

# Halacha Highlight

# Overview

## Including desecrators of Shabbos in a *minyan*

Shulchan Aruch Siman 55 Seif 11  
עברין שעבר על גזרת הצבור וכו'

**A sinner who violated a decree of the community etc.**

Shulchan Aruch (סעי' י"א) writes that someone who sinned may be counted in the *minyan* as long as he was not banned as a consequence of his sin. The basis of this ruling is the Gemara in Sanhedrin (44a) that declares that even if a person sins he remains a Jew and as such is counted for the *Minyan* (עני מיב סייק מ"י). *Poskim* note that even someone who intentionally violates a Biblical prohibition could be counted in a *minyan* since he has not lost his status as a Jew (הלכה ברורה אות ל"ג). Mishnah Berurah (סייק מ"י) writes that someone who sins with the intent to anger Hashem, worships idolatry or publicly desecrates Shabbos does not count in the *minyan*. Additionally, he rules that someone who does not believe in *Torah She'b'al Peh* is not counted in a *minyan* (סייק מ"י).

*Poskim* discuss the application of this *halacha* to those who are not religious. *Sefer Chaye Moshe* cites authorities who adopt a stringent position and maintain that those who are not Shabbos observant may not be counted towards the *minyan*. Many others, however, adopt a more lenient position and offer numerous reasons why the *halacha* recorded in Mishnah Berurah does not apply to people nowadays who are not Shabbos observant. Chazon Ish maintains that since most people who are not Shabbos observant do not know the meaning of Shabbos they are categorized as a *tinok she'nishba* – lit. a child taken into captivity- who is not liable for his ignorance of Torah since he was not exposed to Jews and Judaism. Another reason this *halacha* may not apply is that to be disqualified one must desecrate Shabbos in the physical presence of ten Jews and knowledge that someone desecrates Shabbos is not sufficient (עני ספר חיי משה לסעי' י"א שהארקבוה). Rav Moshe Feinstein (שו"ת אג"מ או"ח ח"א סי' כ"ג) writes that they may be counted in the *minyan* in order to be able to recite *kaddish*, *kedusha*, ברכו and *chazaras hashatz* but it is not considered *tefila b'tzibbur*.

### Siman 55 Seif 10:

If one boy was born on the 29<sup>th</sup> of Adar Rishon and another boy was born on the 1<sup>st</sup> of Adar Sheni and the year of their *bar-mitzvah* is not a leap year, the one who was born on the 29<sup>th</sup> of Adar Rishon must wait until the 29<sup>th</sup> of Adar for his *bar-mitzvah* whereas the boy who was born later on the 1<sup>st</sup> of Adar Sheni will become a *bar-mitzvah* on the 1<sup>st</sup> of Adar. Someone born in Adar and his *bar-mitzvah* is in a leap year does not become a *bar-mitzvah* until Adar Sheni.

- ❖ If their 13th year is also a leap year the one born in Adar Rishon will become a *bar-mitzvah* in Adar Rishon and the one born in Adar Sheni will become a *bar-mitzvah* in Adar Sheni. (M.B. 43)
- ❖ In a leap year Adar Rishon is not considered Adar. (M.B. 45)
- ❖ Someone born the 1<sup>st</sup> day of Rosh Chodesh Kislev in a year in which Rosh Chodesh was two days and when he becomes a *bar-mitzvah* Rosh Chodesh is only one day he becomes a *bar-mitzvah* on Rosh Chodesh. (M.B. 45)
- ❖ If someone was born on Rosh Chodesh Kislev when it was one day and the year of his *bar-mitzvah* Rosh Chodesh is two days he becomes a *bar-mitzvah* on the first day of Rosh Chodesh. (M.B. 45)

### Siman 55 Seif 11:

**A sinner who violated a communal decree or transgressed a prohibition is counted in the *minyan* as long as he has not been banned.**

- ❖ Someone who sins to anger Hashem or worships idolatry or publicly desecrates Shabbos is not counted in a *minyan*. (M.B. 46)
- ❖ Karaim are not counted in a *minyan* since they do not believe in *Torah sheb'al peh*. (M.B. 47)

### Siman 55 Seif 12:

**A banned person is not counted for anything that requires a *minyan* but he is permitted to *daven* in shul unless they specified a stringent ruling about this matter.**

### Siman 55 Seif 13:

**All ten people must be in a single location and the *shaliach tzibbur* must be together with them. If someone stands in the doorway but outside of the threshold, meaning he would be outside when the door is closed, he is considered to be outside.**

- ❖ If they are in the same room they merge together even if they cannot see each other but if they are in separate rooms they do not merge together even though the door between the two rooms is open. If the two groups are in separate domains they do not merge if they cannot see each other and there is a stringent position that maintains that even if they could see each other they do not merge. (M.B. 48)
- ❖ If nine people are together and the tenth is behind a curtain that was erected for *tznius* they constitute a *minyan*. (M.B. 49)
- ❖ If he would be outside when the door closes he is considered outside even if the door is open. Magen Avrohom references opinions that are lenient about this matter and he subscribes to that position. (M.B. 50)
- ❖ The part inside the door is considered inside according to all opinions. (M.B. 51)

# Stories to Share

## The Shunned Chazzan

שייע סי' נ"ה, י"ב: "מנודה אין מצטרפין אותו לכל דבר שצריך עשרה..."

A certain chazzan had an altercation with a business partner and went to the local rabbi for adjudication. The rabbi ruled in favor of the partner. The chazzan got so upset that he began yelling at the rabbi. Although the rabbi bore this abuse for a short while since he understood that losing money was disappointing for this man, at a certain point it became absolutely unbearable. At this point the rabbi proclaimed that this man was to be publicly shunned for shaming and cursing a Torah scholar. That night, when this man stepped up to daven maariv for the community in his synagogue, someone objected. "This man was just officially shunned; how can we allow him to represent us in tefillah? Surely this is forbidden!"

The chazzan objected. "It is true that I acted inappropriately and must eventually make amends to the rabbi, but I believe I erred in my case. Presumably this is no worse than shunning for monetary matters which allows one to join a minyan. If I can join the minyan, why can't I lead it?"

When this question was brought to the Beis Dovid he ruled that the chaz-

zan was correct, but for a different reason. "Although one could claim that this his situation is more serious than shunning for monetary reasons it is clear from Kiddushin 32 that this is not the case. There we find that a Rav may forgo his honor since the Torah he teaches is considered his Torah. Since the Torah scholar can forgo his honor anytime, this is comparable to shunning over a monetary dispute and the chazzan may lead the prayers. This is especially clear since in Yoreh Dei'ah 348 we find that contemporary shunning is comparable to the nezifah of chazal, much less potent than their actual nidui."