

Livestreaming, Zooming, and Recording a Shabbat Service

Concepts and Texts

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Mishnah Hagigah, 1:8

The laws of the Sabbath...
are as mountains hanging by a strand,
since they are little scripture and many laws.
(*The Oxford Annotated Mishnah*)

משנה חגיגה פרק א משנה ח

... הלכות שבת
הרי הם כהררים התלויין בשערה
שהן מקרא מועט והלכות מרובות.

Part 1: Basic Concepts of Shabbat Halakhah (law)

“Shabbat is governed by two sets of commandments, positive ones and negative ones... The negative ones, the ones specifying things that must not be done, are prohibitions that prevent Shabbat from becoming an ordinary day like any other. The uninitiated might view the restrictions as infringements on their freedom..., but insiders will see these prohibitions as a very effective means to ensure their freedom from the ordinary, mundane, burdensome demands of the everyday world.” (Rabbis Michael Katz & Gershon Schwartz, “Shabbat,” in *The Observant Life: The Wisdom of Conservative Judaism for Contemporary Jews*)

A. מלאכה/Melakhah

Avot Melakhot

אבות מלאכות *Principal labors*. The thirty-nine primary categories of labor that are prohibited on the Sabbath. A person who inadvertently performs one of these labors, or one of the sub-categories...derived from them, on the Sabbath is obligated to bring a...sin offering. (Rabbi Adin Steinsaltz, *The Talmud: A Reference Guide*)

Toladah, toldot

תולדות, תולדות Lit., *offspring*. Something secondary or derived from something fundamental. Something that is not a primary source but derives from such a source, either as a legal inference or as a factual derivative... In ritual matters, תולדות are prohibitions not explicitly mentioned in the Torah. For example, prohibitions derived from the main categories of work...forbidden on the Sabbath... In certain cases the rules governing these תולדות are the same as those governing the main categories... In other cases, the derived prohibitions are less severe than the principal ones. (Steinsaltz)

M'lekhet mahashevet

מלאכת מחשבת Lit., *planned, thoughtful, creative work*. Work on the Shabbat is only prohibited by Torah law if it is מלאכת מחשבת – i.e., creative, purposeful work intentionally performed. Work that is not מלאכת מחשבת is prohibited only by Rabbinic decree. All the thirty-nine main categories of labor prohibited on Shabbat...are derived from the various activities involved in the construction of the Sanctuary...in the wilderness. This construction is termed מלאכת מחשבת (see Exodus 35:33), and thus all categories of work prohibited by Torah law on Shabbat must contain this element of creative work. (Steinsaltz)

Mishnah Shabbat 7:2

The primary prohibited labors are forty minus one:

(1) Sowing, (2) plowing, (3) harvesting, (4) binding sheaves, (5) threshing, (6) winnowing, (7) selecting, (8) grinding, (9) sifting, (10) kneading, (11) baking;
 (12) shearing wool, (13) bleaching it, (14) hackling it, (15) dyeing it, (16) spinning, (17) stretching the threads, (18) making two meshes, (19) weaving two threads, (20) dividing two threads, (21) tying, (22) untying, (23) sewing two stitches, (24) tearing in order to sew two stitches;
 (25) trapping a deer, (26) slaughtering it, (27) flaying it, (28) salting it, (29) curing its hide, (30) scraping it, (31) slicing it, (32) writing two letters, (33) erasing in order to write two letters;
 (34) building, (35) pulling down;
 (36) extinguishing, (37) kindling;
 (38) striking with a hammer;
 (39) taking out from one domain to another.

These, then, are the primary prohibited labors: forty minus one.

