לב. עברין שעבר על גזירת הצבור, או שעבר עבירה [לתיאבון], נמנה למנין עשרה. [ש"ע סי"א. וכ"ה ברמ"א יו"ד סי' שלד ס"ב]. ואפילו עבר עבירה שחייבים עליה מיתה, מצטרף. והטעם מפני שכתוב לגבי חטאו של עכן "חָטָא יִשְׂרָאֵל" (יהושע ז, יא), ודרשו חז"ל (סנהדרין מד ע"א): אף על פי שחטא ישראל הוא. [משנ"ב ס"ק מז. וכ"ה ביחו"ד ח"ז סי' ט אות ג]

אבל אם עבר עבירה להכעיס אפילו בדבר אחד, דינו כגוי, ואינו מצטרף. [משנ"ב ס"ק מו].

לג. מומר לעבודה זרה או לחלל שבת בפרהסיא, דינו כגוי, ואינו מצטרף למנין, [אפילו כשעושה כן לתיאבון]. [משנ"ב שם]. ולכן אין לצרף למנין, מי שמחלל שבת בפרהסיא, כגון שעושה מלאכה

A sinner

32) A person who has violated a community statute, or who has committed a sin for his material benefit (*lete'avon*), may still be counted as a member of a minyan. This is the halakha even if he committed a sin that incurs the death penalty. Our Sages derived this rule from the Prophet's account of Akhan's sin, where Hashem declared, "The people of Yisrael have sinned." Although Akhan had committed a serious crime, he was still referred to as a member of Yisrael.

If someone commits a sin to demonstrate his contempt for the Torah or the mitzvah (*lehakh'is*), he has lost the status of Yisrael. Like a non-Jew, he cannot be counted as a member of a minyan.

Day 61

Publicly desecrates Shabbat

33) An apostate, meaning someone who worships other gods, has the status of a non-Jew and cannot be counted as a member of a minyan. The identical status applies to someone who desecrates Shabbat publicly.[344] This means a

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Ayash (*O.H.* #45) deduced from the Talmud (*Eruvin* 65a) that a person is considered sane as long as he has not become "as drunk as Lot." If so, then although it is forbidden for him to pray once he is unfit to address a king, following the ruling of the *Shulhan Arukh* (*O.H.* 99:1), he can still be counted as a member of a minyan. He should be considered no worse than a sleeping adult, who can count as a member of a minyan as per the ruling of the *Shulhan Arukh* (55:6). If someone becomes "as drunk as Lot," meaning that he is unaware of what he is doing, he is considered equal to a mentally challenged person or to a small child, as Rambam ruled in *Hilkhot Mekhira* (29:18). In that case, he cannot be counted as a member of a minyan.

Although the *Shalme Tzibbur* wrote that the *Bet Yehuda* ruled like the *Ben Ish Hai*, it is obvious that his copy of the *Bet Yehuda* was stricken with a mistaken text. Harav HIDA (*Kesher Godal* 8:7) likewise ruled that if someone is drunk and is unfit to address a king he cannot be counted as a member of a minyan, but this is based on the same mistaken text cited by the *Shalme Tzibbur*.

The *Mishna Berura* (*Bi'ur Halakha* 55:8) ruled that if a person who is mentally challenged is capable of praying meaningfully and he understands to Whom he recites blessings, he can be counted as a member of a minyan for prayers. This is based on the ruling of Rama (gloss to *O.H.* 199:10) that the rules for forming a minyan for prayers are more lenient than the rules for forming a *zimun*. In a case when the people have no other option, they can form a minyan counting this drunk person. This situation can come up often on Purim when the halakha encourages people to become drunk.

The *Mishna Berura* (99:10) cited the *Bet David* ruling that a drunk person cannot be counted as a member of a minyan. This citation is mistaken. The text should say *Bet Yehuda*, not *Bet David*. As explained here, that ruling applies only to someone who has become "as drunk as Lot."

344. How many times?

According to some *Poskim*, this applies only to someone who regularly desecrates Shabbat, but others ruled that this applies even to someone who desecrated Shabbat one time. This debate is cited in the *Mishna Berura* (385:4) and the *Kaf Hahayim* Sofer (385:5). The responsa *Rav Pe'alim* (Vol. II, #18; Vol. III, #12) ruled decisively that if someone willfully

שאסורה מן התורה בפני עשרה מישראל ביחד, ובכלל זה מי שנוהג במכונית בשבת ברשות הרבים.

