

THE BAIS HAVAAD HALACHA JOURNAL

Family, Business, & Jewish Life Through the Prism of Halacha

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ALEXA, MAY I SPEAK ON SHABBOS?

What can't you say when someone's always listening?

Adapted from a shiur by Rav Mordechai Lebhav

Amazon's Echo and similar "smart speakers" are devices that provide information, take orders for goods, or activate any of an array of services in response to voice commands.

They operate by constantly recording ambient sound and listening for a "wake word," which for the Echo is "Alexa." Say the wake word and the device replies, cheerfully offering its assistance.

The question arises: Given that the Echo is recording all the time, may one speak in its presence on Shabbos?

Melacha on Shabbos, explains Maharal, is defined as creative activity. Because Hashem rested from Creation on Shabbos, we similarly desist from exercising our own creative powers. In Bava Kama 60 and many places in Maaseches Shabbos we learn that only *melechah machsheves* violates Shabbos. This has several implications for what qualifies as *melacha*, including that a *melacha* must be done with thought; must be performed creatively, not destructively; and must not be done *kill'achar yad*, in an unusual manner.

There is a *machlokes Tana'im* in the case of *davar she'aino miskavein*, such as one who pulls a bench across the ground because he wants it somewhere else. Although the action may dig a groove in the ground—*chofer*, a form of the *melacha* of *choresh*—that is not the bench-dragger's intent.

The Halacha follows the view that this is permitted, because it isn't *melechah machsheves*. The perpetrator's intent is to relocate a bench, not to dig a furrow. But this only holds true in a case where the groove would not inevitably result—a *psik reisha*—from the dragging. If the unintended result is an inevitable consequence of the action, one cannot disassociate the result from the action. If dragging this bench will ineluctably produce a furrow, then the creation of the furrow is virtually intentional and meets the requirements of *melechah machsheves*.

Tosfos in Kesubos 6a (s.v. *hai*) cites the view of the Sefer HeAruch that where the unintended but inevitable result is *lo nicha lei*, something the perpetrator doesn't specifically desire, the act remains permissible.

While the *poskim* generally don't follow the Aruch's view on its own, the Mishna Berura (337) rules that in a case of *psik reisha* involving a *shvus d'shvus*—a *d'Rabbanan* atop another *d'Rabbanan*—we can additionally adduce the Aruch's view to rule leniently. The Sephardic *poskim* generally follow the ruling of the Terumas Hadeshen to apply the Aruch's view even in the case of a single *d'Rabbanan*. (See Or L'Tzion Vol. 2 3:10 and Yabia Omer 4:30.)

In the Echo's case, it is debatable whether a *melacha* is being performed by the speaker whose voice is being recorded.

Even according to the Chazon Ish's view that completing an electrical circuit on Shabbos is forbidden *mid'Oraisa*, in this case one is only adding an insignificant load to an existing circuit by speaking. Though Shvus Yitzchok cites stringent views, R' Shlomo Zalman Auerbach (Shulchan Shlomo 308) permits this.

Additionally, one who speaks

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Highlights of a shiur by Rav Yitzchak Grossman

PAINLESS PROCEDURE: ANESTHESIA DURING CIRCUMCISION

Is experiencing pain a requirement for fulfilling the mitzvah of *bris mila*? Many *poskim* have addressed this question in the context of whether it is permitted to anesthetize the baby prior to the *mila* and have taken a variety of approaches.

The *Imrei Yosher* rules that pain is required based on an opinion in the Midrash (*Bereshis Rabbah*) that Avraham experienced pain during his *bris* and received a double reward for the mitzvah as a result. He therefore rules that any type of anesthetic would be forbidden.

Other *poskim* are also *machmir*:

The *Tzitz Eliezer* quotes the importance of tradition: Such a process was never performed during a *bris* in previous generations.

Rav Moshe Feinstein: due to the potential danger involved in undergoing anesthesia (though perhaps topical anesthetics may be permitted).

