

The Torah forbids eating and drinking on Yom Kippur, and punishes one who does so with Karet. The source is clear. The Gemara Yoma 74b establishes the Pasuk “Taanu et Nafshotachem” to be in reference to eating and drinking. This leaves the source for the other four Enuyim: anointing, washing, wearing leather shoes and sexual relations, unknown. What is their status; also Asur Deorayta or maybe just Dirabanan?

There are two Gemarot that seem to offer Biblical sources for the other four Enuyim. Firstly, the Gemara (Yoma 74a) based on the Pasuk of “Shabaton” Darshens “Shabaton Shvut” to include the other four Enuyim. Secondly, a different Gemara (Yoma 76a), says that the Torah uses the word “Enuy<sup>1</sup>” five times correlating to the five Enuyim. Since only one Makor for these Enuyim is needed and, seemingly, either Gemara alone would suffice as a Makor, the Rishonim, therefore, debate which Gemara is the authentic, Deorayta source and which is merely an Asmachta.

The Riff 1a seems to accept the Gemara Yoma 76a as the actual source. He quotes the Mishneh and immediately after, the five Pesukim in the Torah using the word “Enuy.” Only after quoting the Drasha, does he return to the other Gemarot that appear before the five Enuyim Drasha. The Riff places this Drasha first because he believes it to be the Biblical source. He doesn’t at all mention the Drasha “Shabbaton Shvut,” but one can assume it is an Asmachta B’Alma.<sup>2</sup>

The Ran (Dapay HaRiff 1a), on the other hand, adopts “Shabaton Shvut” as the source for their Biblical origin. The Ran goes on to explain that Chazal were told to interpret Shabbat Shabaton to mean what they wanted it to<sup>3 4</sup>. The Ran argues this is the Rambam’s opinion as well<sup>5</sup>. Presumably they believe the “Enuy” Drashot are nothing more than Asmachtot.

There is one last camp of Rishonim who do not learn either Gemara to be the four Enuyim’s Biblical source. Tosfot, Tosfot Yishunim, as well as others<sup>6</sup>, believe that they are merely Dirabanan. Both aforementioned Gemaras are Asmachtot and the four Enuyim are prohibited on a Dirabanan level only. These Rishonim prove their point from the fact that the Mishneh quotes exceptions for the four Enuyim. If they were indeed Biblical in their origin, there would be no room for exceptions<sup>7</sup>.

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<sup>1</sup> Vayikra 16:29, 16:31, 23:27, 23:32, Bamidbar 29:7

<sup>2</sup> The Minchat Bekurim seems to accept this as a correct interpretation of the Tosefta Yomo 4:1.

<sup>3</sup> Classically, Chazal have the ability to uncover what the Torah had intended. Here they have the freedom to define what the Torah wanted. What triggered the Ran to say this is that there are exceptions to the four Enuyim mentioned in the Mishneh. A Melech and Kalah can wash their faces, and a Chayah can wear leather shoes. If the four Enuyim were Asur M’Deorayta, there would be no room for exceptions (this exact question caused Tosfot and Tosfot Yishunim to claim they are Asur Dirabanan, as mentioned above). Because Chazal had the ability to create the Halacha and not just interpret it, exceptions may be found.

<sup>4</sup> The Meshech Chachma (Vayikra 16:31) explains the pronoun is “Hu” is used (16:31) not “Hee” (23:32). The significance is that the object that is given to “you” (Lachem) masculine and therefore not referring to Shabbat itself. What is given to “you” (Lachem) is the ability to interpret the Pasuk and define Enuy.

<sup>5</sup> The Bach (611:2) may argue that the other four Enuyim are learned from a Halacha L’Moshe M’Sinai.

<sup>6</sup> Tosfot Rosh, the Rosh, the Ritva, Tosfot in Niddah and Tosfot in Nedarim.

<sup>7</sup> The Rishonim who disagree, and say the other four Enuyim are Deorayta, can argue one of the following two arguments. Either they can reject the principle. Just because the four Enuyim are Deorayta does not prevent exceptions. There can be exceptions on Deorayta Enuyim. However, the majority does indeed accept this principle and respond to the proof differently. Firstly, the Ran (as mentioned before in footnote number 3) argues Chazal have a unique power to create the Halacha here and not just interpret it. Once Chazal have that power they can make exceptions as they please. Secondly, others argue that R’ Elizar and the Chochomim argue about this point specifically. R’ Elizar who allows for the exceptions believes

The major question that needs to be answered is what caused the Rishonim to favor one Pasuk over the other, or in the case of Tosfot and Tosfot Yishunim, not to allow either Pasuk to serve as a Deorayta source? In other words, what's behind this Machloket Rishonim?

