Kashrus for Children

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I. Introduction. In order to observe the laws of *kashrus* to the fullest extent, it is necessary to spend a considerable amount of time becoming familiar with the laws of *kashrus*. In most orthodox homes, training in this area begins at a very young age. In this essay we will discuss the degree to which children are required to observe these laws. Specifically we will discuss (a) whether one may provide a child with non-kosher food or medication; (b) at what age one must begin to monitor what foods a child eats; and (c) which laws may be compromised for the sake of a child.

II. Three issues. In approaching any particular question of *kashrus* for children, three separate issues must be dealt with: (a) *lo sa'achilum* (the prohibition to provide a prohibited substance to a minor) ; (b) the mitzvah of *chinuch* (training children in the performance of mitzvos); and (c) *timtum halev* (negative spiritual impact caused by ingesting non-kosher foods). There is room for leniency only in cases where all three issues can be adequately addressed. We will first provide some background information to help understand each of the three halachic issues:

A. *Lo Sa'achilum*. The Talmud (*Yevamos* 117a) derives a prohibition for an adult to provide a child with a prohibited item,[1] from the verse *lo sa'achilum* (Leviticus chapter 11).[2] The medieval talmudic commentators debate whether this prohibition is rabbinic or biblical in nature, with the general consensus seeming to be that it is in fact a biblical prohibition.[3] The Talmud specifically refers to feeding a child blood or prohibited insects, and to bringing a child who is a *kohein* to a cemetery. However, the Talmudic commentators assume that the prohibition is not limited to these three examples;[4] rather they are indicative of a larger prohibition that applies to providing a child with any prohibited item.[5] In order to

[1] The תרומת הדשן בפסקים וכתבים סימן סב writes that the reason for this prohibition is so that the child not grow accustomed to the prohibited item, and continue to seek it out after becoming an adult. If this were true, perhaps it would be permissible to provide prohibited items to a child who will never become obligated in mitzvos (i.e. somebody who is terminally ill or has a halachic status of a mentally incompetent person with no hope for recovery). See, however, שו"ת חתם סופר (או"ח סימן פג ד"ה ואומר) who questions this assertion on the grounds that we do not alter biblical laws based on reasons we suggest for them (לא דרשינן טעמא דקרא).

[2] The Talmud actually cites three separate verses that teach a prohibition to feed a child something that is prohibited. The *gemara* provides an explanation for the necessity of all three verses.

[3] See פרי מגדים פתיחה הכוללת חלק ב' אות ט.

[4] While some medieval rabbinic authorities do maintain that the prohibition only applies to these three *halachos* because they view the three verses cited as excluding all others from this halacha - שלשה כתובים הבאים כאחד, most maintain that these three verses function as a single combined source from which to extend the prohibition of providing a child with prohibited items to all prohibitions. See בית יוסף אורח חיים סימן שמג ד"ה ודע עד ד"ה וכתבו ותרומת הדשן חלק ב' סימן סב.

[5] The *gemara* explains that we require the verses to teach us this prohibition by these three cases because each case adds a detail that the others do not share. From the prohibition of feeding a child blood we see that the prohibition applies even to those items that one is only obligated for when they consume a sizable

determine whether a given case results in a violation of this prohibition it is important to know the following factors:

1. This prohibition does not discriminate between parents and other Jews who are not related to the child.

2. The prohibition also does not discriminate between a child who has reached the age of *chinuch* (religious training) and a child who has not yet reached the age of *chinuch*.

3. This prohibition does not require one to stop a child from committing a prohibition on his own, only to providing the child with the prohibited item.[6]

B. <u>*Chinuch.*</u> In general, parents have an obligation to educate and train their children in the ways of the Torah.[7] In order to determine whether any given case would constitute neglect of this parental responsibility, we must keep the following factors in mind:

1. There is a dispute amongst the medieval halachic authorities whether this obligation is unique to the parents or if it applies to other Jews as well.[8] The *Mishnah Berurah* (343:7) is stringent when it comes to biblical prohibitions and lenient when it comes to rabbinic prohibitions.

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portion (the *gemara* assumes that one is liable for consuming a *revi'is* of blood – see, however רמב"ם הלכות מאכלות אסורות פרק ו' הלכה א' who states that the amount of blood one would be liable for consuming is actually a *kezayis* – see גמרא שבת דף עז. based on ערוך לנר כריתות דף כא:-כב. who distinguishes between congealed blood and liquid blood). From the prohibition to feed a child prohibited insects we learn that the prohibition applies even to items whose punishment is not *kares*, but simply a negative commandment. Finally, from the prohibition to bring a child who is a *kohein* into a cemetery we learn that this prohibition applies even to items that are only problematic for a small segment of the community (כהנים). See משנה ברורה סימן שמג ס"ק ד' and שער הציון שם ס"ק יד.

[6] The exact parameters of "providing" a child with a prohibition will be explored later in this essay.

[7] See יומא דף פב. where the *mishnah* requires a child to be taught to fast on *Yom Kippur* even before he becomes *bar* mitzvah to train him in mitzvos. See also סוכה דף ב: ורש"י שם ד"ה מדרבנן, ונזיר דף כח:, רש"י חגיגה ד"ה קטן ו. The exact source for this obligation is the subject of some debate amongst the *poskim*. The רמב"ם הלכות מאכלות אסורות פרק יז הלכה כח cites the verse ("חנוך לנער על פי דרכו" (משלי פרק כב פסוק ו') (train the youth according to his way) as the source (see ריטב"א סוכה שם ורשב"א מגילה יט: who also cite this verse as the source). This would strongly suggest that the requirement is only *midivrei kabalah* (based on the words of the prophets). Indeed the חיי אדם כלל סו סעיף א' writes that the obligation of *chinuch* is only *midivrei kabalah*. The משך חכמה (בראשית פרק יח פסוק יט), however, assumes that the source of the obligation of *chinuch* is the verse ("ולמדתם את בניכם" (דברים פרק א' פסוק יא) which relates to torah study. See also ספר קיום התורה (פרק ה' אות מא) in which the Chafetz Chaim maintains that one who properly educates his children is in fulfillment of the biblical commandment of "'והודעתם לבניך וגו".

[8] תוספות שבת דף קכא. ד"ה שמע מינה writes that the *beis din* is required to prevent a child from violating a prohibition once he reaches the age of *chinuch*. See וכתבו בית יוסף או"ח סימן שמג ד"ה.

2. This obligation only applies to children who have reached the age of *chinuch* (defined as the age that a child is capable of performing the mitzvah with all of its details) for that particular mitzvah.[9]

3. The parent is also obligated to stop his child from violating a prohibition even when the child initiates the prohibited activity on his own.[10]

C. <u>*Timtum Halev*</u>. The Ramo writes that even when an infant ingests non-kosher food, the food has a negative effect on the spiritual development and well being of the child.[11] It is assumed that the food will lead to the development of negative character traits in the child that are likely to ultimately lead him to violate multiple prohibitions as an adult.[12] It is interesting to note that this prohibition is mentioned in *Shulchan Aruch* only in the context of a nursing baby drinking the milk of a woman who has eaten non-kosher foods.[13] The Talmudic source,

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[9] The גמרא סוכה דף מב. states that a child who knows how to properly shake a *lulav* should be trained to do so. A child who knows how to properly wrap himself in a *tallit* should be trained in the mitzvah of *tzitzit*, and a child who can care for *tefillin* properly and protect their elevated holy status should be trained to wear *tefillin*. This strongly indicates that there is a different age of *chinuch* for each mitzvah. The age of *chinuch* is specifically the age at which the child can perform that particular mitzvah with all of its details. However, in numerous places the *gemara* vaguely refers to the age of "הגיע לחינוך" ("having reached the age of training" - see ברכות דף טו: מגילה יט: וערכין דף ב:) perhaps indicating a single specific age that *chinuch* begins. תוספות ערכין דף ב: notes this apparent contradiction. (See אמת ליעקב ברכות דף טו: הו"ד בהערות על הפתיחה הכוללה חלק ב' #148 who resolves this difficulty.) Generally, we assume as a matter of halacha, as the פרי מגדים (פתיחה כוללת חלק ב' אות י') writes, that a child should be trained in each mitzvah when he is capable of fulfilling that particular mitzvah properly. When a mitzvah requires a level of understanding, the child only becomes obligated in the performance of the mitzvah when he is able to understand the idea of the mitzvah. For further analysis of this topic see הקטן והלכותיו פרק ב' הערה כ'.