Note: **These labors are ‘primary’ in the sense that secondary and tertiary labors unfold under each of them. Each, then, is an archetype (or ‘father’).** So, for example, weeding, trimming, and pruning are included in the category of plowing, and gathering loose wood or grass is included in the category of harvesting... Labors 1-11 are the steps required to obtain wheat in order to bake bread; labors 12-24 are the steps to obtain wool in order to sew a garment; labors 25-33 are the steps required to obtain leather in order to write something; the remaining six belong to diverse categories.... (*The Oxford Annotated Mishnah*)

To these *avot m’lakhah*, the rabbis added a long list of *toladot* (literally, ‘offspring’) that they perceived to issue, like descendants, from the broader categories. For example, planting is an *av melakhah*, while watering that same plant is a *toladah* of planting. Kindling a fire is an *av melakhah*, whereas adding oil to a preexisting fire is a *toladah* of kindling.” (*Observant Life*)

כתיבה/K’tivah - Writing

Mishnah Shabbat 12:3 & 5

3 One who writes two letters, whether with his right hand or his left, whether the same letter or different letters, whether in different inks, in any language—is culpable.

Rabbi Yose said: The Sages declared [the writer of] “two letters” culpable only because they constitute a mark...

Note: The opening statement explains that the prohibition of “writing two letters” should be understood broadly. R. Yose explains that the letters need not even be letters.

5 If one wrote with liquids or fruit juice or with dust from the roads or the dust of scribes or with anything that does not endure, he is exempt.

[If] with the back of his hand or with his foot or with his mouth or with his elbow...he is exempt. (*The Oxford Annotated Mishnah*)

B. שבות/Sh'vut & rabbinic prohibitions

Isaiah 58:13-14

¹³If you refrain from trampling the Sabbath,
From pursuing your affairs on My holy day;
If you call the sabbath "delight,"
The Lord's holy day "honored";
And if you honor it and go not your ways
Nor look to your affairs, nor strike bargains* —
¹⁴Then you can seek the favor of the Lord...

ישעיהו פרק נח יג - יד
(יג) אם תשיב משבת רגלך עשות חפצך ביום קדש
□ קראת לשבת ענג לקדוש יְיָ □ ק מכבד כבודתו מעשות
דרכך ממצוא חפצך דבר דבר:
(יד) אז תתענג על ה'...

* or: "speak thereof"...

(Jewish Publication Society translation)

Mekhilta d'Rabbi Yishma'el, *massekhta d'shabta* parashah 1

"Nevertheless, you must keep My Sabbaths" (Ex. 31:13) – why is this said? Since it says "you shall not do any work" (Ex. 20:10) – I only have [i.e., only know about] matters which are (forbidden) because of labor, (but) matters which are (forbidden) because of restfulness, from where (in Torah do I know about them)? Thus it teaches, "Nevertheless, you must keep My Sabbaths" – to bring matters that are because of restfulness.

Sh'vut

שבות Lit., *rest*. All the restrictions instituted by the Sages on the Sabbath and the Festivals to prevent the violation of Torah laws or to enhance the holiness of the day fall in this category... Many of the restrictions in this category are very ancient... (Steinsaltz)

The term שבות ('resting') covers a whole area of activities which are not strictly work but are to be avoided because they are not in the spirit of the Sabbath (משום עובדין דחול), or because doing them may lead to acts that constitute a major desecration of the Sabbath... These include discussing business matters, asking a Gentile to do what is forbidden for a Jew to do on the Sabbath, make preparations during the Sabbath for a forbidden act that will be done immediately upon the conclusion of the Sabbath... These prohibitions seem particularly burdensome today, but **the truth is that there can be no real Sabbath without shevut. It is, in effect, a means of preserving the special character of the Sabbath.** (Rabbi Isaac Klein, *A Guide to Jewish Religious Practice*)

* *uvdin d'h'ol*: matters/activities of mundane time/the everyday

Muktzeh

Muktseh means 'set aside' or 'excluded'; it is the prohibition against handling any object which for one reason or another, was not intended by us for use on the Sabbath day.

