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**Dedicated in loving memory of
Harav Yosef Grossman zt"l**

SHIUR NONSENSE: DOES ONE WHO CAN'T TASTE OR SMELL RECITE *BIRCHOS HANEHENIN*?

Adapted from a shiur by Dayan Yosef Greenwald

One of the lesser symptoms experienced by many COVID-19 patients, *lo aleinu*, is the loss of taste and smell. Would a person so inflicted be required to recite a *bracha rishonah* upon eating if he cannot detect the taste of the food? May he recite the *bracha* of *borei minei vesamim* if he cannot smell the spices?

The Gemara (Berachos 35a) famously states that *sevara* (logic) dictates that it is forbidden to derive benefit from this world without reciting a *bracha*. Rashi explains that it is logical that one must express gratitude to Hashem upon receiving *hana'ah* (benefit) from eating. One might argue that if a person does not derive any pleasure from the act of eating because he doesn't experience taste, he should not recite a *bracha*. But this is clearly not the case, as all agree that anyone who eats food must recite a *bracha*, whether he enjoys it or not. A person with an aversion to spinach who eats it for health reasons still recites the *bracha*. If so, we must explain what *bracha*-compelling *hana'ah* one derives from an eating experience devoid of pleasure.

The Gemara (Chulin 103b) says that food offers two types of *hana'ah*: *hana'as garon,* the benefit experienced in the mouth (taste), and *hana'as meiayim*, the benefit experienced in the stomach (satiety). Which of these two benefits is the cause of the obligation to recite a *bracha rishonah* on food?

The Eglei Tal (*Tochen* 62) writes that it's clear that *hana'as meiayim* creates the obligation. He adduces support for this from the fact that although the Gemara (Berachos 35b) says that one who drinks olive oil does not recite a *bracha*, the Rambam (*Hilchos Brachos* 8:2) states that he is only exempted from *ha'eitz* but would still recite *shehakol*. The reason, presumably, is that he has benefited in that he is full, i.e., *hana'as meiayim*.

Another point in support of *bracha rishonah* being about *hana'as meiayim* is the fact that the Gemara earlier suggested deriving the obligation of *bracha rishonah* from *birkas hamazon*, where the obligation clearly hinges on satiation.

But this creates a problem. If *hana'as meiayim* is determinative, why do spoiled foods and bad-tasting foods not require a *bracha*? Is there not still some *hana'as meiayim*?

We must perforce qualify that the obligation does not stem solely from *hana'as meiayim*, but rather from *hana'as meiayim* that results from a *ma'asei achilah*, a normal act of eating. But if the food is inherently unpleasant to humans, like drinking olive oil, that is a lesser form of *ma'asei achilah* that would not, according to many opinions, require the regular specialized *bracha,* only the general *shehakol*. Swallowing medicine or an extremely bitter food would not warrant any *bracha rishonah*, because that is not considered a *ma'asei achilah* at all.

Conversely, one who adds an excessive amount of salt to his food such that he doesn't taste the food itself, would still recite a *bracha*, because this is considered a *ma'asei achilah;* the food is fine, he's just preventing himself from enjoying

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Tenth Amendments

Q I purchased an apartment building with a down payment of one million dollars. The building generates $200,000 in net profit per year. With regard to *ma'aser,* does halacha consider there to be no profit for the first five years because I'm just recouping my initial investment, and thus the obligation to give *ma'aser* from the income only starts in the sixth year, or should I be giving *ma'aser* from year 1?

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its taste.

This explains why most *poskim* say that intravenous feeding of a patient on Yom Kippur would not violate the prohibition of *achilah*, since the prohibition involves only an act that is classified as a *ma'asei achilah,* which IV feeding is not.

Thus it is clear that people who have lost their sense of taste must still recite a *bracha* when eating, because it is still a *ma'asei achilah* and *hana'as meiayim* is still received.

With regard to *borei minei vesamim*, though, it seems clear that one cannot make a *bracha* on a smell he cannot sense. For this reason, such a person should not recite *borei minei vesamim* on behalf of his family during *havdalah* on *motza'ei Shabbos*, as he cannot satisfy others' obligations when he cannot fulfill his own. Rather, another household member should recite it. (See Shulchan Aruch O.C. 297:5 and Mishnah Berurah there.)

Strangely, the Gemara (Berachos 43b) offers a separate source for the requirement of *brachos* on fragrances. The Tzlach and R' Elazar Moshe Horowitz ask: Given that the Gemara already sourced the prohibition to derive benefit from this world without a *bracha,* wouldn't that encompass smells, too?

They answer that the Gemara (Pesachim 26a) says that *me'ilah* (misappropriation of items consecrated to the *Bais Hamikdash*) by means of hearing, seeing, or smelling is not included in the prohibition. Although people might pay a lot of money to see a great painting or hear a great singer, *me'ilah* doesn't enjoin *hana'ah* from intangibles; one must actually take and benefit from an object in order to violate *me'ilah*. Similarly, the prohibition to benefit from this world without reciting a *bracha* applies only to taking a physical object and benefiting from it, and smelling an item is not "taking" it from Hashem.

May we merit to experience the *bracha* of the *pasuk,* "Taste and see that Hashem is good (Tehillim 34:9)."

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DAYAN BARUCH MEIR LEVIN

A Many *poskim* reject the first option. The down payment you made is not considered an expense, as it is just an exchange of cash for property. However, you can depreciate the cost of the property over its useful life with regard to *ma'aser* as one would do for tax purposes. The same would apply to other capital expenditures such as equipment or vehicles. If one purchases a truck for his business for $30,000, and the truck is estimated to last ten years, he may not deduct the full cost the first year; rather, he would deduct $3,000 from his net profit each year before calculating his *ma'aser*.

Q Is a cash-out from a refi considered income with regard to *ma'aser*?

Suppose I purchased a property for a million dollars and (for simplicity's sake) it was 100% financed. Later, the property rose in value, enabling me to refinance for a higher amount and take out cash from the loan. Is this considered profit and thus subject to *ma'aser*, or is cash that comes in the form of a loan not considered profit?

A R' Shlomo Zalman Auerbach ruled in such a case that if the refinance was non-recourse (i.e., the owner isn't personally liable for the loan), the cashing out is considered profit-taking and would be subject to *ma'aser*. But if the loan is with recourse, then because the owner is personally liable to repay, it seems that the argument can be made that the cashing out is like any other loan and not subject to *ma'aser*.

Q IRS regulations provide for what's commonly known as a "1031 exchange," whereby if one sells a property for a gain and then uses the proceeds to purchase another property, he is not required to pay tax on the gain from the sale until the second property is eventually sold (provided certain conditions are met). The rationale for this is that we do not view the sale as a sale but as an exchange for the second property, so the owner has not received any profit. Can this rationale also be used to defer his *ma'aser* obligation?

A There does not seem to be much basis in halacha to support construing the situation in that manner. The owner received cash for his property, so he should give *ma'aser* on any profits so realized. The fact that he decided to purchase another property with these funds should not impact this. (And even though, under IRS rules, the funds must remain in escrow between the first and second sales and not in the owner's hands, that is only what is required for the tax deferral, but the owner actually has full access to the funds, provided he is willing to forgo the deferral.)

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