[ילקו"י מהדו"ק עמ' צג]

person who willfully performs an act of *melakha* forbidden by the Torah[345] on Shabbat in the view of ten Jewish people.[346] This includes someone who drives a car on a city road on Shabbat.

desecrates Shabbat even once, he has the status of an apostate (*mumar*). This is likewise the ruling of the *Kaf Hahayim* Sofer (*Y.D.* 2:48) and responsa *Yabia Omer* (Vol. I, *Y.D.* #11:24).

345. Performing acts on Shabbat forbidden by our Sages

The *Aharonim* debated the halakha regarding someone who publicly performs acts forbidden by our Sages on Shabbat but who refrains from performing acts of *melakha* forbidden by the Torah. According to the *Zivhe Tzedek* (*Y.D.* 2:32), responsa *Rav Pe'alim* (Vol. III, #12), and the *Kaf Hahayim* Sofer (*Y.D.* 2:50), such a person does not have the status of an apostate and he can count as a member of a minyan. This appears to be the opinion of the *Mishna Berura* (385:5) as well. Although some *Poskim* ruled stringently in such a case, Maran the Rishon Letziyon (responsa *Yabia Omer* Vol. I, *Y.D.* #11:24) and the *Yalkut Yosef* (footnote on page 94) ruled to follow the lenient opinion regarding halakhot instituted by our Sages and not by the Torah.

Someone who is coerced to work on Shabbat to make a living

The responsa *Rav Pe'alim* (Vol. III, #12) ruled that even if someone feels that he has no choice but to work on Shabbat in order to feed his family, he is in the category of someone who desecrates Shabbat publicly. Maran the Rishon Letziyon (responsa *Yabia Omer* Vol. I, *Y.D.* #11:18) cited *Poskim* who ruled leniently in such a case. He wrote: While I was in Egypt, I knew that many of those who worked on Shabbat in order to make a living made sure to observe Shabbat when not at work. They refrained from smoking through the day, and some of them made sure to pray with an early minyan each Shabbat morning before rushing to work. It was obvious that they felt very bitter about what they were doing, but they felt that they had no choice. It seems to be that if such a person touches wine, it remains kosher. This is likewise the ruling of the responsa *Yede David* Carasso (*E.H.* #13, page 218d), who based it on the ruling of the Ramba"n, Rabbenu Yona, and Rabbenu Yitzhak ben Sheshat that when someone feels forced to do something due to financial pressures, it is considered a case of *oness*. Therefore, this person does not render wine nonkosher by touching it.

346. The halakhic definition of "publicly"

The *Mishna Berura* (385:4) defines this to mean someone who desecrates Shabbat in the view of ten Jews, or even if not in their view if he realizes that his actions will become known to ten Jews. This definition is accepted by the responsa *Rav Pe'alim* (Vol. II, #11; #18; Vol. III, #12) and the *Kaf Hahayim* Sofer (385:11), citing the *Sifte Kohen*.

Maran the Rishon Letziyon (responsa *Yabia Omer* Vol. I, *Y.D.* #11:20), however, cited the *Binyan Tziyon* and other *Aharonim* ruling that this applies only to someone who actually desecrates Shabbat in the view of ten Jews at one time. If ten Jews witness him desecrating Shabbat at different times, however, he does not descend to the status of *mumar* to be considered equal to a non-Jew. This is likewise the opinion of Harav Akiva Eiger (gloss to *Y.D.* 264) – the ten witnesses must see the act together at one time. In responsa *Yabia Omer* (Vol. V, #55, comment #11 on the responsa *Rav Pe'alim* Vol. III), Maran the Rishon Letziyon cited proof to the *Binyan Tziyon's* ruling from Rabbenu Menahem Hame'iri's comment to *Sanhedrin*.

Maran the Rishon Letziyon concluded that, in light of this lenient opinion, if ten Jews witnessed someone desecrating Shabbat at different times and then this person touched wine, the wine remains kosher. This is because the rule that gives this person the status of a non-Jew is an institution of our Sages, and the rule that it is forbidden to drink wine that a non-Jew touched is likewise an institution of our Sages. Since the wine would be forbidden due to a combination of two such institutions, and since a number of *Poskim* ruled leniently about each one of those institutions, we may assume the lenient position.