Many Rishonim may reject the Riff's "Enoy" Drasha, for it shouldn't lead to such a distinction between eating and drinking on one hand and the other Enuyim on the other. If all five Enuyim were learned from the word Enuy, then all would carry of punishment of Karet, yet only eating and drinking do.

Some suggest a two model approach of "Enoy," eating and drinking being one and the other four being the other. Presumably the Riff would accept this. Other still might not because they are still strongly, conceptually linked. The Rishonim who reject the Riff's opinion, believe that eating and drinking aren't similar to the other Enuyim with a more severe punishment. They are completely different in nature from eating and drinking. They are so different that the word "Enuy" can't properly describe both, and if the Gemara seems to present a Drasha that it does, one can be sure it is an Asmachta only.

The Riff would accept the notion that eating and drinking aren't qualitatively different for the other Enuyim, they are just quantitatively worse. The Machloket regarding whether the "Enoy" Drasha can serve as the source would depend on the relationship between eating and drinking, on one hand, and the other four Enuyim, on the other. The Riff would accept the two types of "Enoy" model, while the others would disagree.

The Ran, who believes that eating and drinking are significantly different from the other Enuyim has two separate Pesukim serving as two separate Mekorot. "Enoy" teaches the prohibition to eat and drink, while "Shabaton Shvut," teaches other forbidden acts on Yom Kippur.

One question still remains, why didn't Tosfot and Tosfot Yishunim accept the Ran? They may have disagreed with the Riff, because they too saw eating and drinking as intrinsically different from the other Enuyim, yet why not accept "Shabaton Shvut"<sup>9</sup>? What is behind the Machloket between the Ran and Rambam and the Baalay Tosfot?

The Gemara Yoma 67a may shed light on this issue. It explains that although the Ish HaEti (the man who's job it was to throw the Seir L'Azazel off the cliff<sup>10</sup>) was offered water and food, he would never accept. The Rishonim grapple with how offering the Ish HaEti food was permissible on Yom Kippur? The Tosfot Yishunim (Yoma 68a) explains that because of a Safek Pikuach Nefesh, food was offered. Yet, since the

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the other four Enuyim are Dirabanan. This suggestion is mentioned by the Tosfot Yishunim, although not accepted by him in the end. A third group of Rishonim, led by Tosfot Yishunim, argue that the Isur Deorayta of Rechetza is to wash the whole body and not just one's arms. Wearing leather sandals also are Isur Dirabanan only. It's only leather shoes that are Deorayta. The exceptions are now for Isurya Dirabanan.

<sup>8</sup> Tosfot Yishunim (73b) alludes to these categories and even labels them Enoy with and without "Ibud Nishama." The Shiltay Giborim identifies these two groups as well.

<sup>9</sup> The Riff and Ran may reject each other's Drashot based on their positions about how eating and drinking relate to the other Enuyim. However, no one can accept both rejections, based upon the reasoning offered above. Since, Tosfot and Tosfot Yishunim reject both sources; there must be a different reason as to why they rejected one of the sources.

<sup>10</sup> Although, according to Halacha, this can be done by anyone, the Kohen Gadol always did it. (Rambam 3:7)

situation never became that severe enough to be considered a real Safek Pikuach Nefesh, the Ish HaEti never accepted the food. If there would have been a dire situation, the Ish HaEti would have taken the food and eaten it. The Heter to eat would have been based upon Pekuach Nefesh or Safek Pekuach Nefesh.

The Rambam, Avodat Yom HaKippurim (3:7), allows one to eat when he “is weak and needs to eat.” This Heter is clearly is not rooted in Pekuach Nefesh, yet there is no alternative source allowing for the Ish HaEti to eat. Where does the Heter of eating when one is weak come from?

Rav Chayim Soloveitchik argued that one can eat when physically can not continue performing the sending of the Seir L’Azazel. That’s what the Rambam means by saying “one is weak and needs to eat.”

