best not to impose this restriction on the *Kohen Gadol* in the first place. In other words, the *Kohen Gadol's* Torah reading on Yom Kippur is an exception to the rule.

Harav HIDA (*Birke Yosef* 49:2) noted that the simple reading of the Talmud in *Gittin* and in *Temura* suggests that these are Torah prohibitions. Although the *Tosafot haRosh* and *Tosafot Yeshanim* clearly indicated that they are no more than institutions of our Sages, Harav HIDA demonstrated that the proof they brought to that effect from the passage in *Yoma* can be refuted. On the other hand, he brought proof from *Megillah* 18b that they are forbidden by institution of our Sages. See more about this in the *Halakha Berura* (page 410).

The *Sefer Yere'im* stated clearly that these prohibitions were instituted by our Sages. Although the Talmud bases them on a verse, that is no more than *asmakhta* to these rules, but it is not the actual sources for them. On the other hand, the *Sefer Haredim* (cited by Harav HIDA in *Mahazik Berakha Siman* 49) stated that these are Torah rules, and this is apparently the opinion of responsa *Tashbetz* (Vol. I, #2) and responsa Rashba''sh (#277).

Based on the conclusion of Harav HIDA, the *Kaf Hahayim* Sofer (48:2) ruled that we should consider these prohibitions to be institutions of our Sages. Therefore, in any case where it is unduly difficult to keep the rules, they may be overridden.

The responsa *Hikre Lev* (*O.H.* #12, page 11a) asserted that anyone who ignores these rules is not considered a sinner, and he will not be punished for it. However, since he is studying Torah in the incorrect fashion, he will not be credited for the mitzvah of Torah study. Moreover, he ruled (ibid. #14) that these rules apply to even a single word of Torah, meaning that it is forbidden to say a single word from the Written Torah without reading it from a written text, and it is forbidden to write down a single word from the Oral Torah. The Mahara''l (*Tif'eret Yisrael* chapter 67, cited by the *Kenesset Hagedola, Siman* 49 gloss on the *Arba'a Turim*), however, ruled that a single word has no significance until it is put together with other words. Therefore, he ruled that while reading the Torah, it is permissible to recite a single word by heart if it is missing from the written text. The *Hikre Lev* (*O.H.* #14), however, ruled that it is forbidden to recite even one word by heart. Moreover, he ruled that the prohibition applies even when someone is not performing the public Torah reading.

Day 103

Why not Recite the Written Torah by Heart?

a) Rabbenu Crescas (commentary traditionally misidentified as *Hiddushe haRitb''a* on *Gittin* 60b) cited the Ramba''n explaining that when people recite passages from the Written Torah without using a written text, they fail to notice the special spelling of each word. Many Hebrew words can be

spelled in more than one way, especially words that might have a letter *vav* or a letter *yod*, and the particular spelling used in each instance has great significance. This concept was forwarded as well by Rabbenu Nissim (commentary to *Megillah* 14a) and the *Bet Yosef* (*Siman* 49).

The *Sefer Habattim* (Unit *Migdal David*, Pillar 4, chapter 6) suggested a similar idea: ''Our Sages declared that it is forbidden to cite the Written Torah by heart because when someone reads it from a written text, his eyes are busy scanning the words of God's Torah. He will then pay close attention to the words and letters that he reads, and he will gain a deeper understanding of their meaning.''

b) The *Sefer Yere'im* (#128) offered two reasons for this rule. One: ''If we would get used to citing passages of the Written Torah by heart, we eventually would stop bothering to write the text altogether.''

c) and second: ''If the rabbis would teach the Torah without using any text, some people would accuse them of making it up. They would deny that it has a Divine Source.''

d) *Tosafot Rabbenu Yaakov diTrani* (to *Megillah* 17b), the *Sefat Emet* (comment to *Shabbat* 115a), and the *Yefe To'ar* (cited by the *Etz Yosef* on *Temura* 14b) suggested that we need a hard-and-fast written text of the Torah to ensure that we do not err.

e) According to some *Rishonim* (see below) this prohibition applies only to the public Torah reading in the synagogue and not to other study sessions of the Written Torah. They explained that it is forbidden to read it by heart since that might prompt people to think that the Torah scroll being used is missing part of the text.

f) The Mahara''l of Prague (*Tif'eret Yisrael* chapter 67) suggested that this prohibition is based on the fact that the Written Torah is perfect, complete, and self-containing. When we read from a Torah scroll that contains the entire Torah, we confirm that fact. If we would recite any part of the Torah by heart, however, only the words we recite at that moment are present, and the passage cited does not represent the complete Torah.

