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FLY-BY-NIGHT OPERATION:

When a Plane Arrives on Shabbos

Highlights of a shiur by Rav Daniel Dombroff

A plane on the tarmac is a flight risk.

El Al Flight 002 was scheduled to depart JFK for Tel Aviv on Thursday, November 15 at 6:30 pm. Long story short: It didn't.

As delays on the tarmac mounted, pushing the projected arrival time ever closer to Shabbos, shomer Shabbos passengers asked that the plane be returned to the gate so they could disembark and remain in New York.

The captain announced that he would do just that. And as the air-traffic control audio recordings make clear, he received permission from the tower to do so, more than five hours after his scheduled departure. But to the shock and consternation of the frum passengers, he then proceeded—without explanation—to take to the skies.

What happened next is not the subject of this article. Its subject is the Halachic issues that would have arisen had the plane not in the end been diverted to Athens, and it had landed on Shabbos. (Which is exactly what the *other* ill-fated JFK-to-Tel Aviv El Al flight that night actually did, but that's another story.)

Of course, one should avoid traveling close enough to Shabbos to risk this outcome. Should *oness* bring it about, *chalila*, here is a general guide to some of the issues one might face.

PRE-SHABBOS PREP

If you become aware that your flight will land on Shabbos, there are some things to do before Shabbos begins.

You will probably be carrying money and a mobile phone. These should be moved from shirt pockets to pants pockets. This is because

typically, a shirt pocket is a flat fabric panel stitched to the shirt, requiring the shirt itself to perform half the pocket duties, but a pants pocket is a full standalone pouch that is attached to the garment (See Shulchan Aruch O.C. 310:7, Rama). As a result, walking with money in a trouser pocket is not *tiltul muktzeh* and, according to some, doesn't require shaking out (Mishna Berura *ibid.* 30). However, the pocket does become a *basis* for *muktzeh*, with the implication that one may not move the pocket with his hand on Shabbos.

NER SHABBOS

At the appropriate time, turn on your overhead lamp *l'sheim mitzva*. Because the lights on modern aircraft do not utilize incandescent bulbs, no *bracha* is recited.

CARRY-OFF BAGS

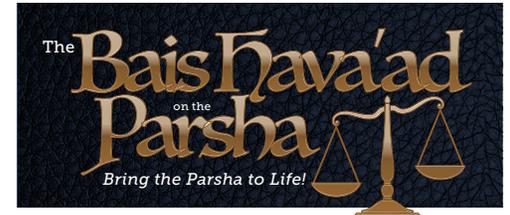
You may take your carry-on luggage from the plane (see O.C. 310:8), because the non-*muktzeh* items it holds will generally be of greater value than the *muktzeh*, and the *muktzeh* things cannot be shaken out. Even if the latter are more valuable and the bag is therefore a *basis*, see Shulchan Aruch O.C. 266 about the specific latitudes afforded by this type of *oness*.

TECHUM SHABBOS

One may not travel beyond two thousand *amos* from the settlement in which he finds himself at the onset of Shabbos, where he is *koneh shevisa*. Even if *techumin* don't exist above the level of ten *tefachim* from the ground (see Mishna Berura 404:7), you are *koneh shevisa*, it would seem, when the plane descends to an altitude of ten *tefachim*, moments before landing. The runway is an uninhabited area larger than a *bais sayim*, so the *techum* count begins immediately at that point (O.C. 396:2).

Your arrival gate will generally

(continued on back)



Highlights of a shiur by Rav Yehoshua Grunwald

PARSHAS VAYAISHEV

Just Cause: How Significant Is Grama?

וַיֹּאמֶר אֱלֹהִים רְאוּבֵן אֵל תִּשְׁפֹּךְ דָּם הַשְּׁלִיכוּ אֹתוֹ אֶל הַבּוֹר הַזֶּה אֲשֶׁר בְּמִדְבָּר וְגַד אֶל תִּשְׁלַחוּ בּוֹ לְמַעַן הַצִּיל אֶתוֹ מִיָּד מִיָּדְכֶם לְהָשִׁיבוֹ אֶל אָבִיו

And Reuven said to them, "Do not spill blood. Cast him into this pit, which is in the desert, but do not lay a hand on him," in order to save him from their hand, to return him to his father. (Beraishis 37:22)

How causation correlates with doing.