Rav Chayim further explains that the Rambam doesn’t need an additional source to allow the Ish HaEti to eat<sup>11</sup>. Once the Isur Melacha falls away, automatically the Isur Achila does as well. The Heter for the Ish HaEti to do Melacha covers the Heter eating as well. The reason is that Yom Kippur is not comprised of two independent Kedushayot HaYom, one being the Isur of Achela and one the Isur of Enuy. Rather, Yom Kippur has one Kedushat HaYom that creates a Kedusha prohibiting both eating as well as doing Melacha. It follows that once the Torah allowed for a Heter Melacha to accomplish throwing the Seir L’Azazel, automatically, there is a Heter Achela to accomplish the same task.

This may be the exact point that triggered the Tosfot Yishunim to disagree. Tosfot Yishunim believes there are two layers to Yom Kippur; one that creates an Isur Melacha and the other that creates an Isur of eating and drinking. Just because the Ish HaEti has a Heter to do Melacha by no means gives him a Heter to eat or drink. The only possibility for a Heter left is to employ Pikuach Nefesh.

A potential Nafka Minah can be found based upon a theory the Beit HaLevi develops according to the Rambam (Gerushin 3:19) and the Ramah (Even HaEzer 123:5). They both state that one who writes a Get on Shabbat or Yom Kippur, as well as the witnesses who sign it on Shabbat or Yom Kippur are all Mumrim. Because the witnesses are Mumrim, the divorce can not take place. The Beit HaLevi explains that doing Melacha on Yom Kippur categorizes one as a Mumer just as violating Shabbat does. After all, Yom Kippur is also called Shabbat<sup>12</sup>.

Rav Moshe Soloveitchik questioned whether violating the Isur Enuy on Yom Kippur would label someone as a Mumer. Seemingly, the answer should depend on whether Yom Kippur has one intergraded Kedusha or two independent Kedushayot. Assuming Yom Kippur has two individual Kedushayot, one can be classified as a Mumer for violating Melacha but not for the Enuyim. Each aspect of Yom Kippur, the Isur Enuy and the Isur Melacha, are different and one can not carry the Mumer status over from Isur Melacha to Isur Enuy. However, if there is one integrated Kedusha on Yom Kippur, violating the Isur Enuy is essentially the same as violating the Isur Melacha. One becomes a Mumer for violating Melacha, so too one becomes a Mumer for transgressing the Enuy prohibition.

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<sup>11</sup> The source to send the Seir is quoted in Gemara Pesachim (66a).

<sup>12</sup> Rav Soloveitchik quoted by the Hariray Kedem points to a problem with the Beit HaLevi. The Rambam (Shabbat 30:15) seems to indicate that only one who violates Shabbat becomes a Mumer. Violating Yom Kippur via a Melacha doesn’t seem to carry with it the title Mumer.

A second Nafka Minah was suggested by Rav Soloveitchik<sup>13</sup> according to the opinion that Shabbat, or Yom Kippur can be violated for Machsheray Mitzvah. The case is where a Mohel needs to eat to gather the strength to perform a Brit Milah. Whether or not that is permissible on Yom Kippur depends on this issue. Assuming Yom Kippur has two disconnected Kedushot HaYom, there is no room for such a Heter. The Heter is limited to breaking Melacha. It does not carry over to the Enuyim. But, if Yom Kippur has a one Kedusha, a synthesized Kedusha, one can assume that since there is a Heter for the Mohel to do necessary Melacha, there is a Heter to do necessary Enuyim.

This Machloket between the Rambam, according to Rav Chayim, and Tosfot Yishunim can be used to explain the Machloket regarding whether or not “Shabbaton Shvut” is the Makor of the four Enuyim. The Rambam can use the word Shabbaton, which connotes avoiding Melacha, to include the prohibition of eating and drinking. Because there is one Kedushat HaYom, making Melacha Asur can cover other Enuyim as well. According to Tosfot Yishunim, who believes that there are two different layers to Yom Kippur, the word “Shabbaton,” can only mean a Shavita from Melacha. “Shabbaton” can not be extended to describe the Enuyim. Any Drasha extending “Shabbaton” to the Enuyim can not be taken seriously. Tosfot Yishunim, therefore, assumes the Drasha to be an Asmachta<sup>14</sup>.

This understanding of the Rambam suggested by Rav Chayim is not universally accepted. The Magid Mishneh, as well as others<sup>15</sup>, seemingly disagrees regarding the Rambam’s position. The Magid Mishneh establishes his opinion based on a textual nuance regarding Tosefet Yom Kippur. The Rambam writes that one should start fasting early and finish late, due to Tosefet Yom Kippur. The Rambam mentions only the aspects that relate to Enuy in regards to Tosefet<sup>16</sup>. There is no mention of any avoidance of Melacha during the Tosefet Yom Kippur period<sup>17</sup>. This assumes there are indeed two independent Kedushayot HaYom. The one that Asurs Melacha has no Tosefet, while the one that creates an Isur Enuy has Tosefet<sup>18</sup>.