Several kinds of objects fall into this category:

1. **Objects which can never be brought into use on the Sabbath without transgressing the Sabbath law...** such as money, candlesticks..., pencils, pens, cigarette lighters.
...
3. **Objects normally used for work prohibited on the Sabbath, but also usable for purposes permissible on the Sabbath, may not be handled unless they are to be used for permissible purposes...** (Klein)

“Feeling that Shabbat had to be not only observed but also honored, the classical rabbis extended the official prohibitions of Shabbat to other activities that might impinge on the sanctity of the day. Thus, they developed a concept called *muktzeh*, meaning ‘set aside’ or ‘excluded.’...

The laws governing *muktzeh* prohibit handling objects that are not intended for use on Shabbat. Of these, the most common are those objects that are always *muktzeh* because they have no licit use on Shabbat at all, like money and writing implements...

Today, we might add pagers, cell phones, and computers to the list of *muktzeh* items. Whether or not they have some licit use on Shabbat, they are by their very nature weekday items whose presence in our personal space on Shabbat will only impair our ability fully to enjoy the day.”
(*Observant Life*)

Amirah I'nokhri

The law states explicitly as a general principle that we may not ask a non-Jew to do anything on the Sabbath that we may not do ourselves...

The rabbis laid down the general principle that if the non-Jew is independent, is paid for the job as a whole, and is not told specifically to work on the Sabbath, he may do his work... as long as the non-Jew is free to decide when the work should be done. An employee of a house or synagogue who is assigned specific duties on the Sabbath as part of his total responsibilities would also come under this category. ...

The only exception to this rule is when the work is done in the open and is obviously being done for a Jew... The same applies to work being done on the premises of a synagogue... (Klein)

Patur aval assur

פטור *Exempt*. ... In ritual matters, it means that a person has no liability, that he is not liable to bring a sacrifice, or that he is not liable according to the laws of a human (rather than divine) tribunal. **It should be borne in mind that, particularly in the laws concerning the Sabbath..., in most instances where the word...is used it means פטור אבל אסור – “The person is exempt, but the action is forbidden”...** The essential nature of the concept...is that the performance of the given action is not liable to punishment, but not necessarily that the action itself is *ab initio* permissible.

Part 2: Conservative halakhic approaches to livestreaming, Zooming, and Recording a Shabbat Service (Responsa of the Committee on Jewish Law and Standards)

A. Rabbi Gordon Tucker, “The Use of a Remote Audio/Video Monitor on Shabbat and Yom Tov” (1989)

https://www.rabbinicalassembly.org/sites/default/files/assets/public/halakhah/teshuvot/19861990/tucker_audiovideo.pdf

May video monitors with sound be used to project synagogue services to another part of the synagogue building? (In the discussion which follows, no distinction need be made between projection to another part of the same building, or to another building). (289)

It should be permitted, provided that (1) no permanent tape is made in the process, (2) the equipment is set up before Shabbat or Yom Tov, and either turned on or placed on a timer, (3) the equipment is either inaccessible to adjustment or repair, or is placed in the skilled hands of a non-Jew in the employ of the synagogue... (294)

B. Rabbi Joshua Heller, “Streaming Services on Shabbat and Yom Tov”

<https://www.rabbinicalassembly.org/sites/default/files/2020-05/Streaming%20on%20Shabbat%20and%20Yom%20Tov%20Heller.pdf>

There are some ways to enable “virtual” participation in religious ritual on Shabbat and Holidays that are solidly within the letter of Jewish law, though admittedly, their widespread implementation **poses challenges to its spirit**. Other methods may be more or less viable based on one’s understanding of the nature of electricity and electronic devices. There are still other modes that might not be accommodated within the *daled amot* of *halakha*, but might seem unavoidable to a particular community given their circumstances. In such cases we cannot encourage their use, but we can offer suggestions as to how to **mitigate** potential violations. (3)

A concern that must be addressed is that many congregations, in pursuit of a “broadcast quality” experience for viewers, have a live professional actively operating the feed. For a one-way stream, this technician may be adjusting sound levels, and switching the broadcast from one camera to another based on what is happening in the service. On a Zoom or multi-way system, the technician may be called upon to spotlight or mute particular speakers. For security purposes, many congregations using Zoom make use of the “waiting room” feature, which requires real-time monitoring as well. **I want to emphasize Rabbi Tucker’s point, that, in the absence of having someone who is not Jewish designated to deal with these issues, there is a very high risk that a Jewish person will step in, and violate not only rabbinic, but biblical prohibitions. Therefore it is strongly urged that if these systems are considered “too important to fail,” that a non-Jewish person be tasked with monitoring them.** (8)

A regular non-Jewish employee of the congregation who tends to the equipment based on instructions given during the week, without specific direction on the holy day, performing only tasks that would be violations of rabbinic law, would be easy to justify.

