# Can an American Grandfather Do Milah

 for His Grandson on Yom Tov Sheni?

### Question:

A Jewish American has children who live in Israel and just recently had a grandson there. He is a mohel and has done all of the milah’s of his descendants and he certainly anticipated to do the milah on this grandson as well. But since the grandson was born exactly eight days before what would be Yom Tov Sheni for those in America he thought of the following question. Should we should say that since he was going to Israel for the brit and is going to keep two days of Yom Tov he could do the milah just like he would do it if he were in America or if it was a Shabbat milah? Or maybe since he could just let an Israeli mohel do it for whom it is a weekday he should do that rather than have him be involved in violating his Yom Tov Sheni?

### Answer:

## A. Avoiding Even “Permitted” Prohibitions

Interestingly this question dates back several centuries, with a question asked of Rabbi Yonah Navon, a great scholar of Yerushalayim in the eighteenth century, student of the Or Hachaim, Rav Chaim Ben Atar, and teacher of the Chida, Rav Chaim Dovid Azulai.[[1]](#footnote-0) Once there was a mohel from the Diaspora visiting Israel on Yom Tov and it happened that in the community he was staying there was a milah on Yom Tov Sheni. Being that he was a mohel the community asked him to do the milah. Rabbi Navon strongly considered having an American do the milah on Yom Tov Sheni to be a violation of Yom Tov. If it was a regular Shabbat, Yom Tov, or Yom Tov Sheni in America, of course it would be permitted to do the milah even though doing so involves a melacha. Though when we consider our situation with Yom Tov Sheni in Israel we could suggest that since there’s a solution to avoid any melacha maybe we should take that route.

Rabbi Navon’s proof that we should in fact be obliged to ask an Israeli mohel is from the principle of Reish Lakish. Gemara Yevamot 20a records that Reish Lakish posited that anytime a person encounters a situation in which he can perform a mitzvah but might also violate a negative prohibition, if he can do the mitzvah and avoid the prohibition he must do so. If there are no other options, he may do the mitzvah even at the expense of violating the prohibition based on the concept of *aseh doche lo taseh*. Briefly, *aseh doche lo taseh* is a rule that gives precedence to positive mitzvot to negative prohibitions and in a clash the positive mitzvah wins out. Therefore, Rabbi Navon reasoned that doing milah on Shabbat or Yom Tov is also essentially a clash between a mitzvah and a prohibition and if there’s no other choice we would violate the prohibition in order to fulfill the mitzvah. But in our situation where the mohel from the Diaspora keeping a second day of Yom Tov could just ask an Israeli mohel he should do so to avoid any clash.

But maybe we don’t apply Reish Lakish’s principle if the entire prohibition is rabbinic[[2]](#footnote-1) in the first place as Yom Tov Sheni is only rabbinic? Rabbi Navon addresses this potential distinction. He rebuts the question from a Gemara Eruvin 103a that states that Rabbi Eliezer who permits violating Shabbat to prepare for a mitzvah of Shabbat would agree that one has to do it in an abnormal way if possible. It is evident from that gemara that even though the prohibition under discussion was only rabbinic, nonetheless, Rabbi Eliezer held that since it is possible to mitigate the prohibition by doing it an abnormal way one should do so.

How far does Reish Lakish’s principle go? One example in which this question is discussed is with respect to wearing a linen four cornered garment with wool tzitzit strings, making the entire garment a forbidden mixture of shatnez. Tosfot[[3]](#footnote-2) questions this halacha because it seems to be in violation of Reish Lakish’s principle. Isn’t it possible to avoid this mixture altogether if you wore a garment and strings of wool? Tosfot cryptically answers that it is considered impossible to avoid and doesn’t explain. The Peni Yehoshua[[4]](#footnote-3), Rabbi Yakov Yehoshua Falk, a German contemporary of Rabbi Navon, elaborates that Reish Lakish only meant if all is equal then one should avoid the prohibition and fulfill the mitzvah, but in regards to tzitzit some people like to wear linen garments and some like to wear wool ones. It seems that if the luxury to choose what type of material I like to wear is sufficient to warrant not having to avoid the prohibition, the same can be applied to our case if there’s an emotional preference of the family to let the grandfather do it rather than an Israeli mohel.