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<sup>13</sup> Hariray Kedem, Siman 47.

<sup>14</sup> The Tosfot Yishunim, while discussing both Drashot, seems to dismiss quickly the “Shabbaton Shvut,” while giving serious thought to the “Enuy” Drasha. This further supports the notion that “Shabbaton Shvut” could not have been taken seriously by Tosfot Yishunim.

<sup>15</sup> Pney Yihoshua, Rosh Hashana 9a, and Kesef Mishneh.

<sup>16</sup> The Rambam in Parush L’Mishnayot Taanit (4:6) extends Tosefet HaYom to Tisha B’av. This further proves the Rambam thinks Tosefet HaYom relates to the Enuy element only. It should be noted that the Rambam does not make this point about Tisha B’av in the Mishneh Torah.

<sup>17</sup> Although the Magid Mishneh himself doesn’t point to the Pasuk, it supports his thesis because it deals with Enuy only. The Pasuk states “V’Enetem et Nafshotachem”

<sup>18</sup> According to the Magid Mishneh, the only Tosefet HaYom the Rambam accepts is Tosefet Yom Kippur for Enuy. There is no Tosefet for Isur Melacha. L’Shitato, the Magid Mishneh believes the Rambam rejects the notion of Tosefet Shabat Deorayta. The Kesef Mishneh (Shabbat 5:3) agrees that Tosefet is for Enuy only argues further (in the Beit Yosef 261 too) that the Rambam rejects completely the notion of Tosefet Shabbat for Melacha, even on a Dirabanan level. If the Rambam would have accepted Tosefet Shabbat or Yom Tov on a Dirabanan level, he would have had to mention it. The Magid Mishneh (Hilchot Chanukah 4:13) quotes the Bahag that L’Halacha one should light Nayrot Chanukah before Nayrot Shabbat. He explains that once the Nayrot Shabbat have been lighted, Melacha is Asur, and Nayrot Chanukah can no longer be lighted. The Rambam and Rashba disagree, arguing that lighting Nayrot Shabbat does not automatically trigger an Isur Melacha. Nayrot Shabbat are lit first because they are more Tadir (frequent). The Rambam would follow this approach of the Rambam and Rashba being that there is no Tosefet Shabbat, and there can be no early Isur Melacha.

Before explaining how Rav Chayim will explain the Rambam in Shevetat Esur, and how the Magid Mishneh will explain the Rambam in Avodat Yom HaKippurim, it pays to look at one more Rambam first. The Rambam in Shevetat Esur (1:5) introduces the four other Enuyim, quotes the Drasha “Shabbat Shabaton” and then explains it. There are, however, two Gersa of the Rambam’s explanation. One Gersa states “Shabbat for Achila and Shabaton for these (other four Enuyim).” The Gersa states “Shabbat for Melacha and Shabaton for these (other four Enuyim).”

This Machloket between Gersaot might depend on the exact issue Rav Chayim and the Magid Mishneh debate. The Gersa that has the word Melacha seems to connect the refraining from Melacha to the refraining from the four Enuyim. This sounds similar to Rav Chayim. The Gersa with the word Achela, avoids connecting Melacha to any form of Enuy. This is because they are two totally separate dimensions to Yom Kippur, in junction with the Magid Mishneh’s approach.

How would Rav Chayim explain the Rambam in Shevetat Esur? The Rambam there seems to indicate Tosefet Yom Kippur exists for Enuy only. Doesn’t this prove that there are two independent Kedushayot HaYom?

One can defend Rav Chayim by rejecting the Magid Mishneh’s Diyuk. The Rambam may have mentioned the Enuy by chance. One shouldn’t place too much emphasis on this textual point. The upshot would be that even according to the Rambam the Tosefet Yom Kippur contains an Isur Melacha.

