

THE BAIS HAVAAD

HALACHA JOURNAL

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



VOLUME 5779 · ISSUE III · PARSHAS VAYERA · A PUBLICATION OF THE BAIS HAVAAD HALACHA CENTER

GIFTING ITEMS OF KEDUSHA TO A NON-JEW

Can A Mezuzah Protect A Non-Jew?

In the United States, schools and yeshivas benefit from the government's largesse in numerous ways. When public officials pay official visits to our institutions, it is common to reciprocate by presenting them with some token of appreciation and gratitude, as is common courtesy.

In the past, there have been instances where communal leaders presented non-Jewish public officials with kosher mezuzahs to hang on the door of their office as a meaningful gift. These officials have been very moved by the gesture and eager to benefit from the protective powers of the mezuzah.

While finding ways to express appreciation to public officials who assist our mosdos and communities is definitely an encouraged and admirable practice, it is worthwhile to point out that a mezuzah may not be the most appropriate gift to give, as we shall discuss below.

THE WORTHIEST GIFT

The incident in the Talmud that is most similar to the practice mentioned above story is found in the Yerushalmi¹. As is well known, a special friendship existed between the Roman King Antoninus and Rav Yehudah Hanasi (known as Rebbi). Once King Antoninus sent Rabbi Yehudah Hanasi a precious stone as a gift.

In return, Rav Yehudah Hanasi sent him a *mezuzah*.

Antoninus was puzzled. He asked, "I sent you such an expensive gift and you send me a piece of parchment?"

Rav Yehudah Hanasi replied, "Your gift I will always have to guard to make sure that no one will steal it. But my gift to you, the *mezuzah*, will watch over you and protect you at all times!"

It seems from this story that it is permissible to

give a non-Jew a mezuzah. However, the matter is not so simple.

GUARDING THE SANCTITY

The main reason why many Poskim prohibit giving a *mezuzah* to a non-Jew as a gift is because of a concern that the recipient will not treat the holy object with the proper sanctity and respect.² The story of Rav Yehuda Hanassi and Antoninus may have been an exception to the rule because Rebbi knew with certainty that Antoninus would treat the holy object with utmost respect.

In fact, the Rema³ explicitly rules that it is forbidden

to give a *mezuzah* to a gentile.

FEAR OF REPRISAL

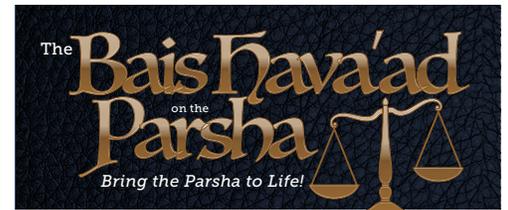
In his Darkei Moshe on the Tur⁴, the Rema relates that the ruler of a certain city once asked his Jewish subjects to send him a *mezuzah*. The townspeople were afraid to refuse, lest they incur the wrath of the powerful ruler. Despite this fear, the Maharil⁵ ruled that it is forbidden. The Rema disagrees with the Maharil and rules that if there is a concern of "eivah", fear that refusing to send the *mezuzah* will lead to hatred towards the

2 The Shu"t Ginas Veradim, Orech Chaim 2:28, adds another reason for the prohibition. He says that giving a *mezuzah* to a non-Jew is in and of itself a "horada b'kedusha", lessening of the holiness of *mezuzah*.

3 Yoreh Deah 291:2

4 ibid

5 Hilchos Mezuzah, Os Daled. This is also the view of the Ohr Hachaim in his Sefer Rishon L'Tzion (continued on back)



Highlights of a shiur by Rabbi Ari Stauber

GUARDIAN, ANGEL

וַיִּקַּח הַמֶּלֶךְ וְחָלַב וּבֵן הַבְּקָר אֲשֶׁר עָשָׂה וַיִּתֵּן לַפְּנֵיהֶם וְהוּא עֹמֵד עֲלֵיהֶם תַּחַת הָעֵץ וַיֹּאכְלוּ.

And he took cream and milk and the calf he had prepared and placed [them] before them, and he was standing over them under the tree, and they ate. (Bereishis 18:8)

The Lev Aryeh (Chulin 104a) is troubled by the sequence of events in the latter half of the pasuk. If Avraham was standing over his guests so that he could serve them while they ate, shouldn't it first say that they ate, and only then that he stood over them?

He answers based on Chulin 103b, where the Mishna says that one may not eat meat while cheese is on the table, or vice versa.

Under certain circumstances this Halacha does not apply, including a case where one places something on the table between the meat and the milk as a *hekker* not to mix the two.