Conversely, a technician who is only present for Shabbat and holiday services, and is writing and recording in response to real-time direct instructions from those organizing the service would not meet these criteria, and would be more problematic. ... **As a general recommendation, even if one believes**

that it is technically permitted for a non-Jewish person to activate the streaming process on Shabbat, it is strongly preferable for the system to activate automatically through a process set in motion before Shabbat, rather than to rely on a non-Jewish person doing so on Shabbat, in case any step of activating the system involves a violation of Torah law. (9)

What forbidden labor is involved in accessing a stream through an electronic device? Rabbi Nevins makes a strong argument that the use of computers, internet-connected tablets, and cellphones on Shabbat...should generally be considered to be prohibited. To summarize his approach: *Koteiv*, writing, is one of the 39 categories of labor prohibited on Shabbat, and at its core requires the writing of two or more letters in a way that will endure. Causing letters to appear on the screen of an electronic device is not *koteiv* in the classic sense, because the letters on the screen itself are not permanent. Similarly, typing on a physical or virtual keyboard is not the same as writing. However, any biblically mandated labor is also considered to have *toledot*: derivative activities that may have a different physical process, but have the same purpose and result, and are therefore forbidden. **Typing something on a computer or a phone may engage a very different physical process than writing with pen and paper, but accomplishes the same intended result, of creating a permanent record.** Rabbi Nevins argues that this is true even if one uses the device without actually typing, since the device, and the internet servers to which it connects, make a permanent record of one's actions, and thus would be *toledat koteiv*.

According to Rabbi Nevins' analysis, interacting with an internet-connected device and typing an address to activate a video connection, would be a violation of Shabbat, through *koteiv* on a biblical level, and that other types of typing would be at least *toledat [sic] koteiv*. (11)

In general, it does not matter whether an activity on Shabbat is forbidden by Biblical or Rabbinic decree. It is forbidden. However, in some cases, the type of prohibition determines the circumstances where that prohibition may be overridden... Rabbi Nevins notes that a *shvut* may be overridden when there is a positive religious obligation at stake (the classic example being caring for the comfort and dignity of people). (12)

We may rely on...precedent that...work that is Biblically prohibited becomes only rabbinically prohibited if done in an unusual, less effective way. **We can not consider the use of an electronic device to be *k'leachar yad*, in and of itself, since electronic devices are now considered the "normal" way to perform many functions.** However, one may interact with the device in an unusual way. For example, one might use the mouse with one's non-dominant hand or click with one's wrist instead of one's finger. (14)

There are, of course, ways to avoid the concern that activating a video link would be a violation of Shabbat or Yom Tov. The most obvious option would be that one might set up a computer or smart TV tuned to the stream before Shabbat, and leave it on, with screen saver disabled. (15)

The most serious concern is that the user would be tempted to adjust or reset the device if it is malfunctioning (*shema yitaken*). ... This...is particularly serious in this case because, in the case of an electronically transmitted service, the availability of the service depends entirely on the equipment...