Parameters of This Prohibition

The *Sifte Shoshanim* (chapter 2) gives us an organized summary of the various opinions regarding this halakha. A condensed version appears in the *Halakha Berura* (page 411), as follows:

Opinion #1) Rabbenu Tam, cited in the *Mordekhi* (*Gittin* #407), ruled that it is permissible to recite a passage of the Written Torah by heart if it is one that everyone already knows fluently by heart, such as the passages of the

Shema or the verses of *birkat kohanim*. The *Shulhan Arukh* (49:1) ruled that we may rely on this leniency. See below in halakha 1.

Opinion #**2)** The Tosafot (to *Temura* 14b) ruled that the prohibition applies to the Five Books of Moses only, but it is permissible to recite by heart any part of the Prophets or the Writings. Nevertheless, it is clear from the discussion of many *Rishonim* regarding *Megillat Esther* and *pesuke dezimra* that they disagreed with this and that they ruled that the prohibition applies to all books of the Written Torah. In fact, it is obvious that the *Shulhan Arukh* disagreed as well, as we can see from its ruling in *Siman* 141:1.

Opinion #**3)** A second opinion cited in the above Tosafot is that the prohibition applies only when someone is reciting a passage for the purpose of enabling others can thereby fulfill their obligation, but it permissible to recite passages by heart for yourself. This concurs with the opinions of the *Tosafot Yeshanim*, the *Sefer Yere'im*, Mahara''m, the *Sefer Mitzvot Gadol*, and others. A number of *Aharonim* (*Ateret Zekenim*, the *Peri Hadash*, Harav Eliyahu of Vilna, *Mishna Berura* 49:2) cited this opinion as the halakha in practice.

Some *Aharonim* complained that it is clear that many *Rishonim* disagreed with this, since they discussed the question of a blind person reciting Torah passages by heart for his own sake, and they ruled that we must allow him to do so based on the verse (*Tehillim* 119:126): ''עֵת לַעֲשׂוֹת לַה' הֵפֵרוּ תּוֹרָתֶךָ – There is a time to take action for God's sake; they have annulled Your Torah.'' It is clear from this discussion that the prohibition applies to someone who recites Torah passages for his own sake as well.

Opinion #**4)** The *Orhot Hayim*, the *Kol Bo*, and Rabbenu David Abudarham ruled, based on a passage in the Talmud Yerushalmi, that this prohibition applies only to the public Torah reading in the synagogue, and the reason for it is that we do not want the listeners to suspect that the Torah scroll is missing any of its text. When reciting Torah passages as part of our prayers, however, there is nothing wrong with reciting them by heart. Some *Aharonim* suggested that this is likewise the opinion of Rambam (*Hilkhot Tefilla* 12:8).

The *Sefer Ha'itim* (page 278) added that the prohibition applies to all public readings of the Written Torah, and not only to the Torah reading. Nevertheless, Harav David ben Zimra insisted that according to the Talmud Bavli, it is forbidden to recite passages of the Written Torah by heart as part of the prayers, disagreeing with this principle forwarded in the Talmud Yerushalmi.

Opinion #**5)** Ritb''a (comment to *Yoma* 70a) ruled that this prohibition applies only to someone chanting verses from the Written Torah, but not to

someone who recites verses as part of his prayers or in order to sharpen his fluency of the material. This, according to some *Aharonim*, concurs with the *Kol Bo's* ruling that the prohibition applies only when someone chants the verses with the traditional cantillation notes. When someone recites verses as a way of praising God, he probably recites them as his emotions dictate and he does not follow the notes. The *Tahorat Hamayim* (*Shiyure Tahora*, *ma'arekhet dalet* #36) asserted that the *Shulhan Arukh* concurred with this opinion.