Reuven was arguing that they ought not kill Yosef directly. Instead, they should place him in a situation where death would come but he would not fall at their hand. Yehuda argued that they would still be responsible for his demise (see Ramban to *pasuk* 26).

Indirect causation, *grama*, is discussed in Bava Kama 55b, where we learn that one who commits a tort in this manner is exempt under the laws of man but

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The Bais HaVaad's popular Daf Yomi in Halacha series continues with Maseches Chulin. This week features a fascinating shiur by Rabbi Shmuel Binyomin Honigwachs, shlit"א, on the topic of Commerce and Chometz. Rabbi Honigwachs is a Dayan at the Bais HaVaad, and in this shiur he presents the specific halachic challenges why the standard sale of chometz may not suffice.

spotlight

Daf Yomi in Halacha

GENERAL HALACHA

Hack Attack and Halacha - The Halachos Of Hacking

By Rabbi Yitzchok Grossman



With each passing election, the spectre of cyber-crime looms larger and larger. This is in addition to computer hacking carried out in the corporate arena. A number of years ago, a shadowy group of computer hackers styling themselves the “Guardians of Peace”, believed to be agents of the North Korean government, breached the security of internal computer systems of Sony Pictures Entertainment, accessed a trove of confidential and sensitive material, including personally identifiable information about the company’s employees and their dependents (including social security numbers, bank and credit card information, compensation details, and HIPAA protected health information) and email between the company’s employees, and disseminated this information publicly, causing embarrassment and inconvenience to many individuals, and considerable financial harm to the company. While it is self-evident that such conduct is morally wrong, we consider here the question of the application of traditional *halachic* categories and precedent to this quintessentially modern scenario.

THE CHEREM OF RABBEINU GERSHOM

There is a medieval tradition, generally attributed to *Rabbeinu Gershom Me’or Ha’Golah*,¹ of a *cherem* [ban / anathema] against reading (or opening) a letter addressed to another.² Some

poskim take for granted that the *cherem* applies to eavesdropping and the interception of electronic communications as well,³ although others adopt a narrow, literal reading of the *cherem*, and limit its applicability to its explicit subject, written correspondence.⁴

RELATED PROHIBITIONS

The *acharonim* have additionally noted various *halachic* problems with reading others’ mail, either as rationales for the ban or as independent considerations:

The utilization of another’s property without permission is forbidden.⁵

“Thou shalt love thy neighbor as thyself” - “that which is hateful to you, do not do unto your friend”.⁶

“Thou shalt not go up and down as a talebearer among thy people”.⁷

Geneivas da’as is prohibited.⁸ [The phrase generally refers to deception, i.e., the *planting* of a *false* idea in the mind of another, whereas our situation appears to be the exact opposite: the *extraction* of a *true* idea from the mind of another; I do not understand the analogy.⁹]

It is prohibited to cause harm to another, even indirectly (*grama be’nezikin asur*), and reading others’ correspondence usually causes harm, whether financial or otherwise.¹⁰

Most of these concerns obviously apply to hacking in general (and to our situation in particular) and are indeed so applied by contemporary *poskim*.¹¹ The question of the applica-

Avraham Naftali Zvi Roth, *Al Devar Ha’Cherem Al Kerias Igeres Shelo Be’Reshus, Ha’Maor* year 32 kuntres 3 (254) pp. 11-14; and R. Jacob J. Schacter, *Facing the Truths of History*, pp. 242-47 and notes 165-77 (pp. 269-71).

3 *Piskei-Din Shel Batei Ha’Din Ha’Rabbani’im Be’Yisrael* Vol. 14 p. 292 s.v. Barur she’ein hevdel ikroni (R. Avraham Sherman); *Piskei-Din* *ibid.* p. 307 s.v. U’Pashut Ha’Davar she’yesh le’harchiv ha’davar (R. Chaim Shlomo Rosenthal); *Mishpetei Ha’Torah* chelek 1 siman 92 os 4 pp. 337-38; R. Yitzchok Zilberstein, cited in *Binas Ha’Shidduch perek 7 she’elah* 16 p. 379; *Emek Ha’Mishpat Hilchos Sh’chenim* siman 26 os 4.

4 Shut. Ve’Darashta Ve’Chakarta chelek 1 yoreh de’ah siman 46 os 1 (in response to R. Tzvi Spitz, the author of *Mishpetei Torah*); Shut. Shevet Ha’Kehasi chelek 4 (inyanim shonim) siman 327 os 2.