[10] שולחן ערוך אורח חיים סימן שמג ומשנה ברורה שם סעיף קטן ב'.

[11] יורה דעה סימן פא.

[12] It seems that this concept applies only to food and not to the violation of other prohibitions. Based on this תוספות גיטין דף ז. (ד"ה השתא) that the concept of השתא בהמתן מרומי שדה (חולין דף ה:) explains the comment of של צדיקים אין הקב"ה מביא תקלה על ידן צדיקים עצמן לא כל שכן (God does not cause a stumbling block even for the animals of the righteous, certainly not for the righteous themselves) only applies to eating non-kosher food but not to other prohibitions. תוספות states further that this concept would not apply to foods that are generally permissible but may not be eaten at this time (i.e. eating before reciting *havdalah*). When it comes to other prohibitions, a righteous individual may sometimes inadvertently violate the prohibitions, but nothing negative will result since it was done entirely inadvertently. When it comes to food though, even if no prohibition was violated the food would still have a negative effect, and God would not allow that to happen to a righteous person. This concern of *timtum halev*, the נצי"ב explains, is also the reason that the ראב"ד (הו"ד ברא"ש פרק יוה"כ סימן יד) rules that it is better to violate the *shabbos* for the benefit of a dangerously ill person than to feed him non-kosher food. See also חיד"א (ספר פתח עינים על עבודה זרה דף כו.) who quotes the בית דוד על הטור יו"ד סימן פא who asks where we ever find a source in ancient rabbinic literature that *timtum halev* can even be caused when no prohibited food has been consumed.

[13] See ערוך השלחן (יו"ד סימן פא סעיף לד) who attributes the rebelliousness of the younger generation to the fact that people are not careful about this halacha. See also תוספות (חגיגה דף טו. ד"ה שובו) who cites a passage in תלמוד ירושלמי that the mother of *Acher* had smelled the fragrance of idols as she was eating, thus causing the spiritual impurity to spread through her system, ultimately leading her child to go off the proper path.

however, applies this concept to the general ingestion of non-kosher foods.[14] The application of this principle to nursing from non-Jewish women is not a result of the violation of a forbidden act of eating non-kosher,[15] but is a natural consequence of ingesting the food that has impure sources.[16] There is a dispute amongst the medieval commentators regarding the parameters of this consideration:

1. Rashi writes that the child tastes all of the foods ingested by the woman who is nursing him, in the milk.[17] Ritva adds that non-Jewish women eat all sorts of prohibited insects. Based upon this approach it would seem that if the non-Jewish woman were to eat only kosher food before nursing, it would not be a problem to have her nurse the Jewish child.

2. Rashba assumes that this is not a halachic consideration that is necessarily related to non-kosher food, but is merely a *midas chasidus* (stringency for pious individuals),[18] because the uniquely Jewish

[14] גמרא במסכת עבודה זרה דף כב וביבמות דף קיד. The מסכת יומא דף לט. also discusses the issue of a Jewish baby nursing from a non-Jewish woman. It does not, however, directly link the discussion to the issue of *timtum halev*. In fact, the *gemara* seems to offer conflicting messages as to whether it is actually prohibited to allow a child to nurse from a non-Jewish woman. In מסכת עבודה זרה the *mishnah* states that it is permissible, while in מסכת יבמות the *gemara* states that the milk is similar to milk of a non-kosher animal and is therefore only permissible in a time of danger.

[15] Both the ט"ז (יורה דעה שם ס"ק כה) and the ש"ך (יורה דעה שם ס"ק כו) maintain that even when a woman had permission to eat non-kosher food (i.e. her life was in danger) she should not nurse her child after eating it. Similarly, the משך חכמה דברים פרק ו' פסוק יא writes that the torah allowed Jews upon entering *Eretz Yisrael* to eat non-kosher food (see חולין דף יז.), but immediately warns us השמר לך פן תשכח את ה' אשר הוציאך מארץ מצרים מבית עבדים ("be careful lest you forget God who has taken you out of Egypt") to teach us that even though there may have been a halachic dispensation to allow the consumption of otherwise prohibited foods, the negative effects of these foods are still present and one must be wary of them. This approach, however, seems to be contradicted by the דרשות הר"ן (דרוש יא ד"ה ואני סובר) who writes that when a *bet din* rules that it is permissible to eat a certain food, even if they are later proven to be incorrect in their ruling, one who followed the ruling and ate the food will not suffer *timtum halev*. See, however, מסורה חוברת יא עמוד עא where Rabbi Avraham Rubin שליט"א suggests that one can distinguish between knowingly ingesting non-kosher food with a rabbinic allowance to do so (because of illness etc.) and unknowingly ingesting the food based on a ruling of the *beis din*. Whenever a person is aware of the fact that the food is indeed not kosher, we remain concerned with the idea of *timtum halev*. See also תפארת ישראל למהר"ל מפראג פרק ח' ד"ה ובפרק who, in developing the idea that mitzvos are not determined by nature, states that the food itself does not cause the *timtum halev*, but the sin causes it. See also תורה תמימה (שמות פרק ב' פסוק ז', ויקרא פרק יא פסוק מג) ומקור ברוךפרק כז פסוק מג.

[16] See מסורה חוברת יא אלול תשנ"ה במאמרו של הרב אברהם ישראל רובין שליט"א where this assertion is proven from the statement of the רשב"א that although there is no technical *kashrus* problem with milk from a non-Jewish woman, the child should not be fed that milk because it causes bad character traits to develop.

[17] סוטה דף יב:.

[18] See אמת ליעקב על התורה שמות פרק ב' פסוק ז' who states that the source to prohibit a child to nurse from a non-Jewish woman is the comment of רש"י on *chumash* that Moshe would not nurse from the Egyptian women because the same mouth that would one day speak with God should not nurse from a gentile woman. Rav Yakov Kaminetzky זצ"ל points out that although most children will not grow up to speak with God to the level of Moshe (who spoke directly with God - פה אל פה אדבר בו), each parent must raise their

character traits of mercy, modesty, and kindness to others (*rachmanim, bayshanim, gomlei chasadim*) are assumed to be passed along through the mother's milk.[19] It would seem from this approach that the problem would persist even if the non-Jewish woman ate only kosher food prior to nursing.

III. Feeding non-kosher foods to children.

A. Direct feeding. The שו"ע rules that no Jew may feed non-kosher food to a Jewish child of any age.[20] This is true even if the food is only rabbinically[21] prohibited,[22]

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child to possibly strive to reach those heights. This comment clearly reflects a non-halachic view of *timtum halev*. See also מהרי"ץ חיות (סוטה יב:) who suggests that *Chazal* pointed out that *Moshe Rabeinu* would not nurse because he was destined to speak with God, and not simply because nursing from Egyptian women causes *timtum halev*, because prior to *mattan torah* it may have been permissible to nurse from non-Jewish women. My brother, Rabbi Avi Lebowitz suggests that *Chazal*'s focus on the fact that Moshe was going to speak to God rather than the simple issue of *timtum halev* that would apply to all Jews (even those who are not destined to speak to God) may be related to the miracle that occurred where God allowed Moshe as an infant to be discerning enough to turn down the milk of the Egyptian women. While it would be forbidden to provide any child with such milk, God only performed this miracle for the benefit of the mouth that would eventually speak to Him.