Following the same line of reasoning, we may count this Jew as a member of a minyan, since the concept of praying with a minyan is likewise an institution of our Sages as explained in the preface to this *Siman*. This is especially so in our times when many *Poskim* ruled that the non-observant Jews of today have the status of being "kidnapped by non-Jews from infancy." This is the ruling of the *Yalkut Yosef* (first edition, footnote on page 94).

ויש מקילים בשעת הדחק, לצרף למנין את המחללי שבת בזמן הזה, הואיל ונחשבים כ"תינוקות שנשבו". [ילקו"י שם, יבי"א ח"ט סי' קח אות לד]. והכל לפי הענין.

ומכל מקום כשמצרפים מי שהוא בחזקת מחלל שבת למנין, אין להניח לו שיאמר לבדו הקדיש [או "ברכו"], אלא צריך שאחד מן הקהל שהוא שומר תורה ומצוות שיאמר עמו קדיש. [יבי"א ח"ה או"ח

According to some *Poskim*, such a person can be counted as a member of a minyan when it is essential, since in our times non-observant Jews have the status of being "kidnapped by non-Jews from infancy." Each case must be judged individually.[347]

When counting someone who desecrates Shabbat as a member of a minyan, he must not be allowed to recite kaddish or *Barekhu* unless an observant Jew recites it along with him. Also, the congregation should not rely on this minyan to recite the cantor's repetition of the *Amida*. Instead, the cantor should recite the first three blessings out loud while the

Does the sinner count as a witness to his own sin? What about female witnesses?

The *Kaf Hahayim* Sofer (385:11) ruled that the person who desecrates Shabbat counts as one of the ten witnesses to his sin. The responsa *Rav Pe'alim* (Vol. III, #12) ruled that if someone desecrates Shabbat in the view of ten women, it is considered to be a public desecration, and it does not matter whether the witnesses are male or female. The *Kaf Hahayim* Sofer (*Y.D.* 2:49), however, ruled that the sin is considered public only if there are ten adult male witnesses.

347. The situation in our generation

The *Or Letziyon* (Vol. II, page 45) ruled that anyone who desecrates Shabbat publicly cannot be counted as a member of a minyan. If he recites kaddish by himself, no one should respond Amen to it. Moreover, he cannot serve as the cantor on behalf of the congregation.

Maran the Rishon Letziyon (responsa *Yabia Omer* Vol. IX, #108:34) debated this ruling, citing the responsa *Melamed Leho'il* (*O.H.* #29) testifying that in Germany and Hungary the custom was to count such people in a minyan. This is because most of these people have no idea that desecrating Shabbat is a capital offense, and they have the status of people who sin unwittingly. Moreover, the responsa *Binyan Tziyon* (later edition, #23) asserted that they often have the status of people "kidnapped by non-Jews from infancy." The author of responsa *Sho'el Umeshiv* remarked famously that we cannot disqualify Jews in the United States who desecrate Shabbat from counting in a minyan since they have the status of people who were "kidnapped by non-Jews from infancy."

Maran the Rishon Letziyon discussed this issue in *Yalkut Yosef* (first edition, page 93). He cited the Hazon Ish suggesting that in our times we are incapable of rebuking sinners properly. Therefore, those who desecrate Shabbat these days have the status of sinners who have not received rebuke, and they can be considered "kidnapped by non-Jews from infancy." Maran the Rishon Letziyon cited several more *Aharonim* who ruled leniently in this matter.

In our modern age of instant communication, however, anyone can easily access the information about Shabbat and its importance. Besides that, there are many people who were brought up in observant homes and discarded the mitzvot afterward, especially in Jewish communities of the Diaspora. It is up to our contemporary rabbis to judge each case on its own merit. See the responsa *Tif'eret Yisrael* Bitan (Vol. I, *Y.D.*, footnote to #5).

In responsa *Yabia Omer* (Vol. V, *O.H.* #12), Maran the Rishon Letziyon ruled that if someone who desecrates Shabbat publicly recites kaddish in the synagogue, it is imperative that someone else recite it along with him. It is clear from this that we can rely on the lenient opinions listed above only when there is no other option.