There is another way to shield Rav Chayim from the Dikuy made by the Magid Mishneh. Being that the Magid Mishneh’s proof came from Tosefet Yom Kippur, conceivably it stand to reason that there is a difference Yom Kippur itself and Tosefet Yom Kippur. Meaning, the two Kedushayot of Yom Kippur may be synthesized during the actual day itself, which is the position stated by Rav Chayim. Yet during Tosefet Yom Kippur they are disconnected. In order to make such a claim, and distinguish between Yom Kippur and Tosefet Yom Kippur, Tosefet Yom Kippur in general, as well as its specific relationship to Yom Kippur, needs to be investigated thoroughly.

Tosfot in Pesachim 99b, in dealing with the Halacha that Matzah should not be eaten until after Tzet HaKochavim he quotes a Machloket why this is true. The first opinion, that of the R”I M’Korbeal, argues that it is a specific Halacha limited to Matzah based on a Gezarat HaKatuv<sup>19</sup>. The second opinion, Rabaynu Yehudah, argues that no Yom Tov Mitzvot can be done until after Tzet HaKochavim. There is need to mention it specifically regarding Matzah. One might have otherwise allowed Matzah to be eaten early, in trying to accomplish a bond between the Karban Pesach, which was done during the day and Matzah.

The major difference between these two approaches is whether other Mitzvot, beside Matzah, can be performed before Tzet HaKochavim. The R”I M’Korbeal’s reasoning seems limited to Matzah specifically. He would, intern, allow for other Mitzvot to be performed at this time. The Rabaynu Yehudah’s logic, on the other hand, extends to all Mitzvot.

This Machloket when further explained may strike at the heart of what Tosefet HaYom is. The R”I M’Korbeal may understand Tosefet HaYom, Yom Tov in this case, as a real extension of the day. There is an expanded period of Kedushat Yom Tov. Because it’s really Yom Tov, one can perform the Mitzvot of the day.

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<sup>19</sup> V’Achaltem et HaBaser B’Laylah HaZeh

The Rabaynu Yehudah thinks that Tosefet Yom Tov is not an extension of the day. Rather, it has an Isur Melacha without a Kedushat HaYom. It's a Chumrah to prevent Chillul Yom Tov. It's basically a buffer zone. Being that it's not Halachikly Yom Tov, no Mitzvot can be done then.

The R'I M'Korbeal quotes the Gemara Brachot 27a as a proof to his opinion. It says that on Friday afternoon, Erev Shabbat, one can daven Maariv and make Kiddush. Presumably, the time period being discussed is Tosefet Yom Tov. By the fact that Kiddush can be made indicates that Tosefet Shabbat is an extension of Shabbat. Tosfot Rosh (Brachot 27a) concludes not only that Tosefet Shabbat is authentic Shabbat, but that Tosefet Shabbat must be Deorayta.

How would the Rabaynu Yehudah respond? Maybe one can disconnect Tefilla from Shabbat, arguing coincidentally the Tefilla falls on the night of Shabbat, and it isn't inherently linked to the day itself. Just like on other days Maariv can be pushed a little earlier, so too on Friday, Maariv can be pushed up. That may be true, but can anyone say the same about Kiddush? Isn't Kiddush fundamentally rooted in the day of and Kedusha of Shabbat? How can one make Kiddush before Shabbat begins? This question is even more difficult according to the Kesef Mishneh<sup>20</sup> 's understanding of the Rambam which doesn't accept Tosefet Shabbat at all<sup>21</sup>?

The answer to this question might depend on the nature of Kiddush. Once it is known what Kiddush aims to accomplish, it can be determined why it is allowed to be done even before Shabbat begins.

The Gemara Brachot 20a obligates women in the Mitzvah of Kiddush. Even though, classically, women are Paturot from Mitzvot Asay She-Ha-Z'Man Grama, Kiddush is an exception because of a link from "Shamor" to "Zachor." There is a principle called "Kol She-Yeish-nu B'Shamor, Yeish-nu B'Zachor," whoever is Chayuv in Shamor is also Chayuv in Zachor.

R' Akiva Ager offers two different understandings to the Gemara's linkage from "Shamor" to "Zachor". The simple understanding of this Gemara obligates all women to all the Mitzvot Asay of Shabbat. Since they are Chayuvot in the prohibitions, i.e. the Melachot, they are Chayuvot in the positive commandments as well. The second possibility is that women who are Chayavot in the Lo Tasay, are obligated in the Mitzvah of Zachor, or in other words Kiddush, being that Kiddush is learned from the word Zachor. This possibility obligates women in Kiddush only. They remain Paturot in other Mitzvot relating to Shabbat, based on the aforementioned principle, Mitzvot Asay She-Ha-Z'Man Grama.