5 Shut. Toras Chaim (Maharchash) chelek 3 siman 4; Shut. Kol Gadol siman 102.

6 Shut. Chikkei Lev yoreh de’ah siman 49.

7 Shut. Halachos Ketanos chelek 1 siman 276; *Chikkei Lev* *ibid.*

8 *Chikkei Lev* *ibid.*

9 Rakover *ibid.* (note 15) defends the invocation of *geneivas da’as* in this sense and cites other instances of such usage.

10 *Toras Chaim* *ibid.*

11 *Shevet Ha’Kehasi* *ibid.* forbids the operation of “eavesdropping equipment that is called ‘scanner’” due to, *inter alia*, the concern of the *Halachos Ketanos*

of the prohibition against unsanctioned utilization of another’s property is an interesting one: R. Avraham Sherman (discussing eavesdropping on a telephone call) apparently understands it as applying to the intangible entity of information,¹² and should therefore certainly apply it to hacking, but R. Chaim Shlomo Rosenthal (discussing a similar case, the listening to a recording of a telephone call without the participants’ permission) is unsure whether the prohibition applies to such situations.¹³ It can be argued that unauthorized electronic access of a computer system is tantamount to unauthorized physical access of that system, and is therefore prohibited by the prohibition against unauthorized utilization of another’s (tangible) property, but this is a non-trivial assertion.

HEZEK RE’YAH

One is forbidden to look from his window at his neighbor’s yard “in order that he should not damage him with his looking”,¹⁴ and even where there is no concern for “damage of the eye” (i.e., *ayin ha’ra*), it is nevertheless prohibited to look at the affairs of another when conducted in his home and property (i.e., where there is an expectation of privacy), “for perhaps he does not desire that they should know his actions and affairs”.¹⁵ Although the scope of this prohibition obviously requires elucidation, it presumably extends to the forbidding of the unauthorized accessing and public dissemination of private information, and has indeed been invoked to this effect by contemporary *poskim*.¹⁶

We conclude with the uncompromising position of R. Yaakov Avraham Cohen: “Those who break into computer codes or into any protected data store or similar, who are called “hackers” - their sin is severe.”¹⁷

for *rechilus*; Ve’Darashta Ve’Chakarta *ibid.* os 6 forbids eavesdropping on telephone conversations due to the concerns of *ve’ahavta le’re’acha kamocho, rechilus* and *geneivas da’as*.

12 *Piskei-Din* *ibid.* p. 292. An interesting parallel to the idea that the category of theft can apply to intangible information is the position of the Shut. *Machaneh Chaim* 2:CM:49 s.v. U’Le’da’ati that plagiarism of the Torah of another constitutes *geneivah* or *gezeilah*, in spite of the absence of any loss to the victim, which he proves from the Talmudic characterization of the study of Torah by a non-Jew as theft from the Jewish people.

13 *Piskei-Din* *ibid.* p. 307. See Rakover *ibid.* (note 17).

14 *Rema choshen mishpat* 154:7.

15 *Shulchan Aruch Ha’Rav choshen mishpat, hilchos nizkei mamon, se’if* 11.

16 *Shevet Ha’Kehasi* *ibid.*; R. Zilberstein *ibid.* p. 380.

17 *Emek Ha’Mishpat* *ibid.*

1 Shut. *Benei Banim* chelek 3 beginning of siman 17 and note 1 of Rakover’s article (cited below).

2 Shut. *Maharam bar Baruch defus Prague* siman 1022; *Kol Bo* end of siman 116; Shut. *Maharam Mintz* siman 102. For more or less comprehensive discussions of the *cherem*, see *Encyclopedia Talmudis* Vol. 17 end of entry *cherem de’Rabbeinu Gershom* os 18 cols. 452-54; Nahum Rakover, *Ha’Haganah Al Tzinas Ha’Prat – Cherem De’Rabbeinu Gershom Be’Devar Kerias Michtavim*; R.

MATTERS OF INTEREST

Avissar Family Ribbis Awareness Initiative: Who is the Borrower?



DELAYED PAYMENT

If a store sets a price on an item, they may not charge more for credit. This is known as *agar natar* (charging for credit, aka *ribbis*). Many times, stores run sales with a two tier pricing system: the cheaper price for those who pay cash, and the higher price for those who buy on credit. An interest-bearing financing plan for a customer who purchased a couch would also be prohibited for the same reason.