[19] ר"ן בעבודה זרה דף כ. וכן הוא ברשב"א יבמות דף קיד. The ר"ן also cites the opinion of רבינו חננאל that the milk of a non-Jewish woman is indeed prohibited. See also גמרא כתובות דף ס.

[20] שו"ע או"ח סימן שמג. It is worthwhile noting, though, that a pediatrician will frequently recommend baby formulas with non kosher ingredients for a colicky baby. In most instances the non-kosher ingredient is from an enzyme that is derived from pigs. The enzyme will almost always make up less than 1/60 of the total volume of the formula and is therefore permissible to feed to the child.

[21] See, however, שו"ת אגודת אזוב חלק יורה דעה סימן יג who suggests that rabbinically prohibited food where the prohibition has no basis in torah law (such as food cooked by a non-Jew), may be fed to children. It should be noted, though, that when the non-Jew cooks food in a kosher pot, the pot may require koshering before being used again for kosher food. See שולחן ערוך יורה דעה סימן קיג סעיף טז.

[22] שו"ע שם. See also ש"ך יורה דעה סימן פא ס"ק כא. This halacha is in fact subject to a dispute amongst the medieval rabbinic authorities. The ר"ן יומא writes that one may feed the child rabbinically prohibited foods even after he has reached the age of training for mitzvos. The רשב"א concurs, but reveals in a responsa that he only intended this statement as halacha, but not to be relied upon in practice. The opinion of the שולחן ערוך reflects that of the רמב"ם (סוף הלכות מאכלות אסורות) that it is even prohibited to feed the child rabbinically prohibited food. Rabbi Ovadiah Yosef שליט"א (שו"ת יביע אומר חלק א' יורה דעה סימן ד' אות ג-ד) explains the dispute as follows: Generally we consider all biblically prohibited items to be איסורי חפצה (prohibitions that relate to the object itself), while rabbinic prohibitions are considered to be איסורי גברא (prohibitions that relate to the person) Thus, נתיבות המשפט (חו"מ סימן רלד) writes, one who violates a rabbinic prohibition inadvertently (בשוגג) is not in need of any atonement. Had he done something objectively wrong (i.e. an איסור דאורייתא), whether he meant to do it or not, he would require atonement. Since he has only violated a prohibition on the person (i.e. an איסור גברא), which is loosely based on the prohibition to rebel against the words of the rabbis, his unwitting action can hardly be termed a rebellion and therefore does not constitute a prohibition at all. Perhaps all agree that the prohibition to feed a child would only apply to a prohibition relating to the object (i.e. an איסור חפצה), but not to a prohibition relating to the person (an איסור גברא - because a child is not obligated in any mitzvos). It can therefore be explained that the רמב"ם views rabbinic prohibitions as prohibitions on the object (איסור חפצה) thereby forbidding one from feeding them to children, while the רשב"א views them as prohibitions relating to the person - איסור גברא - thereby permitting them to be fed to children. (See also שו"ת בית שערים חלק או"ח סימן קי"ב ד"ה ואמנם, שו"ת אבני צדק או"ח ס"ס מה,

and even if one did not intend for the child to eat the food, but to play with it.[23] If the child is ill, and there are not any non-Jews available, one may feed the child rabbinically prohibited foods.[24]

1. Feeding children meat during the nine days. The *Shulchan Aruch* records the practice not to eat meat from *Rosh Chodesh Av* until *Tisha b'Av*.[25] This practice is not a rabbinic prohibition per se, but a custom that has been accepted by the majority of the Jewish people. Whether or not one may feed children meat during this time depends on how broad one understands the prohibition to feed a child non-kosher food. The *poskim* are divided on this issue:
    a. The stringent approach. The *Mishnah Berurah*, citing earlier authorities, rules that in the absence of a necessity relating to a mitzvah, even the youngest of children should not be fed meat during the nine days.[26] The logic for this position is that although there is no requirement to train a very young child to mourn the loss of the *beis hamikdash*, the prohibition of feeding children prohibited items extends even to those items that are only prohibited due to custom.

ושו"ת מנחת אלעזר חלק א' סימן ה'.) Rabbi Avi Lebowitz has pointed out that one can question this analysis of the רשב"א's opinion. The רשב"א seems to only permit giving the child the prohibited item in a case where it serves to benefit the child. If the leniency relates to the fact that it is only a prohibition relating to the person - איסור גברא, it should not make a difference whether or not it benefits the child. For elaboration of this point see באור הלכה סימן שמ"ג ד"ה מד"ס, שו"ת רע"א סימן טו, ושו"ת מהר"ם שיק או"ח סימן קעג. Furthermore, Rabbi Dovid Yosef (Rav Ovadia's son in his תורת המועדים הלכות ומנהגי בין המצרים עמוד קצ) questions the assumption that an איסור גברא cannot relate to a child. After all we find that one is not permitted to provide a chld with rabbinic prohibitions of shabbos, many of which are only איסורי גברא.

[23] משנה ברורה שם ס"ק ד' בשם המגן אברהם. It should be noted that this prohibition only applies to non-kosher food. When it comes to other prohibitions שולחן ערוך הרב סעיף י writes that you may place it in front of the child even if you are certain he will violate the prohibition. For this reason, many *poskim* have permitted putting a child (who is not yet at the age to understand what he is doing) in front of a light switch that you would like turned on or in front of a refrigerator door when the light inside was left on. Rabbi Chaim Pinchas Scheinberg שליט"א has ruled that it is even permissible to instruct a child to open the refrigerator if, in his own mind, he does not associate the opening of the refrigerator with the light turning on. It would similarly be permissible to instruct a very young child to flick a light switch, if the child does not yet know to associate his action with the light turning on or off (שמע בני עמוד קכ). See, however, פסקי תשובות סימן שמג אות ב' הערה 8 where he points out that the example cited by the שולחן ערוך הרב was of giving a child a cookie with writing on it, where we do not have to worry about the fact that he will eat it and thereby erase the writing. The prohibition of erasing such writing, however, is only a rabbinic prohibition (עיין משנה ברורה סימן שמ ס"ק יז), possibly suggesting that it would be forbidden to place a biblical prohibition in front of the child.

[24] שולחן ערוך הרב סימן שמג סעיף ו'. See also Rabbi Dovid Weinberger's שמע בני page 129.

[25] שולחן ערוך אורח חיים סימן תקנא סעיף ט.

[26] משנה ברורה סימן תקנא סעיף קטן ע' ושער הציון שם אות ע"ו. See also שו"ת אגרות משה אורח חיים חלק ד' סימן כא סוף אות ד' who even prohibits feeding children meat late on Friday afternoon during the nine days, unless they customarily eat their shabbos meal at that time (because of the late summer shabbosos). See also שו"ת רבבות אפרים חלק א' סימן שעא וחלק ב' סימן קנה אות כב.

b. The lenient approach. The *Magen Avraham* writes that when a child has not yet reached the age to properly understand the idea of mourning the destruction of the *beis hamikdash*, there is nothing wrong with feeding him meat during the nine days.[27] The *Aruch Hashulchan* is willing to rely on the opinion of the *Magen Avraham* for a particularly weak child who stands to gain from the extra meat in his diet. [28]

2. Feeding children outside of the sukkah. The *Magen Avraham* writes that just as we may not feed children prohibited foods, we may also not feed them outside of the sukkah during the holiday of *Sukkos*.[29] The *Mishnah Berurah* cites this comment of the *Magen Avraham* and adds that one cannot even instruct a child to eat outside of the sukkah, as this would constitute a violation of *lo sa'achilum*.[30] Although, generally the prohibition of *lo sa'achilum* applies to even the youngest of children, Rabbi Moshe Shternbuch points out that one may feed a very young child outside of the sukkah. He explains that young children would be exempt from sukkah due to the fact that they require the assistance of their mothers in order to eat properly.[31]
   a. Later authorities strongly question the application of *lo sa'achilum* to feeding a child outside of a sukkah. After all, *lo sa'achilum* is the prohibition to provide a child with a prohibited item. Providing a child with perfectly kosher food that he plans on eating outside of the sukkah would not be included in this prohibition. Furthermore, the prohibition of *lo sa'achilum* only applies to violation of

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[27] מגן אברהם סימן תקנא ס"ק לא. See also תורת המועדים סימן ה' עמוד קצ who argues that there is ample room to be lenient in this matter. First, many *rishonim* maintain that one is permitted to feed a child rabbinically prohibited food. Second, even if one may not feed rabbinically prohibited food to a child, there may be room to distinguish between rabbinically prohibited food and food that is only prohibited based on a *minhag*. Finally, one can argue that the prohibition to feed a child prohibited items only applies to items that are *always* prohibited, and not to items that are only prohibited for a certain amount of time. See above footnote 22 and below footnote 76 for an elaboration of this point.