Yet, the Peni Yehushua himself limits his approach because the Gemara Ketubot 40a says that if a woman wants to marry someone who is prohibited to her although he has a personal mitzvah to marry her such as if he seduced her she may not do so. Even though it seems to be a classic case of *aseh doche lo taseh*, a mitzvah overriding a negative prohibition, the gemara explains that since it is in her discretion to forgo that right to marry her seducer she must do so in order to avoid the prohibition. Accordingly, not having the right to choose to wear one of the common materials of garments is considered unreasonable, but being limited not to marry one specific person who would have been forbidden anyway if not for the seduction is possible. Seemingly, according to the limitation of the Peni Yehoshua, we can suggest that in our case it is reasonable for the grandfather to forgo the right to do the milah since he have the opportunity to do it on other occasions. Perhaps though, from the emotional perspective of the grandfather, doing another milah isn’t a replacement being able to do milah on his grandson. Either way, Rabbi Navon disputes the Peni Yehoshua’s understanding and explains that Tosfot means it is considered impossible to fulfill both if a certain type of material could never be used for the mitzvah of tzitzit, that would be a partial mitigation of the mitzvah with respect to that material.[[5]](#footnote-4) According to that interpretation we should revert to Rabbi Navon’s ruling to forbidden the Diaspora mohel from doing the milah himself.

## B. Is Milah on Shabbat *Hutrah* or *Dechuya*?

A large component of the question seems to rest on another question is doing milah on Shabbat should be seen as a conflict (*dechuya*) and milah trumps Shabbat or perhaps it is complete permitted as though the Torah never commanded us to not do the melacha involved with a milah on Shabbat (*hutrah*).[[6]](#footnote-5) This inquiry is parallel to a question that the gemara poses regarding the halacha that that a tameh kohen may bring a korban that must be brought by a certain time, even though usually it is forbidden for a tameh person to bring a korban. The Gemara Yoma 6b cites a dispute whether the prohibition of a tameh person sacrificing a korban is in conflict with the mitzvah to bring the time-sensitive korban and the mitzvah wins (*dechuya*) or whether it is completely permitted (*hutrah*). What’s the practical difference between these opinions? The gemara explains that the extent to which a person would have to go in order to get a replacement tahor kohen hinges on the above dispute. If the mitzvah wins out over the tumah, if there are any replacement kohanim available we would endeavor to get that person; if it is completely permitted that’s unnecessary. As to the nature of the exact extent a person should go to get a replacement depends on two variant texts in the gemara.

How does that relate to milah on Shabbat? Rabbi Navon explained that milah on Shabbat is considered only pushing aside the prohibition of Shabbat but not completely permitted. His primary proof is the language of the Mishna Shabbat 130a that states any action of milah which couldn’t be done before Shabbat pushes aside Shabbat clearly implying that there’s a clash.

Nonetheless, Rabbi Navon anticipates a counterargument and understands that it is possible to argue that milah on Shabbat is completely permitted. Even if that’s the case, reasons Rabbi Navon, still everyone would agree that it is necessary to get a replacement if it is very easy to do so. He explains that based on the way the Rambam Biyat Mikdash 4:14 understood the Gemara Yoma 6b we should follow the text that says that even if something is completely permitted if there’s an alternative we should try to avail ourselves of that option.

## C. Following the Local Practice

As is true with much of Torah, there’s a possible argument that can be made to disagree with Rabbi Navon’s conclusion. A contemporary of Rabbi Navon in Bulgaria, Rabbi Yehuda Ayash[[7]](#footnote-6), wrote that it is permitted for the Diaspora mohel to do the milah. Fundamentally, he agrees with Rabbi Navon’s point that since there’s an alternative it wouldn’t be permitted as much as it is in the Diaspora or a regular milah on Shabbat. However, he provides two simple arguments to permit it.

One, the whole concept of following one’s minhagim from where one came from stems from the Mishna Pesachim 50a that states: a person who is traveling from a place where they work on Erev Pesach in the morning to a place where they don't work, or vice versa, he should follow the stringencies of both places. He may not differ from the local practice so that he doesn't cause a dispute. Based on the Gemara, the Rosh Pesachim 4:4 explains that if a person comes from a person where they don't work on Erev Pesach in the morning and he's traveling to a place where they do work he should simply follow the stringency of his hometown and no work. Generally, it wouldn't even be noticed that he is practicing differently than the local people since there are many people who regularly don't go to work or don't have a job. However, says the Rosh, if it'll be evident that he isn't working to be strict for his hometown's custom he needs to break his custom and follow the local one so that he doesn't start a fight. He concludes that this wouldn't apply to something that is actually Biblically forbidden but for the sake of peace a custom or rabbinic law can be abrogated.[[8]](#footnote-7) Therefore, reasons Rabbi Ayash, since the mohel from the Diaspora is only keeping a second day in Israel in order to be strict for his hometown’s custom he can abrogate that custom if it’ll be noticeable. Therefore, in our case where the grandfather is a known mohel and it’ll certainly be recognized by the family members that he isn’t doing the milah because of his hometown’s practice, then it should be permitted for the mohel to abrogate his hometown’s custom of Yom Tov Sheni which is rabbinic. This argument would allow the mohel from the Diaspora who was picked in advanced or would otherwise be evident if he weren’t to do the milah to perform the milah.