Someone who would not dare desecrate Shabbat in view of a Torah scholar

The *Mishna Berura* (385:6) ruled that if the non-observant Jew would be ashamed to desecrate Shabbat in the presence of a prominent rabbi, he is not considered a full-fledged Shabbat desecrator in public although he sins in the presence of many ordinary Jews. The *Or Letziyon* (Vol. II, 20:5) concurred with this, citing proof from *Eruvin* 69a and the *Torat Hayim's* comment on that passage.

Maran the Rishon Letziyon (responsa *Yabia Omer* Vol. IX, #108:129) stipulated that this leniency applies only if we are certain that the sinner would not dare commit the sin in front of the scholar. If we are not certain about it, and the sinner desecrated Shabbat in view of ten Jews, we must assume that he sees no shame in his actions at all.

סו"ס יב). וגם לא יאמרו כל חזרת השליח ציבור, אלא יאמר השליח ציבור תפלה אחת בקול רם עם הקדושה עד "האל הקדוש", ואחר כך ימשיכו תפלתם בלחש. [ראה הלכה ברורה עמ' קסח]

לד. מי שנתקרב לשמירת תורה ומצות, ומשתתף בתפלה, אך עדין אינו יודע לומר תיבות התפלה, נראה שמצטרף להשלים מנין. דאף שהוא עצמו לא יצא ידי חובת תפלה בכך, מ"מ כיון שיודע עיקר ענין התפלה, ועומד ומבקש מהקב"ה, חשיב שפיר לענין זה שיש כאן עשרה מתפללים. [הליכות שלמה תפלה עמ' סד]

לה. מי שמחלל יום הכפורים בפרהסיא דינו כדין מחלל שבת בפרהסיא. אבל מי שמחלל יום טוב בפרהסיא מותר לצרפו למנין. [ראה בש"ע אהע"ז סו"ס קכג. ובמאור ישראל עירובין סט ע"א. ובהלכה ברורה עמ' קע]

לו. הקראים שאינם מאמינים בתורה שבעל פה, אינם מצטרפים לעשרה לקדיש ולקדושה ולתפלה בצבור, כי מאחר שאינם מודים בדברי חז"ל, ודאי שאינם משלימים המנין, וכמו ששנינו (עירובין לא ע"ב) השולח עירובו ביד מי שאינו מודה בעירוב, אינו עירוב. וכל שכן אלו הקראים שאינם מודים בדברים שבקדושה, כי אינם משגיחים בדברי חז"ל כלל, רק במה שיראה להם משפט הכתובים. ומי

congregation recites it silently. After the cantor reaches the words *ha'El hakadosh*, the cantor continues silently along with the congregation.[348]

Doesn't know how to pray

34) Even if someone does not know how to read the words of the prayer book because he only recently was inspired to become an observant Jew, he is qualified to be a member of a minyan. As long as he understands the concept of prayer and he stands up and asks Hashem for his needs in his own words, the minyan is considered to consist of ten Jews who are praying together.

Publicly desecrates Yom Kippur

35) If someone publicly desecrates Yom Kippur, he has the same status as someone who publicly desecrates Shabbat. If someone publicly desecrates any of the other *Yamim Tovim*, however, he still qualifies as a member of a minyan.

Karaite Jews

36) Karaite Jews, who do not believe in the authenticity of the Oral Torah, are disqualified from being members of a minyan. Since they do not accept the authority of our Sages, they do not believe in the need for a minyan, and thus they are disqualified. This is similar to the halakha of someone who appoints an agent to place his *eruve tehumin* outside the city, and that agent does not believe in the efficacy or need for an *eruv*. In such a case, the *eruv* is disqualified.

Karaite Jews do not believe in the concept of holy passages in our prayers, since this is an institution of our Sages and they accept the words of the Written Torah only. If a Karaite Jew becomes attracted to Torah Judaism and commits himself to observe the

348. This is the ruling of Maran the Rishon Letziyon, as explained in the previous footnote. The *Halakha Berura* added that the cantor must not recite the repetition of the *Amida* if the minyan is completed by someone who desecrates Shabbat publicly.