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WITH ALL DUE RESPECT: CONTEMPT OF COURT IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

The Associated Press reports:

A New York judge found former President Donald Trump in contempt of court and set in motion \$10,000 daily fines Monday for failing to adequately respond to a subpoena issued by the state's attorney general as part of a civil investigation into his business dealings...

"Mr. Trump, I know you take your business seriously, and I take mine seriously," [Judge Arthur] Engoron said. "I hereby hold you in civil contempt and fine you \$10,000 a day" until the terms of the subpoena are met.¹

Cornell Law School's Wex Project outlines the concept of contempt of court:

Contempt of court...is the disobedience of an order of a court. It is also conduct tending to obstruct or interfere with the orderly administration of justice...

¹ Larry Neumeister. Judge finds Donald Trump in contempt in New York legal fight. AP News. <https://apnews.com/article/donald-trump-held-in-contempt-in-ny-legal-fight-409f6571e9d74c76055c8e0a57249163>.

Contempt of court can also be classified as civil contempt or criminal contempt... For example, in Pennsylvania, if a court's purpose for finding contempt is to coerce the contemnor to comply with a court's order, then the charge will be one of civil contempt. However, if the court's purpose is to punish the contemnor for disobedience, then the charge will be one of criminal contempt...

Punishments for contempt include imprisonment and fines. However, according to the Supreme Court, civil contempt penalties are conditional. [Those who are] punished for civil contempt can avoid the punishment by doing as the court ordered, and they are therefore described as "carrying the keys of their prison in their own pocket." Punishments for criminal contempt, however, are generally unconditional and definite.²

Halacha has close parallels to these various
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² Legal Information Institute, Wex, Contempt of Court.

לע"נ הרב יוסף ישראל
 ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
 HaRav Yosef Grossman zt"l



PARSHAS ACHAREI MOS DOUBLE TAKE

Excerpted and adapted from a shiur by
 Dayan Yosef Greenwald

You shall not take (*lo sikach*) a woman in addition to her sister, to make them rivals, to uncover the nakedness of one upon the other in her lifetime.

Vayikra 18:8

Chazal teach that even if such a *kidushin* were performed, the prohibition of *arayos* with its *chiyuv kareis* prevents the *kidushin* from taking effect. The Sefer Hachinuch (mitzvah 206) writes that still, "*lo sikach*" teaches that one who does so has violated a prohibition. This *chiddush* is not accepted by other Rishonim, who hold that since the *kidushin* is invalid, the *ma'aseh* is meaningless, so no prohibition has been committed.

The Chinuch appears to contradict a Gemara: If a woman's husband was thought to have died and she accepted *kidushin* from another man, no *issur* is violated if her husband returns before the *nisu'in* (Yevamos 89). According to the Chinuch, the second man should have transgressed *lo sikach*, because *eishes ish* (a married woman) is one of the *arayos*.

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Q&A from the
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Taking a Count

Q I forgot to count the *omer* last night and only counted this evening, not long after sundown. May I count on the remaining days with a *bracha*?

A The Shulchan Aruch (O.C. 489:8) rules that one who skips a day must continue to count, but without a *bracha*. The background of this ruling is a question debated by the early *poskim*. In the context of *sifras ha'omer*, the Torah requires (Vayikra 23:15) "*sheva shabbasos temimos* (seven complete weeks)," which according to some authorities means that a single missing day prevents fulfillment of the mitzvah. Others interpret "*temimos*" differently and

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aspects of contempt of court, which we explore in this article.

The Gemara takes for granted that someone in contempt of court is excommunicated, to the extent that its entire discussion is only about the due process that must be satisfied in order to reach a conclusion that a particular individual is indeed guilty of contempt:

Revina said: We deem an agent of the rabbis, who was sent to summon an individual to court, as credible as two witnesses if he says that the defendant refuses to come to court. And this matter applies only with regard to excommunication, but with regard to issuing a document of ostracism, since it causes the defendant a loss of money (as he must pay the sofer for drafting the document), the agent is not deemed credible...

The continuation of the discussion makes it clear that this punishment of excommunication is similar to the modern conditional penalties for civil contempt, where the offender can avoid the punishment by doing as the court ordered:

Rava said: With regard to one who had a document of ostracism written for him because he did not come to court, we do not tear up the document until he actually comes to court, and it is not enough for him to commit to appearing. Similarly, if the document of ostracism was written because he did not obey the ruling of the court, we do not tear it up until he actually obeys the ruling. (The Gemara comments:) This second statement is not so. Rather, once he has acquiesced and said "I will obey," we immediately tear up the document.³

Maharik, however, considers it obvious that even one who obeys a court summons but still displays egregious disrespect for the judges by telling them that they should not think that he came in obedience to their order, for he does not care at all about their order, is excommunicated, "since there is no more disrespectful behavior than this."⁴

3 Bava Kama 112b-113a.

4 Shu"t Maharik *shoresh* 189, codified by Rama in Shulchan Aruch C.M. *siman* 11 *se'if* 1.

This seems more akin to an unconditional punishment for criminal contempt.