The second argument is that it would give the mistaken impression that milah doesn’t override Yom Tov Sheni and somehow it is more serious than Shabbat. It is conceptually similar to the rule that the Rambam writes that it is preferable to have a great dignified Torah scholar violate Shabbat to save the life of a Jew rather than have a child do it because it is important that people not have the misconception that we’re hesitant to violating Shabbat for someone’s life.[[9]](#footnote-8) Even though the Kesef Mishna[[10]](#footnote-9) explains that the Rambam held that violating Shabbat for saving a Jew’s life is only because Shabbat is pushed off and not completely permitted, it is still preferable to forgo the special preference we would have to have a non-Jew or child do the melacha so that people don’t have the wrong misconception. Similarly, here we should be concerned for a mistaken impression that people will say you can’t do a milah on Yom Tov Sheni and avoiding that misconception should permit the mohel from Diaspora to do the milah if he was chosen and not to have to find an alternate mohel.

## D. Approach of Rav Ovadia Yosef and Rav Yosef Shalom Elyashiv

Rav Ovadia Yosef[[11]](#footnote-10) disputes with Rabbi Ayash’s first argument. Is it so clear that it is forbidden to publicly display that one is observing Yom Tov Sheni when someone from comes from the Diaspora to Israel? Indeed, Rav Yosef Karo[[12]](#footnote-11) writes that it is permitted to have a minyan of those from the Diaspora to form a minyan and pray together on Yom Tov Sheni, even though it will be noticed. He claims that this was the minhag already in the sixteenth century in Israel. Rav Yosef therefore argues that according to Rav Karo we’re not concerned today that if someone actively observes the custom of the Diaspora of Yom Tov Sheni in Israel it is going to cause a fight, and therefore he should abrogate his hometown’s practice. A very similar argument with Rabbi Ayash’s point can be found in the writings of another eighteenth century contemporary from Izmir, Turkey, Rabbi Yisrael Yakov Elgazi.[[13]](#footnote-12)

With respect to the second argument, although we wouldn’t want to cause a misconception it isn’t a likely misconception. People know that Shabbat is more serious than Yom Tov Sheni for many reasons and if milah can be done on Shabbat certainly it can be done on Yom Tov Sheni. Furthermore, it isn’t comparable to the case of having a Torah scholar violate Shabbat instead of a child because if someone has the misconception that it is forbidden to violate Shabbat for saving a Jew that is a serious danger to life; on the other hand, if people were to make the mistake of thinking that it is forbidden to do milah on Yom Tov Sheni after all they will still do the milah the next day, which of course isn’t ideal but not life threatening. Additionally, saving a Jewish life is in the hands of every individual and sometimes if one person has a misconception it can be catastrophic. But making sure that a brit milah is performed on time which is the responsibility of the father, but generally is also attended to by family members, the rabbi, and friends, it is extremely unlikely that they would all mistakenly think that it is forbidden to do milah on Yom Tov Sheni.

Therefore, on the basis of Rabbi Navon’s argument Rav Ovadia Yosef comes to the conclusion that he shouldn’t do the milah and instead an Israeli mohel should do it.