In other cases, where Chazal forbade an activity out of concern for an inadvertent violation,

(continued on back)

spotlight

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

Using a Wireless Internet Connection without Permission

Adapted from a shiur given by Rabbi Zvi Ralbag



In today's modern world, *poskim* are often faced with halachic *shailos* related to technology that did not exist in earlier times. Take, for example, the following commonly asked question: Is it permitted to use a neighbor's wireless internet connection without permission (for permitted usages of the internet)? On one hand, perhaps since one would usually have to pay for a wireless internet connection, the neighbor whose wireless connection one is using can indeed demand payment. On the other hand, perhaps one can argue that since the neighbor does not lose anything monetarily when another individual uses his wireless, there is no obligation to pay for using it.

Despite the lack of halachic sources that deal directly with wireless internet, there is a *sugya* in the Gemara that in fact holds the key for answering this *shaila*, known as *zeh neheneh v'zeh lo chaser*, found in *Bava Kamma* 20a. The Gemara queries whether one who lives in someone else's *chatzer*, or yard (we will refer to a house, which may be a more common case) without the owner's knowledge or permission (i.e., squatting) must pay the owner for his benefit.

The Gemara then analyzes the specifics of the case: If the house is not usually rented out anyway by the owner, and the one who stayed there wouldn't have paid money to stay somewhere else during that time had it not been available (he would have slept in a car or outside somewhere), then it is *zeh lo neheneh v'zeh lo chaser*, one does not benefit, and the other does not lose anything, and there is certainly no question that he is exempt from any payment. The Gemara continues: If the house is usually rented out, and the owner would have rented it to another if not for the presence of this person, then the owner suffers a financial loss, and the person does derive monetary benefit, as he would have spent money to stay elsewhere. It is then a case of *zeh neheneh v'zeh chaser*, one benefits and the other suffers a

loss on his account, and the one staying there would certainly have to pay. The Gemara concludes that the inquiry refers to a case where the house was not intended to be rented out, so the owner doesn't lose anything, but the one living there does benefit, as he would have paid to stay somewhere else. This is known as a case of *zeh neheneh v'zeh lo chaser*. Consequently, the question of the Gemara is whether we should say that since the owner didn't lose anything, the "squatter" is exempt from payment, or perhaps say instead that if benefit is derived, one is obligated to pay, even if no financial loss was involved.

Although the Gemara does not resolve this question conclusively (it is a dispute between numerous amoraim), the *Shulchan Aruch* (C.M. 363:6) rules that one is *patur* from paying in a case of *zeh neheneh v'zeh lo chaser*. What might be the basis for this ruling? Perhaps it can be understood in one of two ways:

There is an obligation to pay only when one takes something from another and thereby causes a loss. However, if no loss is caused, then no obligation exists to pay.

The obligation to pay is determined by the *hana'ah*, or benefit, derived, as the benefit is worth money. Therefore, we should say that anyone who derives benefit from another should pay, even if no loss is caused. However, instead we invoke the principle of *kofin al midas sedom*, that if a person does not lose anything, we can force him to forego receiving payment for it.

It would seem from an analysis of *Tosafos* (s.v. *zeh*) and other sources that the second explanation may be the accepted one. *Tosafos* say that in a scenario where someone is living in another's home without the owner's knowledge (*shelo mida'ato*), even if it is usually rented out, the one who benefits is still *patur* from paying. The reason is that such benefit is only considered damage of *gerama*, indirect, and does not actually destroy anything. According to *Tosafos*, therefore, in a case of *zeh lo neheneh v'zeh chaser*, one does not benefit but the other (the owner) suffers a loss, the one benefiting is still *patur*.

The problem with *Tosafos* is that according to this, why does the Gemara state that one is *chayav* to pay for benefit gained in a case of *zeh neheneh v'zeh chaser* — isn't that also a case of *gerama*? R. Aharon Kotler (*Sefer Mishnas Rav Aharon*) answers that evidently according to *Tosafos*, the *mechayev*, or basis for liability, is not the loss experienced by the owner (in that he could have rented the property out), since that is defined as *gerama*. Rather, the *mechayev* is the *hana'ah* of the one living there — the *zeh neheneh*, based on explana-

tion B above. The reason, then, why one need not pay in a case of *zeh neheneh v'zeh lo chaser* is only because the owner does not lose anything, and we apply the principle of *kofin al midos sedom* and do not allow him to charge. But in a case where the owner does experience a loss and is considered *chaser*, then we don't say *kofin al midos sedom*, due to that loss.

