כג. אם יש לפניו מים שיש בהם ספק אם נעשתה בהם מלאכה, כשרים לנטילת ידים, שכל ספק בטהרת ידים טהור. ומברך גם כן בשם ומלכות "על נטילת ידים". והרי זה דומה לדין ספירת העומר בבין

When in doubt

23) If someone has a container of water and he suspects that it has become "used water," he may assume that this did not happen and he may use this

the ground, they still have the status of *kelim* and the water that runs through them becomes genuinely "drawn water."

Actually, the *Piske Teshuvot* disqualified swimming pools as a mikveh for immersing the hands for a different reason. He contended that the pool cannot be considered a mikveh at all since the water constantly runs through the filter system and it therefore has the status of "flowing water." A mikveh, by definition, is a body of standing water that does not flow. This argument was echoed by the *sefer Hiddushe Batra al HaMishna Berura* (page 93). Maran the Rishon Letziyon (*Tahorat Habayit* Vol. III, page 336) and responsa *Shama Shemuel* (Vol. V, page 106) countered that mikveh waters are not disqualified by the filter system through which they run. [The filter system in a community mikveh is constructed in a fashion that does not disqualify the mikveh waters as "drawn water."] It may be, however, that the filter system in an ordinary swimming pool would disqualify its waters as "drawn water" even if the pool had originally been filled in a manner that did not disqualify the water.

Used water

Once we have established that a swimming pool does not have the status of a mikveh for *netillat yadayim* and it is not possible to perform this mitzvah by immersing one's hands in it, we can now turn to the second issue requiring clarification: When people swim in the pool, does this disqualify the water as "used water"? As explained in the halakha here, the waters of a mikveh or *ma'yan* cannot be disqualified as used water. Drawn water, on the other hand, can be disqualified even it is now in a pit dug into the ground. The *Olat Tamid* (160:6, cited in the *Mishna Berura* 160:24 and the *Kaf Hahayim* Sofer 160:31) explained specifically that even if the water becomes used only after it is in the pit, it is nevertheless disqualified since it had once been drawn in a container.

Rabbenu Avraham ben David ruled that, regarding the mitzvah of *netillat yadayim*, a pool filled with forty *se'a* of drawn water has the status of a mikveh and one may immerse the hands in it. Does this mean that even if someone uses the water it is not disqualified as "used water," like the rules that apply to a regular mikveh?

The same question applies to a pool filled with forty *se'a* of drawn water, if the water was poured on the ground and allowed to flow into the pool. All the *Poskim* agreed that this pool has the status of a mikveh regarding *netillat yadayim* and one may immerse the hands into it. Does this mean that all *Poskim* agree that the water in this pool remains fit for the mitzvah even if it is used and someone may take a container of water from it and perform *netillat yadayim*? These questions were raised in *sefer Birkhot Shamayim* (Weiss, footnote 85 on page 244). He likewise noted that it is impossible to infer any clue to this issue from the words of the *Shulhan Arukh*, since in one place they imply one thing but afterward they imply the opposite.

The *Piske Teshuvot* cited above apparently assumed the lenient position in both these questions. Once the waters are considered a mikveh regarding *netillat yadayim*, they are not disqualified even if they afterward are used, he ruled. This ruling is cited in *sefer Sha'are Haberakha* (footnote on page 49).

The *Arukh Hashulhan* (160:1) apparently concurred with this since he stated that Rambam would say that if there is a pool filled with forty *se'a* of drawn water and someone used the water in it, the water is disqualified *since Rambam ruled that one may not immerse hands into this pool for netillat yadayim*. We can deduce from this that according to Rabbenu Avraham ben David the water would not become disqualified even if someone used it.

The Nadvorna Rebbe, Harav Mordechai Hayim Rosenbaum (cited in *Kovetz Nezer haTorah*, issue 18, page 240) ruled likewise that since Rabbenu Avraham ben David ruled that one may immerse hands in the pool, the water does not become disqualified for *netillat yadayim* even if someone uses it. If the pool was filled by pouring the drawn water on the ground and allowing it to flow into the pool, he added, all *Poskim* agreed that the water remains fit for the mitzvah even after it is used since they all agreed that people may immerse their hands in this pool.