The *Shevet HaLevi*: the person receiving the *bris* must be awake at the time due to *mitzvos*

spotlight

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The Zichron Gershon Kollel doubled its members after announcing the studying of *ribbis* this zman! Given the complexities of *ribbis*, it was only natural that many outsiders would take advantage of the rare opportunity to delve into this halachically sensitive topic under the auspices of The Bais HaVaad. Bruchim Habaim!

GENERAL HALACHA

Tuition Quiz: Tough Questions for Schools and Parents

By Rav Daniel Dombroff



Costs of living in the frum community are rising every year. Along with regular expenses, the cost of yeshiva tuition is also an increasing financial burden. Likewise, many schools are struggling with financial challenges and are having difficulty making ends meet. How can they pay their teachers when the parents do not pay tuition fees?

What are the halachic considerations in collecting tuition from parents? And how far must parents go in order to pay their obligation?

AGGRESSIVE COLLECTION

Can the school act aggressively in collecting tuition?

לא תהיה כנושה 'Thou shalt not be as a creditor'.

There is an *issur*, a biblical proscription, of exerting excess pressure on one's debtor. Does this apply to pressuring parents to pay tuition? The *Kesef Kodshim* rules that the above prohibition is limited to loans. However, when the *yeshiva* grants an extension of the tuition payment, it may, at that point acquire the sta-

tus of a loan, triggering the restriction of excess pressure. Furthermore, this prohibition is unique in that its only where it's certain to the lender that the borrower doesn't have the means to pay and we don't apply the regular rule of "safek deoraisa lchumra" (one must stringent when in doubt regarding a biblical prohibition).

USING A COLLECTION AGENCY

If the school is unable to collect tuition, are they permitted to turn the debt over to a collection agency?

The Rema is stringent, not allowing use of a gentile to collect a debt. The Rema, however, in the *Darchei Moshe*, his remarks on the *Tur*, allows selling a financial obligation to a gentile. The *Tumim* also allows using a gentile to collect where the other party is a *gavra alima* (a difficult individual). A practical means, perhaps, of efficiently collecting the tuition may be to publicize the delinquency if the other party is uncooperative. Certainly one should consult with rabbinic guidance before exercising this option.

PUNISHING THE CHILDREN

If the tuition is not paid up and the parents are in arrears, may the child be sent home from yeshiva?

The community is obligated to create a school. If a parent cannot afford tuition, the community should provide for that individual. (The *Vilna Gaon* explains that this is an obligation of Tzedaka.) The *Shulchan Aruch Harav* says that this obligation should be split in the community according to wealth.

It needs to be determined if our current school system can be called a community school, or are they private institutions? There are a number of halachic differences that evolve depending on whether the schools are public or private.

If they are perceived to be private institutions, one could argue that raising funds for parents who cannot pay tuition is not an obligation

of the school, but an obligation of the entire community. The leaders of the community should arrange funding for such parents thus avoiding the terrible consequences of a child being sent away from school and learning.

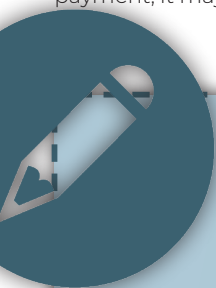
However, if we view the schools as a fulfillment of the communal obligation, then we can suggest that the school board, or leaders within the school of some other capacity, have taken over the responsibility of ensuring that every child merits a proper Torah education. It goes without saying, that there must be a consistency as far as how the schools project themselves.

OVEREXTENDING THE PARENTS

How far are the parents obligated to extend themselves in order to pay their tuition fees?

Paying tuition should be treated with at least as much respect as any other financial obligation. (If a person is truly in need of Tzedaka, see the previous section for the details.) As far as *bal talin* is concerned (the obligation for one to pay their financial obligation in a timely manner on the day of service), it is necessary for us to determine if the service provided by the school is like that of a worker, or considering that one is not paying the teacher directly, we would view it like a sale of goods in which case *bal talin* would not apply. Furthermore, if the school obligates the parents to pay in the beginning of the month, that may also cause us to view the service provided by the school as a sale (as a worker is generally paid at the completion of the job) and therefore there will not be an issue of *bal talin*. However, once the month ends perhaps it transforms at that point into an obligation for the work, thus invoking *bal talin*.