This also would apply to sales of 2/10 net 30. Many times vendors will stipulate that should the customer pay within ten days of delivery he will be entitled to a 2 percent discount. Since according to halachah payment is due upon delivery of the goods, giving a reduction for paying on time is equivalent to charging more for paying late. This practice must be avoided.

BUYING A HOUSE ON PAPER

Developers often sell houses on paper, before they are actually built. The buyer signs a contract, gives a deposit, and then — when the house is completed — closes on the house. Until the closing, the buyer does not actually take title to the land. The contract is merely a binding agreement to buy/sell the developed house in the future. Since there is no transfer of any goods at the time of the deposit, the monies advanced are viewed in halachah as a loan until the closing takes place. In exchange for this loan, the seller agrees to freeze the price of the home. This type of agreement is called “*poskin*,” and is *avak ribbis*. The seller is relinquishing his right to raise the price of the item, even though its market value may rise, in exchange for the buyer advancing the money. The actual difference between the market value and the lower sale price is considered *ribbis*.

If two parties enter into a *poskin* agreement, halachah requires that the buyer pay the seller the actual market value of the item at the time of delivery. He may not buy the item for the lower agreed upon price since he is then collecting the *ribbis*. There are various solutions offered for this problem and one should consult his *rav*.

There are some who justify this practice with the following rationale. The reason *poskin* is prohibited is because it is *mechzi keribbis* (resembles *ribbis*). People may interpret the low-

er price as payment for advancing the funds. In a situation where the item being purchased will never have a clear market value, the discount will never be apparent. Houses often do not have a clear value. Therefore according to these opinions, buying on paper would be allowed.

PREPAYMENT FOR SALES

There are a number of cases that have similar problems. When a merchant runs a sale on items that he does not have in stock, and insists that customers pay the full purchase price up front in order to receive the sale price, it is considered *poskin*. This scenario is especially problematic since there are two different prices, the sale price available to customers that prepay, and the higher regular price. This contrast highlights the benefit that the buyer receives for prepaying, and makes the *ribbis* glaringly apparent.

Pre-publication specials are even more problematic. When the buyer pays for the item before it is even published, he receives a discounted price. The item is obviously not available elsewhere and will only become available for cash sales at a higher price.

A possible solution would be for the seller to allow customers to postdate their checks. Since the customer can obtain the item without prepaying, the “locked-in” price is not considered payment for the loan.

HALACHOS OF DAILY LIVING

Weekly Questions

Laws regarding bread



Am I permitted to speak during *netilas yadayim* or between *netilas yadayim* and *hamotzi*?

While a person washes one's hands it is forbidden to speak until one makes the blessing *al netilas yadayim* (Drashos HaTzlach, 4:22). The *bracha* applies to the *mitzvah* of washing and there should be no interruption between the *mitzvah* and the *bracha*.

If a person did speak before making the bless-

ing he should again wash *netilas yadayim*. One should first rub his scalp or touch his shoe so that a blessing on the new *netila* will be justified (Piskei Teshuvos, 158:122).

After *netilas yadayim* it is preferable not to talk until *hamotzi* is recited (Shulchan Aruch 166:1). *Bidieved*, if one did speak he is not required to wash *netilas yadayim* again provided that he did not have *hesech hadaas*, any distraction from maintaining the cleanliness of his hands (Mishnah Berura 166:6).

What's the proper procedure for *netilas yadayim* before eating bread?

One should pour at least one *revi'is* (about four ounces), all at once, on the right hand, allowing water to flow over one's entire hand, both the front and back and between the fingers (this can be done by simply rotating one's hand). When water is plentiful the Mishnah Berurah writes that one should ideally pour a second time on the right hand (162:21). The cup should then be transferred to one's right hand and this procedure should then be repeated for the left hand.

One should then rub one's hands together, a process called *shifshuf* (Shulchan Aruch, 162:2),

a practice Rav Belsky, *zt"l* felt is too often overlooked (Shulchan Halevi, chapter 3:1b)

One should then make the blessing *al netilas yadayim* and then dry them (Mishnah Berurah, 158:42).

Why do we wash *netilas yadayim* before we eat bread?