[28] ערוך השולחן אורח חיים סימן תקנא סעיף כו.

[29] מגן אברהם או"ח סימן תר"מ. See, however, מגן אברהם סימן תרט"ז ס"ק ב' where he states explicitly that although one may not feed a child on Yom Kippur, one may feed a child outside of the Sukkah on the holiday of *Sukkos*. See שו"ת בנין אב חלק א' סימן כה who resolves the contradiction by differentiating between a child that is fed by a man and a child that is fed by a woman. A woman who feeds the child, need not do so in the sukkah because she is exempt from the mitzvah of sukkah herself. A man, on the other hand, who is obligated in the mitzvah of sukkah would be required to feed his child in the sukkah as well. Rav Abba-Shaul points to similar distinction expressed by the אמונת שמואל in the context of the prohibition of placing a stumbling block before a blind person - לפני עור. See שו"ת בית הלוי חלק א' סימן טו for a similar distinction.

[30] משנה ברורה סימן תר"מ ס"ק ה'. See also: ערוך לנר סוכה דף ב who also states that one who feeds a child outside of the sukkah has violated לא תאכילם. The ערוך לנר uses this idea to answer the question of תוספות ישנים ליומא דף פב. See also גליון הש"ס לסוכה שם.

[31] שו"ת תשובות והנהגות חלק ג' סימן רי"א. See also ערוך השלחן סימן תר"מ סעיף ב' who justifies the common practice to feed children outside of the sukkah based on a child's lower threshold for צער (anguish) caused by the cold climates.

negative commandments, and not to the neglect of positive commandments.[32]

B. Indirect feeding. The *Mishnah Berurah* writes that it is also prohibited to tell a child (of any age) to eat non-kosher food on his own.[33] In fact, Rashi strongly implies that an adult cannot even hint to the child that he would not mind if he ate the non-kosher food.[34]

C. Telling a non-Jew to feed non-kosher food to a child. The *Mishnah Berurah* points out that it is likewise forbidden to tell a non-Jew to feed non-kosher food to a Jewish child of any age, just as one may not ask a non-Jew to violate any prohibition for you.[35] However, if a child is ill, one may ask a non-Jew to feed even a biblically prohibited food to the child. In fact, when a child needs *chameitz* on Pesach for health reasons, we allow a non-Jew to bring the child to the non-Jew's home and feed him the *chameitz*. If this is not feasible, it is even permissible for the non-Jew to bring the *chameitz* into the Jew's home and feed the child there, provided that no Jewish adults touch the food.[36] If, however, the non-Jew feeds the child without being told to do so, only the parent must stop the child from eating.

D. Child takes the food. When the child grabs non-kosher food without being prompted by an adult to do so, the prohibition of *lo sa'achilum* does not apply, but the mitzvah of *chinuch* certainly does apply. Therefore, only the parents would be obligated to stop the child from eating the food if it is rabbinically prohibited and the child is above the age of *chinuch* (six or seven years old). If the food is biblically prohibited, all Jews would have to stop the child from eating the food.[37] If the child is under the age of *chinuch* but above the age where he can understand that he is doing something wrong (and not just due to fear of his

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[32] שו"ת תשובות והנהגות חלק ג' סימן ריא and הליכות שלמה (להגרש"ז אועירבך זצ"ל) פרק תשיעי בדבר הלכה אות מה. See, however שו"ת אבני נזר או"ח סימן תפא who proves that eating outside of a סוכה can properly be labeled as a prohibition, and not merely the neglect of a mitzvah.

[33] משנה ברורה סימן שמג ס"ק ה'. See also ריטב"א יבמות דף קיד: ומאירי שם.

[34] רש"י יבמות דף קיד. בד"ה בעושה על דעת אביו ומאירי שם. It does seem, though, from other halachic sources that it is permissible for somebody other than a parent to put the child in front of the food and allow him to eat on his own. Although on *Sukkos* one may not feed a child or tell him to eat outside of the sukkah, the משנה ברורה (סימן תרמ בשער הציון ס"ק ח') writes that it is permissible to put food in front of the child to eat. See also אגרות משה יורה דעה חלק ב' סימן ט' ומקראי קודש חלק ימים נוראים עמ' קנד.

[35] משנה ברורה סימן שמ"ג ס"ק ה'.

[36] משנה ברורה שם.

[37] משנה ברורה סימן שמג ס"ק א-ב,ז. See also משנה ברורה שם ס"ק סד-סה that if the child violates a *Shabbos* prohibition on his own because he assumes that his father wants the particular action to be done, one must stop the child because the father is required to see to it that the child not do prohibited labor on *Shabbos*. See also חינוך הבנים למצוות עמוד כז (מהרב נויבורט שליט"א) who suggests that the age may be as young as two years old. See also שולחן ערוך אורח חיים סימן שלד סעיף כה who suggests that the age may be as high as four years old. See also Rabbi Simcha Bunim Cohen's Children In Halacha (page 8) who suggests that the age may be as high as four years old.

parents), only the parents must stop him. If, however, he is too young to understand why he is being told not to eat the food, even the parents do not have to stop him from eating the food that he has taken.[38]

1. A practical example of this may be when a child finds a non-kosher candy in a cereal box. If the child has not yet reached the age of *chinuch* (leaving out the issue of *timtum halev*), one need not stop the child from eating the candy. If, however, he has reached the age of *chinuch*, the parent is certainly obligated to stop him and others would be obligated to stop him if the food is biblically prohibited. Once again, though, we would be hard pressed to permit this under anything but the most difficult circumstances due to the concern of *timtum halev*.

IV. Medication for Children.[39] The halachic issues we face when feeding children non-kosher food seem to be particularly difficult when it comes to medication.[40] After all, it is not very difficult to find kosher certified food to give to children, but it may often be extremely difficult to find a proper medication with kosher certification. This problem may be exacerbated by the fact that many medications made specifically for children have added flavors to make it palatable to children.[41] In order to address this problem a number of lenient considerations have been suggested:

A. Small measures of prohibited items. The first leniency is based on a comment of Rabbi Eliezer Waldneberg שליט"א relating to mixtures that contain non-kosher food. Generally speaking, in order for one to be punished for consuming a prohibited food, he must eat a complete measure of that food (usually a *k'zayis* – size of an olive - for solid food, and a *revi'is* – somewhere between 3 and 6 fluid ounces - for liquids). Nevertheless, even if one consumes less than the full measure of food (a *chatzi shiur*), while he will not receive a punishment, he has

[38] משנה ברורה סימן שמג ס"ק ג. The exact age of three is suggested by ברית עולם דיני אמירה לנכרי סימן כב אות י'. If, however, a parent realizes that the child is exceptionally bright and displays an understanding of the issues prior to the age of three, the פסקי תשובות סימן שמג אות ב' recommends to be stringent.

[39] Most of the source material for this section has been taken from two very important articles on the topic. One was written by Rabbi David Heber and published in the Mesorah journal volume VII. The other is part of a series of articles on *kashrus* in medication written by Rabbi Howard Jachter and published in the TABC Torah publication Kol Torah in the spring of 2005.

