

THE BAIS HAVAAD

HALACHA JOURNAL

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



A PUBLICATION OF THE
BAIS HAVAAD HALACHA CENTER
 105 River Ave. #301, Lakewood, NJ 08701
 1.888.485.VAAD (8223)
 www.baishavaad.org
 info@baishavaad.org
 Lakewood • Midwest • Brooklyn • South Florida

לע"נ הרב יוסף ישראל
 ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
 Harav Yosef Grossman zt"l

VOLUME 5780 • ISSUE XVII • PARSHAS BEHA'ALOS'CHA



GOING PUBLIC: UNAUTHORIZED DISCLOSURE IN HALACHA

May secrets be revealed for the public good?

Adapted from the writings of Dayan Yitzhak Grossman

In the previous issue (tinyurl.com/y7ergrhk), we noted that software-based contact tracing of those infected by COVID-19 might entail privacy violations, and we discussed some halachic guidelines for the balancing of privacy rights against other considerations.

One context in which privacy rights are set aside for the benefit of the public welfare is *mamzeirus*. To prevent the illegal intermarriage between *mamzeirim* and non-*mamzeirim*, a *mamzer's* status was deliberately publicized at his *bris*,¹ he was given the name Kidor to indicate his status,² and there is even an opinion that the word "*mamzer*" should be

branded on his forehead!³ (These practices are not generally followed today, perhaps because reliable and durable record keeping has rendered them unnecessary.⁴) In the same vein, the standard sanctions for public humiliation are not imposed upon someone who truthfully calls another a *mamzer*,⁵ and some *Acharonim* explain that this is because publicizing *mamzeirus* is a mitzvah.⁶ There is an opinion that extends this to the exposure of an individual's past criminality, since disclosure of such information is also in the public interest, both because criminal behavior disqualifies

3 Shu"t Zera Emes cheilek 3 siman 111, cited in Darchei Teshuvah Y.D. siman 180 s.k. 1.

4 See Shu"t Bnei Vanim cheilek 4 siman 24.

5 Rama C.M. 420:38.

6 Shu"t Chavos Yair siman 62 and Shu"t Shevus Yaakov cheilek 1 siman 179, cited in Pis'chei Teshuvah ibid. s.k. 7.

1 Rama Y.D. 265:4 (citing Maharil).
 2 Taz ibid. s.k. 8 (citing Maharil).



Excerpted and adapted from a shiur by
 Harav Chaim Weg

PARSHAS BEHA'ALOS'CHA LEGAL HOLIDAYS

In the second month, on the fourteenth day in the afternoon they shall make it.

Bemidbar 9:11

The Gemara (Pesachim 6a) says that *sho'alin v'dorshin b'hilchos Pesach* (we ask and expound about the halachos of Pesach) for thirty days beforehand. The Gemara explains that the source is in our *parsha*, where Moshe teaches the halachos of *Pesach Sheini* while it was still *Pesach Rishon*, which is thirty days prior. The Bais Yosef (O.C. 429) asks that the Gemara in Megilla 32a states that Moshe instituted that we expound the halachos of each *chag* during the *chag*, not beforehand, which appears to contradict the Gemara in Pesachim.

The Bais Yosef's first answer is that the primary obligation to *darshen* the halachos of Yom Tov is on the Yom Tov itself, as per the Gemara in Megilla. The Gemara in Pesachim, though, is referring to when two people are asking questions, only one of which pertains

(continued on page 2)

Q&A from the
**BAIS HAVAAD
 HALACHA HOTLINE**

1.888.485.VAAD(8223)
 ask@baishavaad.org

Minyan Money

Q While davening at a backyard minyan, I noticed a man searching frantically in the grass under his chair. When he stopped, I heard him mutter, "The \$500 is gone forever." He then left early. I searched the area and found five well-camouflaged hundred-dollar bills in the grass. To whom does the money belong?

A Because the owner experienced *yiush* (loss of hope of retrieving his money), he no longer owns the money.

(continued on page 2)

(continued from front page)

someone from giving testimony or taking an oath and because the public may reasonably wish to be wary of someone with such a past.⁷ Others disagree and assert a “right to be forgotten,” particularly when the infraction occurred “a long time ago” in the perpetrator’s youth and his current conduct is upstanding.⁸

Similarly, there is extensive discussion in the *poskim* over the text of the *kesubah* for a woman who is a *be’ulah* but wasn’t previously married. Some rule that the explicit term “*be’ulah*” should be used, to publicize the fact that the woman is prohibited from marrying a *kohein*. Others argue that this goal can be accomplished by simply omitting the standard term “*besulah*,” or by substituting a variation such as “*kalsa*,” “*arusah*,” or “*ulemta*,” which will be sufficient to indicate that she is not a *besulah*, and it is unnecessary and therefore wrong to publicly shame the woman. If the *bo’el* was someone who does not render the woman prohibited to a *kohein*, and certainly if it was the groom himself, some *poskim* even allow the use of the term *besulah*, since in those cases there is no public benefit to exposing her conduct. But most *poskim* object to such explicit falsehood and recommend the substitutes mentioned above, with some maintaining that “*beulah*” should be used even in this case.⁹