Before explaining the logic for each version R' Akiva Ager suggested, it pays to develop some Nafka Minot. These two different readings of the Gemara may explain a Machloket between the Rabaynu Tam and Ran (Ran in Shabbat Dapay HaRiff 44a) as to why women are Chayavot in eating three meals on Shabbat. Rabaynu Tam suggests their Chayuv stems out of "Af Hayn Ha-you B'oto HaNeis." They too benefited from the

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<sup>20</sup> The Kesef Mishneh's position is dealt with in footnote 18.

<sup>21</sup> The Gemara Brachot also allows one to daven Maariv, and make Havdalah early on Shabbat afternoon. Allowing Havdalah to be made early clearly do not stem from Tosefet Shabbat. One must suggest it is a Mitzvah Dirabanan and was allowed to be early during desperate situations. Tosfot Rosh explicitly states it was allowed early in these explicitly situations. It is noteworthy to point out that there is a large Machloket Rishonim regarding whether Havdalah is Deorayta or Dirabanan (Beit Yosef 296).

miracle of the Man. The Ran thinks there is a more local Chayuv, that of “Kol She-Yeish-nu B’Shamor, Yeish-nu B’Zachor.” Since people who are Asur in the negative Mitzvot are Chayuv in the positive Mitzvot, women are Chayavot in eating the three meals. One doesn’t need to deal with “Af Hayn Ha-you B’Oto HaNeis.”

Rabaynu Tam may accept R’ Akiva Ager’s second approach limiting “Kol She-Yeish-nu B’Shamor, Yeish-nu B’Zachor” to Kiddush only. Now the only source to obligate women in the three meals on Shabbat is “Af Hayn Ha-you B’Oto HaNeis.”<sup>22</sup>

Another possible application of R’ Akiva Ager’s Chakira might explain the Machloket regarding women’s obligation in Havdalah. If R’ Akiva Ager’s first read of the Gemara is correct, and “Kal She-Yeish-nu B’Shamor, Yeish-nu B’Zachor” extends to all Shabbat Mitzvot, it’ll include Havdalah. Women in turn would be Chayavot in Havdalah. On the other hand, if R’ Akiva Ager’s second approach is correct, “Kal She-Yeish-nu B’Shamor, Yeish-nu B’Zachor” is limited to Kiddush. Women would not be Chayuv in Havdalah<sup>23</sup>. Regarding whether women are indeed Chayavot in Havdalah is a Machloket in Shulchan Aruch (Orach Chaim 296:8)<sup>24</sup>.

The logic for the first possible read R’ Akiva Ager suggested is self evident. Kedushot Shabbat can not be divided. When there is a Chayuv for the Lo Tasay, that means it’s Shabbat. Once it’s Shabbat, all the positive Mitzvot are mandatory. The question now becomes, what’s the reason for R’ Akiva Ager’s second read of the Gemara Brachot 20a? Why should Kiddush the Lo Tasay be more connected to Kiddush than any other Mitzvot?

Rav Soloveitchik answered that Kiddush doesn’t create the Kedushot HaYom of Shabbat. What Kiddush does is give meaning to the Lo Tasay of doing Melacha. The Shaveta done on Shabbat is not by chance. Avoiding Melacha is not circumstantial, and the Kiddush declares that.

If this is the case regarding Kiddush, one can defend Rabaynu Yehudah and the Rambam. Kiddush no longer has to be specifically on Shabbat. It merely, has to declare that the rest done on Shabbat is not arbitrary. This can be accomplished before Shabbat<sup>25</sup>.

This may explain why the Rambam (Shabbat 29:1) believes both Kiddush and Havdalah are Deorayta, and they can be both be pushed up to an earlier time; Kiddush to Friday afternoon, and Havdalah to Shabbat afternoon(Shabbat 29:11)<sup>26</sup>. The goal of both

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<sup>22</sup> Although Rabaynu Tam never explicitly limits the Zachor and Shamor connection to Kiddush, the Avudiraham indeed does. L’Shitato, he agrees that the reason they are Chayavot in eating three meals on Shabbat is Af Hayn.

<sup>23</sup> Alternatively, one can explain this Machloket Rishonim being about the nature of Havdalah. Whether it is a Shabbat Mitzvah or a Saturday night Mitzvah may explain the different opinions. Assuming it’s a Shabbat Mitzvah, “Kal She-Yeish-nu B’Shamor, Yeish-nu B’Zachor” would work. Women would be Chayavot. However, if it’s a Saturday night Mitzvah, there would be no source to obligate women.