[40] Paradoxically the problem of non-kosher medications for adults may not be nearly as great. This is because adult medications generally come in tablet form and can be swallowed. Rabbi Shlomo Zalman Auerbach זצ"ל (שו"ת מנחת שלמה חלק א' סימן יז) suggests that swallowing pills is considered to be a benefit that is an abnormal way of receiving benefit - שלא כדרך הנאתן and therefore permissible even for a person who is not dangerously ill - a חולה שאין בו סכנה. Furthermore, Rabbi Moshe Feinstein זצ"ל (שו"ת אגרות משה אורח חיים חלק ב' סימן צב) and Rabbi Ovadiah Yosef שליט"א (שו"ת יחוה דעת חלק ב' סימן ס') permit taking medication that has no taste or a poor taste.

[41] The *kashrus* of children's medications is often particularly difficult to ascertain because of glycerin. Glycerin can come from a forbidden animal or from plants or petroleum. It is impossible for the consumer to know (and very often even the manufacturers don't know) where the glycerin came from.

violated a prohibition. The Talmud records a dispute whether the prohibition of consuming a half measure is biblical or rabbinic in origin.[42] The normative ruling follows the opinion that maintains consuming a half measure is a biblical prohibition.[43] Based on this alone one would be inclined to assume that when consuming a medication that contains a half measure of non-kosher food they have violated a biblical prohibition. Yet, two prominent *acharonim* have suggested that even though normally eating a half measure of a prohibited item is biblically prohibited, when one consumes a half measure as part of a mixture that contains a majority of permissible food, he has only violated a rabbinic prohibition.[44] Rabbi Waldenberg has ruled in accordance with this opinion. One may argue that if taking medication without kosher certification is at worst only rabbinically prohibited, there may be room for leniency with a child who is considered to have the status of a *choleh she'ein bo sakanah* (somebody who is ill, but not dangerously ill).[45] Rabbi Shlomo Kluger זצ"ל rules that a *choleh she'ein bo sakanah* can consume rabbinically prohibited items for medicinal purposes.[46] It should therefore follow that children may consume medications that do not have kosher certification.

1. Rejecting this view. This lenient approach relies on an assumption that has been rejected by a majority of the halachic authorities. As mentioned, Rabbi Shlomo Kluger maintains that a *choleh she'ein bo sakanah* may consume rabbinically prohibited food for medicinal reasons. However, the Ramo maintains that a *choleh she'ein bo sakanah* may not use even rabbinically prohibited foods for medical treatment.[47]

B. Double doubt. Rabbi David Heber has suggested a more convincing lenient approach, based on some of the considerations we have already mentioned. The *Beis Yosef* rules that while an adult should not drink from the *kiddush* wine in shul on Friday night,[48] one may give the wine to a child to drink. Indeed, this is the common practice in most shuls where *kiddush* is recited on Friday night. Rabbi Ovadiah Yosef explains the logic of giving the wine to children in the following way: Although, as we have already noted, we rule in accordance with the

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[42] מסכת יומא דף עג:.
[43] רמב"ם הלכות שביתת עשור פרק ב' הלכה ג'.
[44] מנחת כהן שער התערובת א:ד, פרי חדש אורח חיים סימן תמב.
[45] Rabbi David Heber מסורה חוברתז עמוד צב. There may be additional room for leniency because we are usually not certain of the presence of the prohibited substance in the first place.
[46] שו"ת האלף לך שלמה סימן קב.
[47] רמ"א יורה דעה סימן קנה סעיף ג' וכן הסכימו בשו"ת רעק"א סימן ה' וחיי אדם כלל סט בנשמת אדם סימן ג'.
[48] בית יוסף אורח חיים סימן רסט בשם הרא"ש פרק ערבי פסחים סימן ה' ורבינו ירוחם חלק א' והגהות מיימוניות פרק כט אות מ ומרדכי בפרק ערבי פסחים בשם מור"ם מרוטנבורק הלכות ברכות תפ"ו ע' קעח. The logic for this stringency is that one does not fulfill his obligation of *kiddush* in shul because there is a requirement for the *kiddush* to take place in the same time and place as the meal (קידוש במקום סעודה). As such, any sipping of the wine is considered to be a violation of drinking before *kiddush*.

Rambam that one may not even feed a rabbinically prohibited food to a child, Rashba maintained that we may do so. Although we accept the opinion that one may not drink from the *kiddush* wine in shul, some *rishonim* maintain that we may do so. Rabbi Yosef therefore suggests that we may combine the lenient ruling of Rashba with those who permit drinking the *kiddush* wine to form a *sfek sfeika* ("double doubt") that allows the child to drink from the *kiddush* wine in shul.[49] We have now demonstrated a willingness on the part of the *Beis Yosef* to use the opinion of Rashba along with another rejected halachic opinion to form a *sfek sfeika* that will serve as the basis for a lenient ruling. Taking this logic one step further, Rabbi Heber suggests that we may formulate a similar "double doubt" in permitting children to take medication without kosher certification. Perhaps we may rule like Rashba that one may feed rabbinically prohibited foods to children, and perhaps we may rule like Rav Shlomo Kluger that a *choleh she'ein bo sakanah* may ingest rabbinically prohibited foods for medicinal purposes.[50] Rabbi Herschel Schachter agrees with this approach and rules leniently that flavored medication without kosher certification may be given to children in the absence of a suitable alternative.[51]

V. Hospitals and Institutions. One of the more heartbreaking issues that *poskim* have had to deal with relates to care for a child (or mentally disabled adult who often is considered the halachic equivalent of a child) by placing the child in an institution that does not provide kosher meals. Obviously, when a family is faced with this most difficult decision the matter must be discussed with a leading *poseik* and should never be taken lightly. For that reason, we will not provide practical guidelines, but will merely survey some of the halachic literature on this topic to determine varying levels of sensitivity to the halachic issues involved.

A. The response of the Chasam Sofer. The Chasam Sofer was asked about a young orphan who was mentally disabled, and whose relatives wanted to place him in an institution for the physically and mentally handicapped where he would gradually learn to live something resembling a normal life with a certain degree of independence. Although the family was capable of sending food to him on a daily basis, the institution would not allow any of its patients to eat outside food. All patients had to be part of a single community and support system, which included having all meals together. After discussing the issues of *chinuch* and the prohibition of *lo sa'achilum* at great length, the Chasam Sofer arrives at the

[49] שו"ת יביע אומר חלק א' יורה דעה סימן ד' אותיות ה'-ז'. This approach is fairly explicit in the words of the בית יוסף himself. The בית יוסף also suggests another reason to be lenient with children, because if nobody were to drink this wine we would be facing a more serious prohibition of *beracha l'vatalah*.

[50] Obviously, both of these doubts assume the ruling of the פרי חדש and מנחת כהן (that less than a full measure of prohibited food mixed with a majority of permissible food is only rabinically prohibited) to be correct.