## E. Rav Shlomo Zalman Auerbach’s Counterargument

On the other hand, Rav Shlomo Zalman Auerbach[[14]](#footnote-13) championed the lenient approach with respect to this question. He explained that in fact performing milah on Shabbat is completely permitted unlike Rabbi Navon’s premise and proof. Rav Auerbach’s proof is that there’s a dispute whether it is permitted to have multiple mohalim perform a milah on Shabbat or it is preferable to just have one mohel do it. The Shulchan Aruch[[15]](#footnote-14) rules that one mohel should do the whole job so as to minimize the amount of people involved with melacha and the Rama disputes that. The Vilna Goan[[16]](#footnote-15) explains that these opinions are arguing about the nature of the fact that milah can be done on Shabbat; if Shabbat is just pushed aside for milah then it is reasonable we should minimize Shabbat’s desecration, but if milah on Shabbat is completely permitted then we can have as many mohalim involved as desired. Therefore, reasons Rav Auerbach, Ashkenazim who generally follow the Rama hold that milah is completely permitted on Shabbat.[[17]](#footnote-16) In that case, it would follow that it is permitted for the mohel from the Diaspora to do the milah without resorting to an alternate Israeli mohel for whom it is a weekday. He doesn’t address Rabbi Navon’s point about how even the opinion that something is completely permitted agrees that if it is easy one must find an alternative. Though, it seems that Rav Auerbach might respond that we follow the other text in the gemara being that it is the second of the two texts and generally we follow the second of variant texts in a gemara.

A further factor that Rav Auerbach incorporated is the opinion of the Chacham Tzvi.[[18]](#footnote-17) The Chacham Tzvi holds that someone from the Diaspora who visits Israel should only keep one day. While it is certainly the opinion of Rav Auerbach and the established halacha that those visiting Israel keep two days, nonetheless, the opinion of the Chacham Tzvi exists and can be used as a factor to be lenient in our case.

## F. Conclusion

In conclusion, the question at hand of whether an American grandfather can do the milah in Israel on Yom Tov Sheni although it would be easy to get an Israeli mohel primarily hinges on whether milah on Shabbat and by extension Yom Tov Sheni is pushing aside the melacha (*dechuya*) or that it is completely permitted (*hutrah*). If the milah is merely pushing aside the melacha then it should follow that if there’s an alternative that doesn’t involve melacha we should resort to that option in accordance with Reish Lakish’s principle. However, if we assume that the milah is completely permitted on Shabbat, then it follows that it is permitted for the grandfather to do the milah even without trying to find another person. Therefore, there are many factor reasons to be strict and have someone else do the actual milah, but for Ashkenazim there is room to permit it in this case of a grandfather who wants to do the milah of his grandchild. In practice, Rabbi Daniel Feldman with the agreement of Rav Hershel Schachter permitted it. For further applicability a person should consult their local Orthodox rabbi.

1. Rabbi Navon’s opinion is recorded in Nichpeh Bkesef O.C. responsa 5. Chida in Machzik Bracha O.C. 331:6, Rav Chaim Palagi in Artzot Hachaim 10:22, and Ikrei Hadaat O.C. 22:4 concur. [↑](#footnote-ref-0)
2. Gemara Beitzah 4b [↑](#footnote-ref-1)
3. Ketubot 40a s.v. kgon [↑](#footnote-ref-2)
4. Ketubot 40a s.v. vein [↑](#footnote-ref-3)
5. Kehilat Yakov Yevamot ch. 9 quotes the Oneg Yom Tov who concurs with Rabbi Navon’s understanding of Tosfot. [↑](#footnote-ref-4)
6. C.f. Rashi Brachot 20a s.v. shev, Rashi Shemot 20:8 [↑](#footnote-ref-5)
7. Mateh Yehuda v. 2 p. 41, cited by Shalmei Chagiga (Dinei Yom Tov Sheni Shel Galiyot n. 4) [↑](#footnote-ref-6)
8. Pri Megadim E”A 468:11 codifies the Rosh. [↑](#footnote-ref-7)
9. Kesef Mishna Shabbat 2:3 explaining the Rambam [↑](#footnote-ref-8)
10. Kesef Mishna Shabbat 2:1 [↑](#footnote-ref-9)
11. Leviat Chen n. 98, Yalkut Yosef O.C. 331:17 [↑](#footnote-ref-10)
12. Avkat Rochel responsa 26 [↑](#footnote-ref-11)
13. Shalmei Chagiga (Dinei Yom Tov Sheni Shel Galiyot n. 4 p. 116), cited by Shaarei Teshuva O.C. 496:5 [↑](#footnote-ref-12)
14. Yom Tov Sheni Khilchato 12:1 p. 261. Bear Moshe v. 7 p. 331 (Dinei Ben Eretz Yisrael Vchul YD 266) as agrees. [↑](#footnote-ref-13)
15. Shulchan Aruch Y.D. 266:14 [↑](#footnote-ref-14)
16. Biur Hagra Y.D. 266:25 [↑](#footnote-ref-15)
17. Yad Shaul Y.D. 266:7 writes that with respect to Yom Tov certainly milah is *hutrah*. [↑](#footnote-ref-16)
18. Chacham Tzvi responsa 167 [↑](#footnote-ref-17)