<sup>24</sup> The Beit Yosef 296 quotes the Orchos Chayim and Rabaynu Yonah as the Rishonim who disagree regarding women’s Chayiv of Havdalah.

<sup>25</sup> One may argue further that it’s specifically the Isur Melacha that’s needed for Kiddush. Only during Tosefet Shabbat, because it has an Isur Melacha, can Kiddush be made. After all Kiddush declares that the Isur Shabbat directed towards Shabbat. This argument may be accepted by Rabaynu Yehudah, but not the Kesef’s Mishneh’s version of the Rambam. This version of the Rambam doesn’t recognize any Tosefet Shabbat at all.

<sup>26</sup> This is L’Shitato. In responding to why one can make Kiddush on Erev Shabbat, there are two possibilities. One is to assume Tosefet Shabbat is really Shabbat. Tosfot Rosh accepts this approach. The

Kiddush and Havdalah is to declare Shabbat to be holy and its Shavita meaningful, both when Shabbat arrives and when it departs.

This Chakira, whether Tosefet HaYom is a real extension of the day or merely a buffer zone, has several other Nakfa Minot. Tosfot in Ketubot 47a, in an effort to resolve a contradiction between the Gemara in Ketubot and Moad Katan 8b<sup>27</sup> regarding whether or not one can marry a woman on Yom Tov, offers two answers. The Gemara in Ketubot allowing for marriage isn't referring to Yom Tov proper. Marriage is not allowed then, as the Gemara in Moad Katan affirms. Rather it is referring to Tosefet Yom Tov. During this period, marriage is allowed.

The second resolution Tosfot offers is that the marriage actually can take place on Yom Tov, but there can be no Seudah. Without a Seudah, marriage is allowed on Yom Tov proper<sup>28</sup>.

One way of explaining this Machloket is by using the Chakira mentioned above. If Tosefet Yom Tov is merely a time period of Isur Melacha, there is no reason to assume marriage would be prohibited. There is no Kedushot Yom Tov. There is no Simcha. There is no reason to assume marriage would be Asur. Alternatively, if Tosefet Yom Tov is literally an extension of the day and contains the Simcha that the Yom Tov itself has, it stands to reason, that it would be Asur, just like Yom Tov itself.

Another possible Nafka Minah might be a Machloket between the MaHarshal and Taz regarding Shemini Atzeret. The MaHarshal demands one wait until after Tzet HaKochavim on Shemini Atzeret to make Kiddush. The reason not to make it during Tosefet Yom Tov, is out of a concern one would have to do it in a Sukah. The Taz (Orach Chaim 668) allows one to make Kiddush during Tosefet Yom Tov, because the day is now Halackhily Shemini Atzeret and no longer the 7<sup>th</sup> day of Sukkot.

The Taz clearly believes Tosefet Yom Tov is now fully Yom Tov, to the point where it is no longer the 7<sup>th</sup> day of Sukkot. There is no concern for one to sit in a Sukah. The MaHarshal, however, believes Tosefet Yom Tov does not transform Ever Yom into Yom Tov. It's merely a buffer zone, with an Isur Melacha. Now the concern that it's the 7<sup>th</sup> day of Sukkot and one should sit in a Sukah, makes sense.

This explanation of the Machloket between the Taz and MaHarshal manifests itself elsewhere. The MaHarshal does not allow one to eat a Seudat Shabbat or Seudat Yom Tov during the Tosefet periods, while the Taz (Orach Chaim 292:1) does. The Taz, who accepts Tosefet Shabbat or Yom Tov to be a genuine extension of the day allows for Seudat Shabbat and Yom Tov during this period. The MaHarshal, who thinks Tosefet Yom Tov is merely a time of Isur Melacha, would not allow one to eat a Seudah Shabbat or Seudat Yom Tov during this time period.

There is a discussion regarding whether or not Tosefet Shabbat and Tosefet Yom Tov are Mitzvot Deorayta or a Mitzvot Dirabanan<sup>29</sup>. The majority of Rishonim believe it

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other is to assume one doesn't need it to be Shabbat to make Kiddush. This is accepted by the Rambam. The difference may be whether one is forced into the position that Havdalah is Dirabanan. Tosfot Rosh is forced into this position, while the Rambam is not.

