not include the outhouse in a tour of the premises, but today many people would include the bathroom. The *Da'at K'doshim* (YD 286:10) required only that the excrement always be covered with dirt to transform the status of the room and qualify it for a *mezuzah*. The *Mezuzat Melachim* (s.k. 147) makes the logical extension and maintains that any bathroom with modern plumbing should require a *mezuzah*. *Mikdash Me'at* concedes that this logic has some validity, but finds it puzzling since the original exclusion was not related to *tzo'ah* but to the undignified function for which the room was used.¹⁰³ Our custom currently is to not place a *mezuzah* on a bathroom, and *Mikdash Me'at* concludes we should not deviate from this custom. It seems also that the custom is not to put a *mezuzah* on a washroom, but to place one on a laundry room.¹⁰⁴

Shabbat

There are a number of questions that arise with respect to Shabbat and the modern bathroom. The first, and potentially most significant, is the question whether pouring water down a drain or flushing the toilet is permissible on

103. See *Chovat ha'Dar*, chap. 2, footnote 35.

104. With regard to a laundry room there may be a difference whether or not it is used for dirty diapers and the like and therefore has a foul odor. In such a case a *mezuzah* would not be affixed.

Shabbat since these acts cause water and its contents to flow from a private domain (*reshut ha'yachid*) to another private domain through a *carmilit* (neutral; non-private, non-public domain) via pipes. Similarly, turning on the faucet or flushing the toilet causes water to flow into the private domain through pipes.

The question of acquiring and disposing of water on Shabbat has existed in all time periods, and the Talmud, particularly in the eighth chapter of *Eruvin*, devotes considerable discussion to the topic. In summing up the laws derived from these sources, the *Aruch HaShulchan* (OC 357:8) states:

And in big cities in our time [late 19th century] that have pipes under the ground that go from a river outside the city to every house and courtyard... it is obvious that there is absolutely no problem. Since the pipes are far underground and wide [hence a private domain], [the water] is going from a private domain to another private domain by indirect action, and then to the river, and there it is his [the person's] power [*koach*] acting in a *carmilit*, and it is permitted.¹⁰⁵

Miscellaneous

An interesting question raised in *Iggerot Moshe* (YD 2:97) concerns the permissibility of even having bathrooms and washrooms in the house. Rav Yehuda he'Chassid in his final directive (*tza'va'ah*) stated that one should not put a *beit ha'merchatz* in one's house.¹⁰⁶ Rav Moshe Feinstein

105. See also *Minchat Yitzchak* 5:75 and 6:29 (second to last paragraph) who discusses the issue of flushing a toilet on *Shabbat* and concludes that it is not a problem.

106. Interestingly, the Jerusalem Talmud, *Pesachim* 7:12, makes

discusses whether this prohibition applies to a *mikvah* and to a modern bathroom. He concludes that it does not, and that it is not contrary to the *tza'va'ah* to have modern bathrooms and/or washrooms in every house.

An issue that comes up frequently in shuls is the problem of wearing a *tallit gadol* into a bathroom. This issue is discussed in the context of wearing a *kittel* into a *beit ha'kisay*. The *Mishnah Berurah* (610:18) rules that since the *kittel*, like a *tallit*, is a garment designated for prayer,¹⁰⁷ one should not enter a *beit ha'kisay* wearing it. However, one is permitted to urinate (not in a permanent *beit ha'kisay*¹⁰⁸) while wearing it. The *Mateh Efrayim* (610:12) is more lenient and rules that one may enter even a permanent *beit ha'kisay* while wearing a *kittel* if it is only to urinate, and *Hayei Adam* (11:37) and *Elef laMagen* (s.k. 18) extend this leniency to a *tallit*. The *Shach* (YD 283:6) and the *Taz*¹⁰⁹ both seem to have no problem with wearing even a *tallit gadol* into a *beit ha'kisay*. With respect to a *tallit kattan* (i.e., *tzitzit*) it would seem that there is no problem wearing a *tallit kattan* and little problem wearing a *kittel* or *tallit gadol* in a clean bathroom and even while urinating, since there are many who permit this even in a permanent (pre-plumbing) *beit ha'kisay*. However, if one can be stringent, it seems that it would be consistent with the dignity due these articles of clothing that

it clear that there would be nothing wrong with putting a *beit ha'kisay* in a consecrated area of the *Beit Hamikdash*.

107. Based on the *Taz*, O.H. 610:21.

108. This is my reading of the *Mishnah Berurah*. The *Kaf ha'Chaim* (610:37) understands the *Mishnah Berurah* to be saying the same thing as the *Mateh Efrayim*, cited next.

109. YD 283:3. However, the *Taz* in *Orach Chaim* 21:3 does not prohibit it, but simply advises that it is not proper, implying that initially one should not enter with a *tallit*, but that, in fact, it is not strictly forbidden.

are designated for prayer not to wear them in a bathroom.

The issue of bringing Jewish texts into a *beit ha'kisay* and bathroom was discussed above. A less problematic issue is that of "Jewish tapes", even those containing blessings with G-d's name. It is certainly forbidden to play such tapes or CDs in an "unclean place" because that would lead to thinking Torah thoughts.¹¹⁰ Carrying such tapes, even unwrapped, in an "unclean" place does not present a problem. G-d's name that is produced when they are played is not in actuality written on them.

Conclusions

1) Halachic issues with regard to a modern bathroom and/or washroom include their potential classification as a *beit ha'kisay* or a *beit ha'merchatz* and that they might have a *ruach ra*.

2) There are reasons to be more lenient with a modern bathroom and washroom than a *beit ha'kisay* or a *beit ha'merchatz*.

3) Modern bathrooms and washrooms do not contain the same kind of *ruach ra* as a traditional *beit ha'kisay* and *beit ha'merchatz* and, therefore, do not require one to wash one's hands merely because one entered there; nevertheless, a conscientious person should be stringent after leaving a bathroom. However, if one used the facilities, showered, bathed or immersed in a *mikvah*, a handwashing is required.

4) According to many opinions if the room is in a clean state it is permitted to perform all ritual washings in a *washroom*. Most authorities permit washing for *davening*,

110. *Iggerot Moshe*, YD 1:173 and YD 2:142.

and many authorities permit all ritual washings, in a *bathroom*. Some of the most prominent *poskim* of our time, however, are equivocal about washing in a bathroom for the purpose of eating and other ritual purposes.

According to all opinions, if there is a foul odor in the bathroom, or if the toilet is not fully clean all halachot relating to *tzo'ah* and foul odor would apply.

5) The current practice is to not place a *mezuzah* on a modern bathroom or washroom.

6) A separate room abutting a bathroom and containing only a sink does not fall into any of the above-discussed categories.

All of these laws point to a clear halachic advantage of the Israeli/European arrangement of having a separate bathroom/washroom/sinkroom.

Finally, although it is debated in the *Yerushalmi*,¹¹¹ the halacha is clear that, alas, this article can also not be read in a *beit ha'kisay* or a room with *tzo'ah* since the *Ramo*¹¹² has ruled that the "laws of the bathroom" are no different than any other halachot and should not be studied wherever other Torah thoughts are prohibited.

111. *Yerushalmi, Shabbat* 3:3. See *Gra OC* 85:6 and commentators to *B. Shabbat* 40a.

112. *OC* 85:2. This is based on *Ran, Shabbat* 40b, who cites the *Ramban* who maintains that the *Bavli* disagrees with the *Yerushalmi* on this issue.

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