[51] As reported by Rabbi Chaim Jachter Kol Torah Spring 2005 and confirmed by Rabbi Schachter in a personal conversation with this author.

conclusion that there is no problem on either count because the child is an orphan and the Jew is neither feeding him directly,[52] nor asking a non-Jew to feed him non-kosher food.[53] However, the Chasam Sofer concludes that once the child becomes a *bar* mitzvah he should be removed from the institution, as he is now obligated in the performance of mitzvos in his own right. All of this is from a strictly halachic perspective. The Chasam Sofer adds, though, that considering the effect of *timtum halev* it is perhaps more advisable to keep the child out of the institution because *chazal* tell us:[54] מוטב שיהיה שוטה כל ימיו ואל תהיה רשע שעה אחת לפני המקום – it is better to be a fool for your entire life than to be a wicked person for even a moment in front of God.[55]

B. Rav Moshe Feinstein's responsa. Rav Moshe Feinstein was asked about a girl who was suffering from an incurable mental illness that was a result of irreversible brain damage. The girl was exceedingly difficult to care for, and her father suffered from a heart condition, which could deteriorate if he was to have the constant stress of looking after his daughter. The only institution available to help her did not serve kosher food. Rav Feinstein cited the earlier responsa of the Chasam Sofer who pointed out that there is no problem of *lo sa'achilum* when you place the child in the institution without specific instructions to feed the child non-kosher food. Furthermore, the parents are not neglecting their obligation of *chinuch* because the child is so severely mentally disabled that she is unable to be educated, and will never become obligated in mitzvos.[56] The only remaining issue

[52] Even if the Jew were feeding him directly, the חתם סופר argues that it may be permissible to place him in the institution based on the following logic: The גמרא שבת דף סט: states that if one is traveling in the desert and he does not know which day is *Shabbos*, he should do whatever minimal amount of work is necessary on each day in order to stay alive. Beyond that, however, he may not do any prohibited labor. תוספות (ד"ה עושה) point out that there is an exception to this rule. He may walk as far as he possibly can (even well beyond the *Techum Shabbos*) on each day because if he does not walk he will never get out of this situation. Similarly, it could be argued, this child will never be able to perform mitzvos properly without remaining in the institution. It may therefore be permissible for him to violate whatever prohibition is necessary in order to one day be able to fulfill the mitzvos properly. This comparison, though, may be debatable. Certainly the man who is stuck in the desert is obligated in the mitzvah of *shabbos* and will never be able to properly fulfill his obligation until he is out of the desert. The mentally disabled child, however, is not obligated in any mitzvos currently, so there may not be the same dispensation to allow the person to embark on a path that would lead to an obligation in, and proper fulfillment of, the mitzvos.

[53] He would merely be asking the institution to provide medication and sustenance for the child, leaving the choice of what kind of food to give him to the non-Jews who run the institution.

[54] מסכת עדיות פרק ה' משנה ו

[55] שו"ת חתם סופר אורח חיים סימן פג.

[56] See פרי מגדים פתיחה כוללת חלק ב' אות ט who argues that deaf-mute or mentally disabled children are not subject to any mitzvah of *chinuch*. מנחת חינוך מצוה ה' אות ב' seems to concur with this ruling. See, however, פרי מגדים (אשל אברהם סימן שמג ס"ק ב') where the same author suggests that a deaf-mute is included in the mitzvah of *chinuch*. See also שו"ת שבט סופר אבן העזר סימן כא where he writes that his father (the author of כתב סופר) was invited to visit a school for the deaf, and was so impressed by how functional the students were that he asked the administration to see to it that the children put on *tefillin* each day. See also שו"ת דברי חיים חלק ב' אהע"ז סימן עג וע"ט, ובשו"ת דברי מלכיאל חלק ו' סימן לה ובשו"ת משנה הלכות חלק ו" סימן טו, ובשו"ת חקרי לב סימן ע'.

is that of *timtum halev*, which, in a strikingly similar case, caused the Chasam Sofer to recommend that a child be kept out of an institution. In order to address this problem, Rav Feinstein pointed out the following lenient considerations:

1. In the case of the Chasam Sofer the institution was meant to rehabilitate the patient where ultimately the patient would be able to function as a normal adult. In Rav Moshe's case, however, the girl's illness was not curable. The institution only served to care for her in a way that she would not put herself into danger and to provide her with a meaningful life experience. Since the concern of *timtum halev* is that the child will develop tendencies that will result in prohibitions when the child gets older, this is only a concern for a child who will one day become obligated in mitzvos. One who will never become obligated in the performance of mitzvos need not be concerned with the effect of *timtum halev*.[57] Even if through some miracle the child would be cured, Rav Feinstein argues that God would likely cure the *timtum halev* as well, because there is no sense in God performing miracles just to increase the number of wicked people in the world.

2. In this particular instance the health of the father is also at risk. Certainly the threat to the life of the parent overrides all three possible prohibitions in feeding the child non-kosher food.[58]

C. <u>The approach of Rabbi Shlomo Zalman Auerbach</u>. Rabbi Auerbach, while agreeing in principle to the concerns of the Chasam Sofer and Rabbi Feinstein, makes a few additional distinctions. Even in a case of a child who has no hope of ever becoming obligated in mitzvos, one may only place him in a non-religious institution, but not one that is not Jewish. He explains that although there is no issue of *chinuch* or *timtum halev*, it is impossible that one would be permitted to "do such a thing that will cause this child to be raised as a gentile in every matter, and ultimately, be buried as a gentile".[59] Specifically relating to children with Down's syndrome, Rabbi Auerbach stresses the importance of keeping the child in a warm and nurturing home environment like any other child.

Relating specifically to a mentally disabled person, Rav Shlomo Zalman Auerbach זצ"ל writes (שו"ת מנחת שלמה חלק א' סימן לד) that if the child is capable of a minimal understanding of Judaism (i.e. that God gave us the *torah*, and we fulfill His commandments) he is obligated in mitzvos that he is capable of fulfilling, and by extension he is included in the mitzvah of *chinuch* when he is a child. It seems that in the case Rav Moshe Feinstein זצ"ל is dealing with the girl was so severely mentally disabled that even a basic understanding of Judaism was beyond her grasp.

[57] A similar distinction is quoted in the name of ר' שלמה שלמן אויערבאך זצ"ל and רב יוסף שלום אלישיב שליט"א in נשמת אברהם חלק ה' עמוד נז.

[58] שו"ת אגרות משה או"ח ח"ב סימן פח.

[59] As quoted in נשמת אברהם חלק ה' עמוד נז.

D. <u>The responsa of Rabbi David Tzvi Hoffman</u>. The specific question posed to Rabbi Hoffman was about a case of a thirteen-year old boy who had suffered a major spinal injury. The only available facility to effectively aid in his rehabilitation did not offer kosher food for patients. Rav Hoffman argued that although it seemed that the boy's life was not in danger, he must not be kept from going to this hospital. He based this assertion on a number of considerations: First, some medieval authorities maintain that one may violate *Shabbat* even to save a limb of a person.[60] Second, some authorities rule that even those who would not permit desecration of *Shabbat* to save a limb would permit other biblical prohibitions to save a limb.[61] Third, it could be argued that by definition a spinal injury always carries with it an element of true danger to the patient's life. Certainly, if the patient were to subsequently suffer a fall into a dangerous area and be unable to save himself, his life would be in danger as a direct result of his injury.[62] Finally, the amount of mitzvos that the child is going to be held back from fulfilling as a result of his illness may warrant temporary violation of commandments to ensure his recovery and a lifetime of serving God with maximum physical capacity.

1. <u>Theoretical position</u>. Rabbi Hoffman points out that whenever one is in a position where they are forced to consume prohibited foods they should consume the lesser prohibition first. Therefore, prior to eating any non-kosher meat, the boy should eat foods that consist of combinations of kosher and non-kosher products. When eating food that is completely prohibited he should consume less than a *kezayis* (olive-size piece) every four minutes.

    a. It should be noted that in this specific case Rabbi Hoffman was addressing a thirteen-year old boy. While it is clear that Rabbi Hoffman would have been just as lenient for a child,[63] there is

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[60] Although, the שולחן ערוך rules contrary to this, this is the opinion of ד"ה ואפילו. תוספות סוכה דף כו and רבינו תם as cited in ר"פ אור זרוע הלכות יום כפורים סימן י' אות ו'. See, however, ספר בעקבי הצאן who presents an argument suggesting that the בעלי התוספות never held this position.

[61] This is the opinion of ש"ך יורה דעה סימן קנ"ז ס"ק ז' based on the פרי מגדים במשבצות זהב אורח חיים סימן שכח ס"ק ג'.

[62] ספר ארחות חיים סימן שכח אות ז' בשם הגהות מיימוני פרק י"ד מהלכות מאכלות אסורות, ובאו"ה כלל נט בשם תשובת מהר"ם.