The halachic discussion most relevant to our context of COVID-19 contact tracing comprises various responsa concerning the disclosure of private medical information to forestall harm to others:

- R’ Yaakov Breish obligated a physician to violate medical confidentiality and disclose his patient’s terminal cancer (of which the patient himself was unaware) to his fiancée, due to the prohibitions of *lo sa’amod al dam reiecha* (do not stand by your fellow’s blood) and *lifnei iver lo sitein michshol* (before the blind do not place a stumbling block).¹⁰

- R’ Eliezer Yehuda Waldenberg and R’

Ovadia Yosef obligate physicians to violate medical confidentiality and disclose their patients’ medical conditions to the authorities when necessary to forestall harm to the public, e.g., to prevent an epileptic from driving a motor vehicle,¹¹ or to stop a vision-impaired person from driving, engaging in industrial work, or registering for military service.¹²

- R’ Shlomo Zalman Auerbach reportedly maintained that disclosing illnesses in appropriate circumstances is permitted but perhaps not mandatory.¹³ On the other hand, he also reportedly maintained that a person’s positive HIV status must be disclosed to his or her spouse.¹⁴

- R’ Asher Weiss discusses the case of a young man diagnosed with a dangerous but treatable heart arrhythmia, which was apparently a genetic disorder. He considers whether the parents are obligated to inform the young man’s cousins so that they, too, can be tested for the problem and treated if necessary. He concludes that it is difficult to formulate a clear halachic rule, since it is hard to properly assess the level of danger to the cousins and to determine the correct balance between that danger and the concern of the family for the infringement of its privacy. The correct course of conduct, he says, is to privately inform the cousins and request that they keep the information secret.

¹¹ Shu”t Tzitz Eliezer cheilek 13 siman 81 os 2.

¹² Ibid. cheilek 15 siman 13 os 1. In both these cases, Rav Waldenberg rules that the physician is obligated to violate medical confidentiality despite having taken an oath to uphold it. See also cheilek 16 siman 4.

¹³ Cited in Nishmas Avraham (Second Expanded Edition) E.H. p. 61.

¹⁴ Ibid. p. 63.

(continued from front page)



to Pesach, and the Gemara is saying that we address the one related to the *chag* first. But there is no obligation to study the halachos beforehand. According to this answer, the halacha does in fact apply to all

When a *hefker* (ownerless) object enters someone’s property—even if he’s unaware of it—the property automatically acquires it on his behalf via *kinyan chatzer*, provided the property is a *chatzer hamishtameres*, i.e., the item is secure and protected within it. Nevertheless, it would seem that for two reasons, *kinyan chatzer* wouldn’t work in this case, even though a fenced-in backyard would qualify as *mishtameres*:



HARAV CHAIM WEG

First, because the money entered the *chatzer* prior to the *yiush*, the *chatzer* wouldn’t acquire it for him. (See explanation in Shaach 268:2 and Nesivos Hamishpat 262:1).

Second, the Mishnah states that one who finds a lost object in a store may keep it. The *Rishonim* ask, why doesn’t the property owner automatically acquire it with *chatzer* before it is found? They answer that the traffic of patrons makes the store not *mishtameres*, because anyone could happen upon the object (Tosafos, Bava Metzia 26a; Shulchan Aruch Choshen Mishpat 260:5). Similarly here, it would appear that during minyan times, when a crowd is present, the *chatzer* is not *mishtameres*.

Based on the above, the money would legally be yours to keep as the finder. However, *Chazal* recommend that in a case like this, where the finder knows who lost the item, he should go *lifnim mishuras hadin* (beyond what the halacha requires) and return it, unless the loser is rich and the finder is poor (Shulchan Aruch Choshen Mishpat 259:5).

holidays.

The second answer of the Bais Yosef is that Pesach is different from the other holidays because it has many elements that must be studied beforehand, such as destroying chametz and baking matzos. According to this answer, the halacha applies to Pesach alone.

⁷ Erech Shai *ibid.*, and Shu”t Teshuras Shai (kama) siman 336.

⁸ Chavos Yair and Shevus Yaakov *ibid.*

⁹ See Otzar Haposkim E.H. Vol. XVII siman 66 s.k. 145-146.

¹⁰ Shu”t Chelkas Yaakov E.H. siman 79



Business Halacha Services



Bais Din and Dispute Resolution



Zichron Gershon Kollel for Dayanus



Medical Halacha Center



Kehilla and Bais Din Primacy Initiative



Halachic Awareness and Education

Scan here to receive the weekly email version of the Halacha Journal or sign up at www.baishavaad.org/subscribe

Elevate your Inbox.



לענ"ר דוד ב"ר משה גרוסמן ז"ל

NAFTALI  www.naftaliinc.com

To become a corporate sponsor of the BHHJ or disseminate in memory or zechus of a loved one, email info@baishavaad.org