According to this, we must interpret the words of the *Shulhan Arukh*, stating that if drawn water that was poured into a pit in the ground is used it is disqualified, as applying only to a pit containing less than forty *se'a* of water. If it contains forty *se'a*, it assumes the status of a mikveh regarding *netillat yadayim* and the water would not become disqualified even if used. If this is so, then at least according to Rabbenu Avraham ben David, the water in a swimming pool remains fit for the mitzvah of *netillat yadayim* even after people swim in the pool.

השמשות, ולדין הנחת עירובי תבשילין בין השמשות, שכיון שהותר לעשות מצוות אלו בבין השמשות, שהרי הן מצוות דרבנן, וספיקא דרבנן לקולא, רשאי אף לברך עליהן. [הליכו"ע ח"א עמ' שכב. וע"ע יחו"ד ח"ו סי' לא]

water for *netillat yadayim*. If he has other water available, however, it is recommended that he use the water that is unquestionably fit for the mitzvah.[94]

Nevertheless, it may be that although the *Shulḥan Arukh* ruled that the water in a genuine mikveh or *ma'yan* cannot be disqualified for *netillat yadayim* even if it is used, the water in a quasi-mikveh such as those described here would be disqualified if used. In fact, this appears to be the understanding of the *Levush* (160:5). His words imply that if someone filled a pit with forty *se'a* of drawn water and then used it, whether he had poured the water directly into the pit or if he had poured it onto the ground so that it flowed into the pit, the water becomes disqualified for the mitzvah of *netillat yadayim*.

The logic for this distinction was explained in the *Bnei Tziyon* Lichtman (160:7). If someone draws water and uses it afterward, he has demonstrated that he no longer considers this water to have any value to him. It then assumes the status of sewage. This is so even if he had poured the water into another pit in the ground. If he had never drawn the water at all, then even if he used it the water's status is not affected.

The *Tehilla leDavid* (160:6) likewise ruled that if a pool is filled with forty *se'a* of drawn water, whether the water had been poured directly into the pit or if it had been poured onto the ground and allowed to flow into the pit, if someone uses the water it is now disqualified for *netillat yadayim*. One can neither immerse the hands into the pit nor can he fill a container with the water and perform regular *netillat yadayim*. In his concluding words, however, he withheld a definite ruling and wrote that the matter requires further research.

This seems likewise to be the opinion of the *Kaf Haḥayim* Sofer (160:31), the *Kitzur Shulḥan Arukh* Toledano (159:11) and the *sefer Kundras Bet Yad* (page 38).

According to this, if people swam in the pool, all the water in the pool is considered "used water" and it is disqualified for *netillat yadayim*. It makes no difference whether the water is truly "drawn water" or if it is drawn water that was allowed to flow along the ground before reaching the pool. If someone has no other water available, however, he should fill a container with this water and perform *netillat yadayim*, but he must not recite the blessing. In this case, he should wrap his hands in cloth while eating his bread.

In conclusion, the waters of a swimming pool are considered "drawn water." If no one has yet swum in the pool, it is possible to immerse the hands into them for *netillat yadayim* according to Rabbenu Avraham ben David, and one may rely on his opinion when one has no other choice, but he must not recite the blessing of *al netillat yadayim*. If the pool was filled by pouring the water onto the ground and allowing it to flow into the pool, all *Poskim* agreed that one may immerse the hands in that water and recite the blessing, as explained above in *Siman* 159:26. If the pool is equipped with a filter system, then in any case he must not recite the blessing. It is preferable to fill a container with water from the pool and perform *netillat yadayim* in the regular manner.

If people have swum in the pool, however, there is good reason to suspect that all the water has become "used water" and is disqualified for the mitzvah of *netillat yadayim*. In this case, one may neither immerse hands in it or fill a container and pour the water on the hands. If no other water is available, he should fill a container with this water and perform *netillat yadayim*, but he must not recite the blessing. In this case, he should wrap his hands in cloth while eating his bread.