Elsewhere, the Gemara itself seems to establish a punishment of flogging for criminal contempt of court:

Rav would flog a man...for tormenting (alternatively, behaving irreverently toward) a messenger of the Sages, as this indicates a lack of regard for the Sages.⁵

(Rashi interprets tormenting to mean striking the messenger who summons him to court on behalf of the judges;⁶ the Ran disagrees and explains that it includes even denigrating him in the presence of others and humiliating him.⁷)

In this context, the flogging is apparently simply a punishment for bad behavior, rather than an attempt to compel compliance with the court's summons. Some *Rishonim*, however, rule that a messenger of the court may use physical force against a recalcitrant litigant in the course of carrying out the court's order, apparently with the goal of enforcing the order.⁸

As we have seen, the Gemara prescribes two forms of punishment for contempt of court: excommunication and flogging. Excommunication itself entails a specific set of punitive restrictions, as set forth in the Gemara and later halachic sources,⁹ but as we have previously discussed,¹⁰ the Geonim expanded these sanctions to a remarkable degree, to the extent of even expelling the children of the contemnor from school and his wife from the shul. As we noted, there is considerable debate among later authorities over these extended sanctions for contempt, but one of those who accepts the possibility of such extensions, the Aruch Hashulchan, justifies them as follows:

And the court has the authority to impose stringencies upon [one who has been excommunicated]: that his sons shall not be circumcised; that he should not be buried

5 Kidushin 12b, Yevamos 52a.

6 Rashi Kidushin *ibid*.

7 Ran *ibid*, 6b in Rif pagination.

8 Sefer *Maysharim nesiv* 31 *cheilek* 2 p. 92 col. 2 and *Nimukei Yosef* Bava Kama 27b, 12b in Rif pagination. The sources in notes 6-8 are all cited in *Bais Yosef* C.M. end of *siman* 8. Cf. Shulchan Aruch *ibid*. *se'if* 5.

9 See Shulchan Aruch Y.D. *siman* 334.

10 Sins of the Fathers. *Bais HaVaad Halacha Journal*. Dec. 16, 2021.



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Perhaps the answer is that there is a fundamental

difference between other *arayos* and *eishes ish*: In the former, the familial relationship

precludes the possibility of marriage, so *kidushin* does not take effect, but a *ma'asei kidushin* is still halachically meaningful, so an *issur* was violated. *Kidushin* of an *eishes ish*, however, is entirely meaningless, because she is already "taken" and further taking is impossible (see *Pnei Yehoshua*, Gittin 43).

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consider each day's counting an independent mitzvah.

According to the first view, there's no point in continuing to count after forgetting one day, as the mitzvah is already lost, and one certainly couldn't make a bracha on such a counting. According to the second view, one must certainly continue counting with a bracha, as yesterday's omission in no way affects today's mitzvah. Given the dispute, one who misses should still count (because of the second view) but should omit the bracha (because of the first).



RAV ARYEH FINKEL

If one forgets at night but then remembers to count during the day, he may count with a bracha for the rest of the *sfirah* (Mishnah Brurah *ibid*. 34). This is because even if the halacha follows the first opinion above, counting during the daytime may suffice, so this constitutes a *sfek sfeika* (a double doubt, which provides for leniency in cases where stringency is subject to multiple doubts).

The Shulchan Aruch writes that if someone is unsure whether he counted one day, he may continue with a bracha. Here too, *sfek sfeika* is applied.

Some *poskim* (cited in Sha'arei Teshuvah *ibid*. 4) apply *sfek sfeika* to your case as well: The status of *bain hashmashos*, the transitional period between day and night, is a *safek*, which, combined with the above *safek*, results in a *sfek sfeika*. Others (*ibid*.) reason that daytime counting itself permits continued counting with a bracha only because of *sfek sfeika*, so *bain hashmashos* cannot be reckoned as an independent *safek*.

If one remembers to count soon enough after sundown—within nine minutes, thirteen according to some (see *Igros Moshe* O.C. 4:62)—he may certainly continue with a bracha. Beyond that point, contemporary *poskim* debate which view to follow, so one should consult his *rav*.

with honor if he dies; and to expel his children from school, and his wife from the synagogue, until he accepts upon himself the law, if they see that by this they will bend his head (i.e., secure his submission). But in the absence of such considerations, we do not punish children because of their parents, and a wife because of her husband, even small children.¹¹

11 Aruch Hashulchan *ibid*. *se'if* 6.

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