<sup>27</sup> The Gemara explains "V'Samachta B'Chagecha" to be and not "B'Ishticha." One should not get married on (Yom Tov or) Chol HaMoad, "Ain Marvin Simcha B'Simcha."

<sup>28</sup> Although there is still some Simcha, it's not enough to cause a conflict with the Simchat Yom Tov, and marriage is permitted.

<sup>29</sup> It is clear that Tosefet Yom Kippur is Deorayta.

is Deorayta<sup>30</sup>, yet that position is not accepted by all<sup>31</sup>. This too might depend on the nature of Tosefet Shabbat. Assuming Tosefet Shabbat is real extension of Shabbat, it stands to reason it is Deorayta<sup>32</sup>. Similarly, if Tosefet Shabbat is merely a time period where Melacha is Asur, it's probably a Rabbinic safeguard<sup>33</sup>.

In order to use this to defend Rav Chayim, one would need to assume that Tosefet Yom Tov and Yom Tov are not the exact same. The safety measure, called Tosefet HaYom, was oriented to prevent a mistake of Enuy only. No parallel protective measure was instituted to avoid doing Melacha<sup>34</sup>. Tosefet Yom Kippur prohibits Enuy but not Melacha<sup>35</sup>. The Rambam believes that Yom Kippur itself has one integrated Kedushat HaYom, yet Tosefet Yom Kippur does not.

How would the Magid Mishneh respond to the Rambam in Avodat Yom HaKippurim? And furthermore, how would the Magid Mishneh explain the Machloket between the Rambam and Tosfot Yishunim regarding whether Shabaton Shvut is an acceptable Makor Deorayta?

Seemingly the Magid Mishneh would have to dismiss that Diyuk that Rav Chayim made, and assume the Rambam is indeed talking about a case of Pekuach Nefesh.

The last issue that needs to be resolved is how the Magid Mishneh would explain the Machloket between the Rambam and Tosfot Yishunim. The way the Magid Mishneh understood Tosfot Yishunim's opinion remains the same as the way Rav Chayim understood it. The word "Shabaton" connotes refraining from Melacha and that can not be extended to Enuyim, for the Isur Melacha is a separate Kedushat HaYom than the Isur Enuy. How does he reinterpret the Rambam's position?

Being that the Magid Mishneh thinks the Rambam has two separate Kedushayot HaYom, he is forced to understand the Rambam disagreeing about the translation of the word "Shabaton." The Rambam may translate it as a generic refraining from something, not necessarily Melacha. The Machloket now one in Parshanut; what does "Shabaton" mean? The Rambam would argue it's a generic refraining from something. Tosfot Yishunim says refraining specifically from Melacha.

Before concluding, it pays to mention a small proof that the translation of the word "Shabaton" according to the Rambam, means refraining from things in general. In Shevetat Esur the Rambam says that there is a Mitzvah "L'shvut" from Achila V'Shetia. No Melacha is being dealt with in this context. "Shavita" clearly can be talking about refraining from eating and drinking.

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<sup>30</sup> This group includes the Rosh (Yoma 8:8), the Ra"ah (Brachot 27a), the Riff (Yoma 2b)

<sup>31</sup> In addition to the Kesef Mishneh's position that Rambam accepts Tosefet Shabbat with a Dirabanan status, is Rabaynu Tam q by the Ohr Zaruh (Hilchot Ever Shabbat 14). The Mordachi in Megilla 2:798 accepts this position as well.

<sup>32</sup> This is not irrefutable. An argument can be made that it is a Rabbinic extension of the day.

<sup>33</sup> Tosfot Ketubot 47a does believe Tosefet Shabbat is Deorayta and limits it to an Isur Melacha. There is precedence for having a Seyug work on a Deorayta level. Tosfot Pesachim 2a believes Baal Yirah and Baal YiMatzay are aimed at preventing the eating of Chomaytz.

<sup>34</sup> The reason for such a distinction may relate to the Karet aspect that Yom Kippur has. It may stem out of the fact that Yom Kippur, and really Isur Enuy, is only once a year.

<sup>35</sup> Once one suggests this distinction for Rav Chayim, one may suggest it too for the Magid Mishneh. In which case, all would agree to the Rambam's position. The Magid Mishneh is not forced into such a position. Being that many of the Achronim do indeed accept the Magid Mishneh's stance, and do not distinguish between Yom Kippur and Tosefet Yom Kippur, one can assume that it is a viable stance.