[63] Indeed, Rabbi Hoffman uses the possibility that this boy may not have the necessary physical maturity to be considered an adult as an additional reason to be lenient. He argues that although we generally assume that a thirteen year-old child who does not have two hairs must have had the hairs at one point and they have fallen out, we only make this assumption because most thirteen year-old boys have already grown two hairs. Therefore, from the perspective of the *beis din* relating to the laws of *miun* and *chalitzah* it is necessary to be concerned for the majority. From the perspective of the child, however, the ספר עט סופר כלל סה פרט ו' explains that he has no obligation to follow the majority because only one who is halachically an adult is bound to follow the majority, but one who may not be an adult, and even has an assumed status of a child - חזקת קטנות - would not be required to follow this majority. See פני יהושע קידושין דף עג for a similar argument. If he is in fact still a child, there is no question in Rabbi Hoffman's view that he may stay in the

reason to be more adamant about consuming less than a *kezayis* at a time for a child than for an adult. Rav Chaim Ozer Grodzinsky raises the possibility that there is no prohibition of feeding a child a half measure. He explains that although we generally assume חצי שיעור אסור מן התורה, (consuming a half measure of a prohibited item is biblically forbidden) a group of later authorities limit that rule to prohibitions of eating.[64] The *Pnei Yehoshua* explains the logic to this distinction as follows: We normally assume that even a half measure is prohibited because there is enjoyment in eating even a small measure of food. When, however, the prohibition does not involve physical pleasure that can be enjoyed in small measures, there would be no prohibition of doing anything less than that which the torah explicitly prohibits. The prohibition to feed a child non-kosher food is not a prohibition of eating, as the adult does not feel any physical satisfaction in feeding the child a half measure.[65]

2. Practical position. In spite of the halachic veracity of this approach, practically speaking Rabbi Hoffman points out that such eating habits would be very difficult to implement. After all, the child was suffering from a physically debilitating illness and needed all of the nourishment he could get. If the doctors notice his modest diet they may suspect that he is not taking his recovery seriously and not devote their full attention to him. Furthermore, the child will hesitate to eat any time food is brought to him. This attitude may lead him to neglect to eat even when his condition warrants it. Therefore, practically speaking the child should eat whatever is served to him and he should be told that a special exception to the laws of kashrus applies to one with his condition, so that he may regain his strength to serve God when healthy.[66]

E. Summary. In summation, the Chasam Sofer and Rabbi Moshe Feinstein maintain positions that reflect a great deal of sensitivity to the issue of *timtum halev* even in extenuating circumstances and in the absence of other halachic problems. This position is somewhat difficult to understand considering that *timtum halev* does not seem to be a halachic concern (as is evidenced by its omission from the entire discussion of a child eating non-kosher food cited in *Shulcha Aruch Orach Chaim* 343), but a worthwhile stringency to observe when possible. Indeed, Rabbi Hoffman omits any mention of a concern for *timtum halev* from his response,

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hospital as no Jew is feeding him any prohibition and the hospital staff has not been instructed to feed him non-kosher food.

[64] שו"ת אחיעזר חלק ג' סימן פא.

[65] פני יהושע ביצה דף ז.

[66] שו"ת מלמד להועיל חלק ב' (יורה דעה) סימן לב.

presumably because he views is as a non-issue in difficult circumstances.[67] Rabbi Yakov Breisch was asked about the permissibility of receiving a blood transfusion from somebody who eats non-kosher food. In his response, he points out that one should not concern himself with *timtum halev* at a time that he is ill, even if other blood is available, because any delay may cause a deterioration of his condition.[68]

VI. Waiting between meat and dairy. Perhaps the most common question relating to *kashrus* with children is how long a child has to wait between eating meat and dairy foods. The halacha does not seem to have been dealt with explicitly in writing, with exact ages and times, by the major halachic authorities prior to the end of the 20th century. In order to properly understand the approaches of the *poskim* to this question, some background information is necessary:

A. General *halachos* pertaining to waiting between meat and dairy. The biblical prohibition of eating meat and dairy together only applies to meat and milk that were cooked together.[69] If one eats meat and then drinks milk in the same meal he has not violated the torah prohibition. Nevertheless, the rabbis instituted a number of safeguards to protect the torah law. First, one may not even eat meat and milk together even though they were not cooked together.[70] Second, one may not even eat meat and milk consecutively, without some minimum waiting period.[71] The *gemara*, however, never states explicitly how long one must wait between eating meat and dairy foods. The lone source in the Babylonian Talmud on the topic is a statement made by Mar Ukva to the effect that while his father would not eat meat and dairy on the same day, he would only wait from one meal to the next.[72] The opinions of the medieval authorities range from no mandated waiting period,[73] to a minimum six-hour waiting period.[74] While the *Shulchan Aruch* rules in

[67] In a conversation with Mori v'Rabi Rabbi Herschel Schachter שליט"א he expressed surprise that *poskim* would ever withhold treatment from a patient due to a concern of *timtum halev*.

[68] שו"ת חלקת יעקב יו"ד סימן יג. Interestingly, Rabbi Breisch cites a comment that he had heard from the Belzer Rebbe זצ"ל who stated that when a person is weak and sick their *yetzer hara* for normal sins is not as strong. In order to compensate for this loss, the *yetzer hara* focuses the patient's attention on being lenient with the mitzvah of "and you shall live by them", and causes the patient to seek out unnecessary stringencies that put a person's life in danger. Rabbi Breisch concludes that the proper performance of the mitzvah of "and you shall live by them" should serve to protect a person from the *timtum halev* caused by non-kosher foods. See also שו"ת חלקת יעקב חלק ב' סימן מ.

[69] גמרא חולין דף קח.

[70] שולחן ערוך יורה דעה סימן פז סעיף א'.

[71] חולין דף קה.

[72] גמרא חולין שם

[73] תוספות חולין דף קה. ד"ה לסעודתא provided that one recites a *beracha acharona* in between. There is another opinion cited in תוספות חוילן דף קד: ד"ה עוף which simply requires a cleansing of the mouth between the two, which suggests that Mar Ukva's decision to wait until the next meal was a personal stringency. This is the opinion of רבינו תם and הלכות גדולות, but has been rejected from the halacha.

[74] רמב"ם הלכות מאכלות אסורות פרק ט' הלכה כח, רשב"א חולין דף קה., רא"ש חולין פרק ח' אות ה'. See, however, שו"ת יביע אומר חלק א' יו"ד סימן ד' אות יג who suggests that maybe even these rishonim would not require a full six hour wait, and five and a half hours would suffice. The logic for this suggestion is that in earlier

accordance with the Rambam that the full six hour period is required, the Ramo merely recommends six hours as a proper custom, but rules that even an hour waiting period would suffice.[75] The *Shach*, while agreeing with the Ramo that a single hour is halachically sufficient, states that anybody who is infused with the spirit of Torah (*reiach hatorah*) should wait the full six hours.[76] Indeed, the majority of Ashkenazic Jewry today waits the full six hours.

B. <u>The specific guidelines offered by the *poskim* for children</u>. Although we have previously illustrated that it is forbidden to feed non-kosher food to a child, Rav Moshe Shternbuch writes that this prohibition does not apply to feeding a child dairy foods after meat. He explains that while we may not eat dairy after meat, the food does not take on the status of forbidden foods, as it is only prohibited as an additional fence around the actual prohibition.[77] It goes without saying that there is no issue of *timtum halev* involved because there is no ingestion of non-kosher

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generations people did not have clocks to tell them exactly what time it was, and they were often forced to estimate. Generally the halachic definition of "close to" a certain time is within a half hour of that time. The comment of גמרא כתובות דף קד. that all measurements of the rabbis were meant to be exact (and not just estimations) would not apply to waiting between meat and dairy because the rabbis of the Talmud never gave an exact time to wait. Furthermore, the מאירי (מגן אבות סימן ט עמוד מז) writes that one only has to wait "five or six hours". In spite of all of these arguments, Rabbi Yosef is hesitant to be lenient in practice barring very difficult circumstances. See also נשמת אברהם סימן פט.