We are able to see past this concern more easily for a service streamed from a synagogue, given the likelihood that a synagogue will have someone non-Jewish who can monitor the equipment, or that the equipment will be inaccessible to laypeople. On the receiving side, many users may not be technologically savvy, and will try to reach out on Shabbat for assistance. Participants would hopefully

not text the rabbi during Shabbat services in search of technical support, but may well reach out to other staff or friends for help. Many home users will also not appreciate the nuances of Shabbat observance. They may not think twice about adjusting home equipment: “Honey, I can’t get on to services. Can you reset the Wi-Fi?” They might search the web or email for the right link or password. Some of these steps are only rabbinically prohibited, or *shvut*...but **we must be realistic that some users will violate Shabbat in more serious ways.**

Even in the absence of a malfunction, there is still a concern that viewers will be tempted to interact with the device. (16)

While undoubtedly there will be some who will follow the steps and precautions outlined above so that they can watch the streaming service without using an electronic device in a way that violates Shabbat, we must assume that many more will interact with their devices, in ways that are violations of the letter and/or the spirit of *hilkhot Shabbat*. **Can a synagogue, in good conscience, provide this service knowing that it will tempt others to violate Shabbat?**

There is a halakhic category of “*Lifnei iver lo titein mikshol*.” Taken literally, this phrase from Leviticus 19:14 prohibits putting something before a blind person that might cause them to stumble. In rabbinic literature, however, the verse is adapted figuratively to refer to many types of behavior that might encourage another to violate a prohibition. (18)

A parallel case is inviting a person to a Shabbat meal when we know that they will drive to and from our home. Is one not violating *lifnei iver* by encouraging them to drive? However, it is common practice, even among many who are normally quite *mahmir*, to invite Shabbat guests, knowing that they will drive. (19)

Rabbi Danny Nevins pointed out that **with a synagogue parking lot, or a Shabbat meal invitation, there are permitted ways to participate (by walking or staying over), whereas with a stream, the practice of accessing the stream is in itself a violation of Shabbat.** I would respond that with most, though not all, streaming systems, there are indeed ways to set up the connection before Shabbat, so in this case as well, we rely on the fact that that possibility exists...

Based on this reasoning, **it is important that any video option is offered in a way that minimizes, rather than increases, violations of *hilkhot Shabbat*, and that there be at least some way, even if it is less convenient, to participate without such a violation.** The stream should be made available with the fewest number of actions (opening an app, or clicking an easy bookmark), and no typing. If the service is protected by a password, the link should be in a password protected part of a website that could be logged into before Shabbat, or accessed with a unique personal link that incorporates the password. In contrast, requiring a user to type a password on Shabbat immediately before accessing a stream might fall into the category of “*lifnei iver*” because we are actually encouraging typing that the user would not otherwise have done.

The CJLS has endorsed opinions both permitting and prohibiting the recording of services on Shabbat and Yom Tov, based primarily on videotaping technology. ...

...concerns about whether turning on a recording is *ketivah* can be avoided by using a system that records automatically. (21)

However, there is a secondary concern: **is it prohibited to be recorded on Shabbat?** In some sense, this a moot question. In many urban settings, is essentially impossible to walk the streets or other public places without one's image being preserved. ... On the other hand, these uses could be considered...unavoidable. We do not intend for security cameras to track our movements. (21)

When a service is intentionally recorded, those participating are behaving with the intent and desire that their words and actions be preserved. Some may view this as sufficient ground to prohibit recording. **The more permissive view would be that once the system is activated, it is encoding whatever it sees-** transmitting and recording a constant string of ones and zeroes, whether we are active or not. The "*ketivah*" is happening with or without human participation. (22)

The impact of recording (and transmission) in the feel of the service:

This concern is the most divorced from *halakhah*, but the one with the broadest implications. The 20th century teshuvot expressed concern that recording the service would encourage people to "play to the camera" or otherwise change the feel of the service. Indeed, these are real concerns. Will services be warped by the desire to meet certain "production values?" Will the recording lead to violations of privacy for those attending services?... (22)

C. Samples from CJLS dissents to Rabbi Heller's responsum

Rabbi Amy Levin: "Streaming Services on Shabbat and Yom Tov" -- a Dissent and a Challenge"

<https://www.rabbinicalassembly.org/sites/default/files/2020-05/Streaming%20Services%20on%20Shabbat%20and%20Yom%20Tov%20Dissent-%20Levin.pdf>

Inviting guests to a Shabbat meal in one's home knowing that it is likely that those guests will drive is an event in an entirely different context than a congregation officially offering streaming, Zooming and recording on Shabbat and יום טוב. One is a private invitation extended by hosts to potential guests to join them for a Shabbat meal in their home ... the other is the official act of a congregation under the supervision of a Conservative / Masorti rabbi and m'ara d'atra arranging a complex procedure that involves participants in the desecration of sacred time.