The discussion on paying tuition debts can be an emotional and heated one. It is important to remember the halachic rulings for every step in the tuition collection process. This article is intended for educational purposes only, and when practically relevant, one should contact a competent Halachic authority.



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MATTERS OF INTEREST

Avisar Family Ribbis Awareness Initiative: Ribbis in Unexpected Places



Many common financial transactions involve ribbis, so pitfalls abound for the unaware. Following are some common business activities that can, depending on the circumstances, constitute ribbis.

- **COSIGNING** cosigning on a loan or car lease, even where the lender isn't Jewish or is a publicly-traded financial institution
- **CREDIT CARDS** using a friend's credit card
- **STRAW PURCHASING** purchasing a home in someone else's name
- **PARTNERS** borrowing done by one partner on behalf of the partnership
- **LATE FEES** charging ongoing late fees in a contract (a one-time late fee for each occurrence is permitted)
- **RETURNABLE ITEMS** selling goods with

an unconditional money-back guarantee

- **CONVERSION** borrowing money in a foreign currency
- **FACTORING** purchasing receivables
- **CASH DISCOUNTS** charging different prices for cash and credit
- **EARLY BIRD DISCOUNT** offering a heavily discounted price for paying before a certain date
- **PRE-PAYMENT DISCOUNT** paying today to lock in a reduced price for an item that is not yet available

HALACHOS OF DAILY LIVING

*One Hundred Daily Berachot
Part I: The Nature of the Obligation*

Topics From The Gerald & Karin Feldhamer OU
Kosher Halacha Yomis



The exact nature of the obligation to recite 100 brachos a day is actually a difference of

opinion. While our relating of the origin certainly indicates that it is a rabbinic enactment, there are those who believe it to be a Torah obligation (perhaps a halacha l'Moshe miSinai – a law that was communicated orally to Moses at Sinai. Such laws, while unrecorded in the Torah, have the force of Biblical law). Some maintain that one need only participate in 100 brachos a day (such as by listening and answering amen to the brachos of others) and that actually reciting 100 brachos a day oneself is merely meritorious. It's evident from Maimonides' introduction to his Sefer HaMitzvos that some earlier compilers even included reciting 100 brachos a day among the 613 mitzvos! (Maimonides himself maintains that it is clearly a rabbinic institution.)

Given the array of opinions as to the law's exact origin and the nature of its obligation, it ought not surprise us that there are also many differences of opinion as to the exact parameters of fulfilling one's daily 100 brachos. Among these questions:

Are women obligated? (This question is addressed more thoroughly in our fifth installment of this series.)

When does a day start for the purpose of this obligation – at sunset or dawn? (Most authorities maintain that the obligation begins at night. There is also an opinion that one only has the daylight hours to fulfill the obligation.)

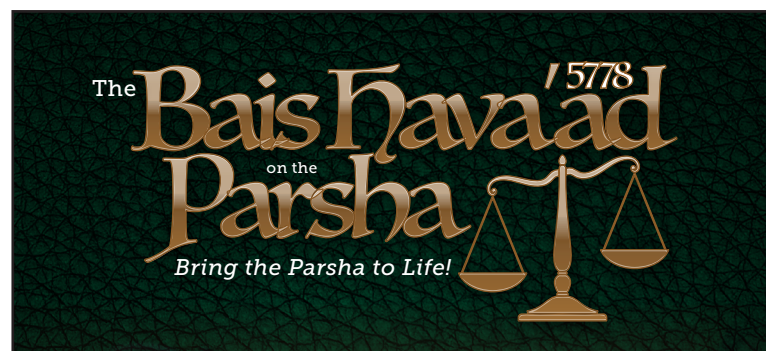
Does answering a zimmun for bentching count as a bracha towards one's daily obligation?

May one contrive a situation that requires him to recite a bracha he otherwise would not be required to recite (*bracha sh'eino tzricha*) for the purpose of reciting 100 brachos?