[75] רמ"א יורה דעה סימן פז סעיף א'. The ט"ז שם ס"ק ג' states that he was unable to find a source for the one hour waiting period. However, the ביאור הגרא שם ס"ק ו' points to a passage in the זוהר that prohibits eating milk and meat during the same hour.

[76] ש"ך יורה דעה סימן פז ס"ק ה' בשם הי"ש. Although the simple reading of the ש"ך implies that this is the recommended course of action for all Jews, כף החיים סימן פז אות כח understands the term "anybody who has a smell of torah" "כל מי שיש בו ריח התורה" as a reference to only the greatest torah scholars and *tzadikim*, but average people are not required to wait the full six hours. The כף החיים does note that according to the לבוש anybody who waits the full six hours is worthy of blessing.

[77] שו"ת יביע אומר חלק א' שליט"א (שו"ת תשובות והנהגות חלק א' סימן תלה). In a similar vein, Rabbi Ovadiah Yosef יורה דעה סימן ד' אות ד') explains that the prohibition to feed children non-kosher food only applies when the food is an איסור חפצה. If the food were only an איסור גברא there would be no problem of feeding it to a child because the child is not obligated in mitzvos. If that is the case, neither the meat nor the milk is an איסור חפצה as both are perfectly kosher. The prohibition of having them in proximity to each other is obviously only an איסור גברא which would make them permissible to feed to a child. This analysis of eating dairy after meat may shed light on an interesting halachic dilemma: If one forgot that he has eaten meat within the preceding six hours, and recites a *beracha* on a dairy food, only to remember that he is not permitted to eat dairy foods yet, should he put the food in his mouth and cause the *beracha* to be wasted, or should he refrain from eating the food and sacrifice the *beracha l'vatalah* in favor of the prohibition of eating dairy after meat. Rabbi Ovadiah Yosef שליט"א (שו"ת יחוה דעת חלק ד' סימן מא) rules that although blessings on prohibited foods are generally considered invalid (רמב"ם הלכות ברכות פרק א, תוספות ברכות דף מה), in this case the blessing would be valid. Rabbi Yosef explains that only a blessing on a prohibited food (איסור חפצה) is considered invalid. A blessing on a permissible food eaten at a prohibited time (i.e. dairy within six hours of meat – an איסור גברא) is a valid blessing. Therefore the person should place the food in his mouth in order to avoid the violation of *beracha l'vatalah*. Indeed, the כף החיים (סימן פט ס"ק ו') reports that he had this exact experience and he allowed himself to eat a small amount of the dairy food to avoid wasting his *beracha*.

food regardless of how short the wait is. The only issue in determining a proper time frame is the mitzvah of *chinuch* .

1. Rabbi Shmuel Wosner. Rav Wosner provides general guidelines and explanations for the halacha without specifically identifying an exact age for each of the categories of children that he identifies.

    a. Young children. When dealing with very young children, Rav Wosner rules that no minimum waiting period is required. He reasons that young children are considered to have the status of an ill person, and the halacha allows an ill person to eat a milk meal after a meat meal, in accordance with the opinion of *Tosafos*.[78]

    b. Older children. When dealing with older children the matter becomes more complex. Rav Wosner is lenient to a degree with children who are "a little bit grown up". He cites a statement of the *Meiri* that since the Talmudic source only requires waiting until the next meal time, and children generally eat more frequently than adults, it would be permissible for a child to have a milk meal shortly after a chicken meal. The *Meiri* was not willing to allow a milk meal after a true meat meal, but since fowl meal is only rabbinically considered meat in the first place, we may be lenient with it. Rav Wosner reasons that if the *Meiri*, who maintained that the halacha demands a waiting period of six hours, is willing to be lenient with a child, certainly Ashkenazic Jews who only maintain the six hour period as an added stringency (albeit a necessary stringency) may be lenient and allow children to eat a milk meal only one hour after a chicken meal.[79]

2. Rabbi Moshe Stern. Rav Stern divides children into four age groups. He does not explain the reasoning or provide sources for his conclusions. The age groups should be divided as follows:

    a. A child under the age of three does not require any waiting period. Cleaning off his mouth from meat residue suffices.[80]

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[78] See ערוך השלחן יו"ד סימן פז אות ז' and כף החיים שם אות כא who require even a sick person to wait one hour.

[79] שו"ת שבט הלוי חלק ד' סימן פד. Rav Wosner expresses some mild reservations about relying on this ruling because while the מאירי was lenient, his leniency was based on the fact that the six-hour waiting period is halachically mandated. It would then follow that for children, for whom it is not halachically mandated, there is room for leniency. However, since we assume that the six-hour waiting period is required based on מנהג, it could be argued that the מנהג applies equally to children.

[80] See במחיצת רבינו (עמוד פה) where it is reported that רב יעקב קמינצקי זצ"ל also did not require any waiting period until the child is three years old.

b. A three-year old child should be made to wait one hour, gradually increasing his waiting period until he turns six.[81]

c. A six-year old child should be encouraged to wait the full six hours, but if unable to do so, may be permitted to eat dairy just three hours after eating meat.[82]

d. Once a child reaches the age of nine, the full six hour waiting period should be strictly enforced.[83]

VII. Conclusion. In analyzing the multitude of issues relating to what our children may and may not eat in different circumstances one is struck by the deep sensitivity that we must have toward negative spiritual influences on children, even when they go beyond the normal strictures and demands of the halacha.[84] This theme, while based in ideas of *kashrus*, can, and should, be applied to all aspects of the upbringing that we provide for our children.[85]

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[81] Requiring a three year old to wait one hour is somewhat puzzling. After all, is the only issue is one of *chinuch* it seems that the three year old is well below the age of *chinuch* for this mitzvah. While he did not agree with this ruling, Mori v'Rabi Rabbi Hershel Schachter שליט"א was able to explain it as follows. We have assumed that the prohibition to feed a child prohibited items does not apply when you are feeding him perfectly kosher dairy food after feeding him meat. Clearly, though, feeding meat and dairy together would be prohibited. It may therefore be argued that the ביאור הגר"א and the זוהר view food eaten within one hour of each other as if they are together. This would make the dairy food we give the child within an hour of meat food a prohibition of rabbinic *basar v'chalav*. Indeed, רב יעקב קמינצקי זצ"ל believed that feeding a child milk within one hour of eating meat is included in the prohibition of לא תאכילם (במחיצת רבינו עמ' פה).

[82] The exact source for waiting three hours is not perfectly clear. The more well known rishonim do not record such a practice. However, רבינו ירוחם does record this practice. It may be explained based on a comment of the דרכי תשובה יורה דעה סימן פז אות ו in the name of ספר מזמור לדוד who states that since the days are short during the winter months it is likely that the time between one meal and another was not more than three hours. It would be illogical to assume that one must wait longer during the summer than he does during the winter, so we may safely assume that if three hours suffices during the winter months, it would also suffice all year round. See also שו"ת יביע אומר חלק א' יו"ד סימן ד' אות יב and (חוברת ח' עמוד עה-עז) מסורה in the name of ר' משה הייניאן שליט"א regarding the custom to wait three hours.

[83] רב יעקב קמינצקי זצ"ל. שו"ת באר משה חלק ח' סימן לו אות ד' agreed that at the age of nine a child must wait the full waiting period that his family's custom requires, but, unlike Rabbi Stern, he did not mention any additional stringencies for the child at the age of six. Indeed, שו"ת חלקת יעקב חלק ב' סימן פח writes that a child under the age of nine who expresses a strong desire for milk may be given milk after waiting just one hour.

[84] It is therefore not surprising at all that the משנה ברורה (סימן שמג ס"ק ב') raises issues relating to basic parenting in the context of this discussion. The משנה ברורה warns to not allow our children to speak *lashon hara*, or to lie or quarrel because, although they may be under the age of *chinuch*, engaging in such behavior becomes habitual and will become increasingly more difficult to thwart as the child grows older.

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