I also posit that the challenge of שְׂמַח יְתֵקֵן [*lest one repair*] cannot be dismissed: the number of elements required to livestream or Zoom is not inconsequential... Even given the presence of a non-Jew employed by the congregation to support the process (itself questionable), the overwhelming majority of those participating remotely are not going to have a non-Jew in their employ to address whatever malfunctions may arise during the course of the service. The likelihood of such in-the-moment intervention to keep the streaming going and being received is far higher than the classic case of the blown bicycle tire.

...there remains the issue of streaming or recording someone who does not wish to appear before a camera during these sacred times.

Let us, instead, consider this to be an opportunity to think creatively about ways to address some of the most pressing challenges of living a life in Jewish community at a time of physical distancing.

...

...it is the challenge of our moment to think creatively about ways for... enhancing the uniqueness of the 7th day instead of using the tools that engage us during the 6 days of our creating and working and producing.

Rabbi David A. Schuck: “Streaming Services on Shabbat and Yom Tov’ -- A Dissent”

<https://www.rabbinicalassembly.org/sites/default/files/2020-06/Streaming%20Services%20on%20Shabbat%20and%20Yom%20Tov-%20A%20Dissent-%20Final%20Copy%20%281%29.pdf>

Rabbi Heller does not offer virtual platforms for Shabbat services as a last option after sincere attempts to engage our communities in less *halachically* problematic ways. I would be more comfortable with a teshuvah that guides rabbis to avoid streaming services until it is clear that all other approaches have failed...

Rather than create new opportunities for religious and spiritual growth, we very quickly found ways to replicate exactly what we did before this pandemic but on virtual platforms. Rabbi Heller’s responsum is an endorsement of replicating exactly what we did before this pandemic but on virtual platforms, some of which violate shabbat. Instead, he should have first required attempts to engage our communities in new ways that do not violate *hilchot* Shabbat while also educating and facilitating our congregants’ religious growth.

For many Jews in the Conservative movement, the synagogue is the focal point of religious observance and spiritual meaning. This is often due to the fact that they have not been educated and empowered to engage in ritual practice on their own. As such, there is a dependency on the synagogue to provide religious observance and spiritual meaning to people. ... As a movement, we could have seized upon this moment as an opportunity to strengthen the skills and confidence of our members to “do Judaism” at home, to wit, become more Jewishy [sic] independent. Instead, we provided them with the same, largely passive, Shabbat morning experience that we offered before the pandemic.

In our communities, computers, iPads, and smartphones are the machines that maximize our production and enable labor. Does logging into a computer enable us to partner with God to actualize the tranquility of Eden and liberate ourselves from the demands of productivity? I am highly skeptical. To my thinking, this is a return to Egypt, not the liberation from it.

Addendum - A small sampler of additional on-line resources (for you to access *after* Shabbat!), representing Conservative/Masorti/Traditional Egalitarian views:

Rabbi Chaim Weiner: “Streaming Synagogue Services on Shabbat”
<https://masorti.org.uk/articles/streaming-synagogue-services-on-shabbat/>

Rabbi Joel Goldstein: “Online on Shabbat: where is it leading us?”
<https://jewschool.com/online-on-shabbat-where-is-it-leading-us-173066>

Rabbis Ethan Tucker and Avi Killip: “How Will We Return to Running Minyanim Virtually and In-Person?” (Podcast: “Responsa Radio”)
<https://www.hadar.org/torah-tefillah/podcasts/how-will-we-return-running-minyanim-virtually-and-person>

(the first ~20 minutes in particular deal with precisely the issue members of our minyan are facing...)