The requirement to wash one's hands is rabbinical. *Kohanim* were required to wash their hands to purify them before eating or handling *terumah* (produce separated for the *Kohanim*). To ensure that *Kohanim* not overlook this practice, *Chazal* required them, as well as all of *klal Yisroel*, to wash their hands before eating “regular”, or *chulin*, bread. (*Chulin*, 106a) Although *terumah* is not eaten at this time, *Chazal* maintained this requirement, even in the diaspora, so that this *halacha* will remain familiar to us when the *Bais Hamikdash* is rebuilt (*Aruch Hashulchan*, 158: 2, 3).

Another basis for *netilas yadayim* is that we are enjoined to lead our lives with sanctity: “You should sanctify yourselves and be holy” (*Vayikra*, 20:7). The Gemara (*Berachos*, 53b) understands “you should sanctify yourselves” as referring to washing one's hands before eating bread.

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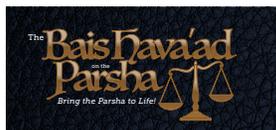
be more than 2,000 amos from that spot, so when you get there you're already out of techum. This leaves you with only your dalet amos in which to maneuver for the balance of Shabbos. However, both the plane and the jetway are reshuyos hayachid and considered an extension of that dalet amos.

But what of the airport itself, beyond the jetway? Although enclosed, it is generally larger than a bais sasayim and so is considered a karfef rather than a reshus hayachid with regard to carrying—and so, it would seem, your dalet amos would not include the terminal—unless it was hukaf l'dira, enclosed for dwelling purposes like eating and sleeping (ibid. 358). There is room to argue that we reckon the airport as such on account of the restaurants on the concourse and the stranded passengers that routinely sleep in the terminal. This would permit walking and carrying.

S'UDOS SHABBOS

If wine and bread are not available but mezonos items are, one should be kovaya s'uda on them and use them for kiddush. (See Pis'chei Teshuva 168 that a mere K'zayis may suffice.)

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liable under the laws of Heaven. The distinction between grama and byadayim

also holds in Halachic realms as diverse as murder and Shabbos.

It must be understood that grama is not treated differently to direct action because the likelihood of result is smaller. The Halachic status of

Bread isn't valid for the daytime kiddush, but by then you will have made enough friends in the terminal to finagle a chamar medina like beer.

BATHROOM BREAKS

Most airport restrooms are now equipped with automatic-flush toilets. These devices utilize a sensor that detects the presence of a person. When that presence is no longer sensed, a solenoid valve is activated and the toilet flushes.

Depending on the type of sensor in use, a paper towel or tissue placed in front of it might prevent the flush. This should be done if possible, but one may still use the toilet if it isn't, considering that the situation is one of p'sik raisha d'lo nicha lei on a d'Rabbanan, with kavod habrios at stake.

DEPARTURE

Whether under any circumstances one might be permitted to take the airport shuttle bus to a hotel is beyond the scope of this article.

* * *

May we merit to be mekayeim fully the mitzvos of kavod and oneg on every Shabbos of our lives.

grama is the same even where the outcome is guaranteed.

Also to be noted is that being responsible only b'dinei shamayim doesn't mean that the perpetrator is basically absolved of guilt but has some abstract spiritual obligation. In fact he is culpable for the result he produced. It's only that Hashem didn't give Bais Din the authority to adjudicate such cases.



מסכת חולין

This Week's Topics

RAV SHMUEL YESHAYA YOFFE, ROSH CHABURA BAIS MEDRASH GOVOHA

- דף ג' Commerce & Chometz
- דף ד' Minors in Halacha
- דף ה' The Heathen Shochet
- דף ו' The Mumar in Halacha
- דף ז' Holy Donkey
- דף ח' Benefitting from Avodah Zarah
- דף ט' Rov vs. Chazakah : Part 1



EVENTS AT THE BAIS HAVAAD

Elective surgery-is it permitted?

Is a healthy individual permitted to undergo a drastic diet solely for purpose of improving his appearance?

These and similar questions were the recent subject of an advanced shiur by Rabbi Eliezer Gewirtzman, shlit'a, as part of our Medical Halacha Center. This shiur was presented via videoconference targeting exclusively members of the medical profession as well as community rabbonim responding to medical questions from congregants. This groundbreaking concept is gaining traction and filling a need heretofore unfilled. For questions on medical issues in halacha, call our hotline at 732.276.2183.



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