94. Maran wrote in the *Shulḥan Arukh* (160:11) that if someone suspects that a container of water had been used and disqualified, he may assume that this did not happen and the water is still fit for *netillat yadayim*. Since the mitzvah of *netillat yadayim* is an institution of our Sages and not a Torah law, we may be lenient when there is a doubt about it. Maran added that according to some *Poskim*, if someone has other water available, he should use the water that is definitely fit for the mitzvah rather than use the water that he suspects might be disqualified.

Maran the Rishon Letziyon (*Halikhot Olam* Vol. I, page 340) explained that when other water is available, this case becomes similar to a case where there is a mixture of forbidden and permissible substances and if one waits passively the forbidden substance will automatically become permissible. In that case, even if the permissible substance is the vast majority of the mixture, the entire mixture remains forbidden in the meantime. The *Poskim* explained that it would be wrong to purposely rely on the principle of *bittul berov* when the entire mixture will become fully permissible with the passage of time. In our case as well, it would be wrong to simply rely on the principle of *safek derabanan lekula* when it is just as easy to use the water that is definitely qualified.

ומכל מקום אם יש לפניו מים אחרים שאין בהם ספק, טוב שיטול ידיו מן המים האחרים שאין בהם ספק. [הליכו"ע ח"א עמ' שמא] ואף באופן שכבר נטל ידיו במים שספק נעשה בהם מלאכה, טוב להחמיר לחזור וליטול ידיו במים שהם כשרים בודאי, בלא ברכה, כדי שלא יבא לידי עניות. [ב"י ולבוש]

This is the general rule: whenever someone has a doubt about the status of his *netillat yadayim*, he may assume that it is valid. In all such cases he must recite the blessing of *al netillat yadayim* as well, pronouncing God's Name. In this aspect, this case is similar to someone who wishes to perform the mitzvah of counting the days of the *omer* during twilight before dusk. Although it may not yet be definitely nighttime, he may perform the mitzvah and recite the blessing over it. Another example is someone who performs the mitzvah of *eruve tavshilin* during twilight as the *Yom Tov* begins. Although it might no longer be day, he may perform the mitzvah and recite the blessing over it. In both these cases we may be lenient since the doubt involves a rabbinically-instituted mitzvah, and once the halakha permits one to perform the mitzvah, it becomes incumbent upon the person to recite the appropriate blessing.

If someone has already performed *netillat yadayim* and now he suspects that the water he used was disqualified, it is recommended that he repeat the mitzvah with water that is definitely fit for it in order to avoid the punishment of becoming impoverished. However, he must not recite the blessing again.

Maran the Rishon Letziyon pointed out that Maran seemed to disagree with these *Poskim* in his *Kesef Mishne*. This is probably why he first wrote in the *Shulḥan Arukh* that it is permissible to use the suspect water even if other water is available. Even so, it is still best to use the other water.

Maran in the *Bet Yosef* ruled that if someone performed the mitzvah with the suspect water, it is still recommended to repeat the mitzvah with water that is definitely kosher rather ran rely on leniencies, but without repeating the blessing. This is because the punishment for failing to fulfill the mitzvah of *netillat yadayim* is impoverishment. The *Levush* (160:10) concurred with this, and the *Mishna Berura* (160:52) cites this recommendation.

The *Eliya Rabba* (160:19), citing Harav Shlomo Luria, agreed with this only partially. He ruled that if someone is not sure whether he had performed the mitzvah of *netillat yadayim* at all, he should go ahead and do it now in order to avoid the punishment of poverty. If someone has definitely performed *netillat yadayim* but he suspects that the water he used was disqualified, however, there is no need to repeat the mitzvah. In such a case, he need not be concerned that he will be punished with impoverishment. Nevertheless, it would be an act of piety to perform the mitzvah again.

The *Mishna Berura* commented (*Sha'ar Hatziyun* 160:54) that even the *Eliya Rabba* would agree that if more water is readily available, one should repeat the mitzvah. The *Kaf Haḥayim* Sofer (160:56) pointed out that since the possible punishment for failing to fulfill the mitzvah of *netillat yadayim* is impoverishment, it is highly recommended to follow the opinion of the *Bet Yosef* and *Levush* requiring one to repeat the mitzvah in all cases of doubt.