Opinion #**6)** Rabbenu Yona, cited in the *Bet Yosef*, ruled that it is permissible to recite by heart all those passages that are obligatory to each individual, such as the passages of the *Shema*. In fact, it is permissible to recite those passages by heart even at times when one is not obligated to recite them. For this reason, it is permissible to recite the entire daily prayer regimen, including the passages of the *korbanot*, by heart. The *Havot Ya'ir* commented that this resolution is superior to all the others offered by the *Poskim*. Therefore, he ruled that it is permissible to recite by heart all passages included in the daily prayers.

Opinion #**7)** Rabbenu Meir, cited in *Tashbetz* (#185), ruled that the prohibition applies only to passages that we are obligated to recite, but not to passages that someone chooses to recite. [This is the opposite of Rabbenu Yona's opinion.] Harav David ben Zimra (responsa Vol. IV, #1205) concurred with this opinion.

Opinion #**8)** One of the *Ge'onim* ruled that any passage that the congregation recites in unison may be recited by heart. This is likewise the opinion of Rabbenu Yitzhak of Barcelona (commentary to *Sefer Yetzira*, page 166) and the *Shilte Hagibborim* (to *Megillah* 14a).

Opinion #**9)** Rabbenu Avraham bar Natan Hayarhi explained that the only reason we are permitted to recite by heart the passages of *korbanot*, of *pesuke dezimra*, and the *Shema* is because it is impossible for people to manage otherwise. The leniency is based on the verse (*Tehillim* 119:126): "עֵת לַעֲשׂוֹת לַה' הֵפֵרוּ תוֹרָתֶךָ – There is a time to take action for God's sake; they have annulled Your Torah."

In conclusion: The *Shulhan Arukh* (49:1) cited the first opinion listed here and ruled that it is permissible to recite by heart any passage that is commonly known fluently, like those of the *Shema* and *birkat kohanim*. The *Bayit Hadash*, cited by the *Magen Avraham* (49:1), followed the ruling of the *Arba'a Turim* that one may not recite a passage by heart for the sake of enabling others to fulfill a halachic obligation, but otherwise it is permitted. (This is opinion #3 listed here.) The *Magen Avraham* recommended that we not rely on this leniency since many *Poskim* disagreed with it. Instead, we should follow the ruling of the *Shulhan Arukh*.

The responsa *Tzitz Eliezer* (Vol. XIII, #11) suggested that all the leniencies listed by the *Poskim* are correct and may be followed. The *Yalkut Yosef* (*Siman* 49, footnote 7) cited this suggestion, and noted that the *Sifte Shoshanim* (page 30) rejected it, arguing that it is clear from the words of the *Poskim* that this is not the case. Harav Meir Mazuz and Harav Yehoshua Maman agreed with this argument, and the *Halakha Berura* likewise ruled that one ought to follow the ruling of the *Shulhan Arukh* only. The *Yalkut Yosef* concluded that he mentioned the opinion of the *Tzitz Eliezer* only in order to justify the common custom of reciting *Tehillim* by heart, but not to suggest that it may be followed.

Day 104

Writing the Oral Torah

Harav HIDA (*En Zokher*, *ma'arekhet mem* #40) related, based on Ramba''m, Rav Sherira Ga'on, and Rabbenu Shemuel Hanaggid, that near the end of Ribbi Yehuda Hanasi's life, he and his colleagues decided to commit the Mishna to writing. This decision was based on the verse (*Tehillim* 119:126): ''עֵת לַעֲשׂוֹת לַה' הֵפֵרוּ תוֹרָתֶךָ – There is a time to take action for God's sake; they have annulled Your Torah.'' Although they permitted the Mishna to be written and studied using a written text, at that time they did not permit any other part of the Oral Torah to be written. This is likewise the opinion of Rabbenu Yeshua Halevi (*Halikhot Olam* Unit 1, chapter 1). According to Rashi, Ribbi Yehuda Hanasi did not permit the Mishna to be studied using a written text; he only edited and finalized the authoritative version of the Mishna, but it continued to be studied without written texts. It was not written until the entire Talmud was committed to writing.