When reciting a bracha, must one have in mind the intention that it count as one of his 100 daily brachos?

If one starts Shabbos early, do his Friday afternoon brachos count for Friday or for Shabbos? Similarly, if one bentches for Shalosh Seudos after Shabbos has ended, do the brachos count for Shabbos or for Sunday?

For these and similar questions, it is advisable that one consult one's own rabbi or halachic advisor.



Presented by Renowned Poskim & Maggidai Shiur

1 Concise Shiur Per Parsha

Contemporary Halachic Issues Related to Every Parsha



(continued from front pg.)

on Shabbos in his Amazon Echo-equipped home is clearly not intending to record his voice. Though it will happen anyway, it is obviously not *nicha lei*. (See R' Nissim Karelitz's Chut Shani, Vol. 1, Kuntres Hachashmal.)

Similarly, though there is Halachic debate about the permissibility of speaking on Shabbos to a person wearing a hearing aid, all agree that one may speak to a third party even if a hearing-aid wearer is listening in, because this result of one's action is too disconnected from the actor.

Another example of this principle appears in the Chavos Da'as (Y.D. 91:5), who says that

an insubstantial result that doesn't benefit the actor is excluded by *melech machsheves*. R' Shmuel Wosner (Sheivet Halevi 3:45 and 7:42) permits, on this basis, pouring boiling water into a bowl containing small water droplets. The act is too insignificant to constitute *melacha*.

Likewise, it would be permitted to walk on the street on Shabbos while video of the activity is being recorded by an orbiting satellite.

It would seem that being picked up by the Echo's recorder would be comparable to these examples. The result of the speaker's action, though inevitable, is insignificant, and therefore not prohibited as a *psik raisha*.

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tzerichos kavanah or because appointing a *mohel* to be

his *shaliach* to perform the bris only works if he is awake during the *bris*.

Other *poskim* including the Maharsham, Rav Yitzchak Elchanan, and Rav Ovadia Yosef disagree and argue that there is no need to experience pain during a *bris*, and the Midrash does not mandate experiencing pain. In addition, they explain that there is no concern of *shelichus* or *mitzvos tzerichos kavanah*

when a person is functioning normally but is simply sleeping, and tradition alone is an insufficient concern to render it forbidden.

Some contemporary *poskim* take a middle ground:

In a regular *bris mila* for a baby, it is preferable not to use anesthesia.

In a more complicated *bris*, such as an older adult or a case where it will cause an unusual amount of pain, it is permitted.

This approach was taken by the *Shevet HaLevi* as well as Rav Eliashiv, as reported by Rabbi Dr. Abraham in *Nishmas Avraham*.

מסכת מנחות

This Week's Topics

RAV YEHOShUA GRUNWALD
RAV MOSHE ZEEV GRANEK

| | |
|--------|---|
| דף ע' | Harvesting Chadash, Then & Now |
| דף ע"א | Cutting Off Branches of Fruit Trees |
| דף ע"ב | Postponing Kiddush Levana |
| דף ע"ג | The Mitzva of Eating the Meat of the Korban |
| דף ע"ד | Ice Cream for Dessert: Does it Require a Beracha? |
| דף ע"ה | What is a Greek Chaf'? |
| דף ע"ו | Shehechyanu on Mitzvos |

EVENTS AT THE BAIS HAVAAD

Bais HaVaad Launches Chaburas Even Haezer for Rabbonim

In a groundbreaking development, the Bais HaVaad is launching an all new project to study and educate community rabbanim on the practical halachos related to *gittin* and *even haezer*, as well as exploring the associated halachos from a *choshen mishpat* perspective. Under the leadership of Harav Yaakov Simiatyeki, shlit"a, this program will begin with a curriculum for community rabbanim as well as a weekly shiur for practical application. Rabbi Simiatyeki brings with him a wealth of practical experience sitting on *siddur gittin* in Lakewood and abroad, and we wish him and all the rabbanim *hatzlacha rabba!*



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