According to this approach that the determining factor is the *hana'ah*, we can better understand the following halacha mentioned in the Gemara (*Bava Kamma* 20b) and cited in the *Shulchan Aruch*: If a person lives in another's house *shelo mida'ato*, and the case is one of *zeh neheneh v'zeh lo chaser* (as described above), but the "squatter" then causes a small amount of damage to the walls, such as they become slightly black, which causes the value of the house to decrease slightly, that is considered a case of *chaser* for the owner, and the squatter is *chayav* to pay, even if it is a very small amount.

The Rema then adds (363:7) that in that case, one doesn't just pay for the small damage done, but rather for the full amount of the *hana'ah*, i.e., the price of rent for the amount of time spent in the house. But some commentaries question the Rema here: Why should one have to pay the full amount (since if not for the damage, he would have been *patur*) — shouldn't it just be limited to the small amount of damage caused? The answer is that according to explanation B, the *hana'ah* alone is considered the *mechayev*, but if the owner does not lose anything, then we apply the rule of *kofin al midos sedom*. However, when there is damage, we certainly would not apply that principle, since he has good reason to not have wanted him there. Therefore, we return to the *mechayev* of the *hana'ah*, and one must pay the entire value of the *hana'ah* received.

This explanation can also help us understand another point mentioned by *Tosafos* and cited by the Rema (363:6): The exemption in the case of *zeh neheneh v'zeh lo chaser* applies only when the person lived in the house without the owner's knowledge. But if he asked the owner first whether he gave him permission to stay there and the owner refused, then if he does so anyway, he is *chayav* to pay. Now if the basis for the *petur* of *zeh neheneh v'zeh lo chaser* is that no damage was caused, then the same should be true in this case as well, and he should not have to pay. But if the explanation is based on the *hana'ah*, just that we impose the principle of *kofin*, then this halacha is logical: We only apply the rule of *kofin* after the fact, but if the owner does not give permission before the person lives in his house, and he has a good reason why he does not want to allow him to do so, then we would return to the factor of the *hana'ah* and one would pay for the entire value of the benefit derived.

Based on this analysis of the sources relating to *zeh neheneh v'zeh lo chaser*, we can now return to our original question concerning using another's wireless internet connection. It would seem that we can divide the question into two:

1. If the person requests permission beforehand
2. If he didn't request permission beforehand

In case A, if the one with the connection refuses to allow the other to use it because it might slow him down, then this would be similar to the case in *Tosafos* and the *Rema* where the person benefiting must pay the full value of the benefit, which would be equivalent of the price for the internet connection. According to our understanding, we would not apply *kofin al midas sedom* here since he has a valid reason for not wanting his neighbor to use the

connection – it might slow down his usage of the internet.

In case B, where he didn't ask permission beforehand, then it may depend on the question of whether a loss of any type was incurred. If the internet was being used at a time when clearly the one with the connection was not using it, and therefore it did not inconvenience him in any way, then we should apply the standard rules of *zeh neheneh v'zeh lo chaser*, and he would not have to pay for the use. But if the wireless is being used at a time that he may be using it also, it may be considered a case of *zeh neheneh v'zeh chaser*, since the neighbor's usage may slow down the use of the one who owns the connection (e.g., he is downloading large files or apps). Therefore, one would have

to pay for the usage. The amount required to pay though may depend on which explanation for *zeh neheneh v'zeh lo chaser* we adopt: According to explanation A, that the damage is the determining factor, then he need only pay a small amount, since the damage caused was only that it took a few minutes more to complete whatever tasks he wished to perform using the internet moving more slowly. This, in effect, may boil down to paying the difference between the cost of a fast-speed internet vs. a slow-speed internet. According to explanation B that the *chiyuv* is based on the *hana'ah* but the *petur* is imposed based on *kofin al midas sedom*, then it would seem that when there is a loss (such as the internet moving more slowly), one should pay the value of the entire *hana'ah*, which would be the full price of purchasing a wireless connection for that month.

MATTERS OF INTEREST

Avissar Family Ribbis Awareness Initiative: Ribbis in Unexpected Places

'INTEREST'ING ACCOUNTS



Reuven allows Shimon to make a purchase on his credit card. Shimon will pay the issuing bank directly, including the interest charged by the bank, several months hence. Both men reckon that there is no ribbis problem, because the bank isn't owned by Jews. But Halacha views this case differently.

The bank has never heard of Shimon; the responsible party on the account is Reuven. When Shimon uses the card for his purchase, the bank is lending the money to Reuven, who, in turn, lends it to Shimon. The interest Shimon has undertaken to pay the bank is, in fact, inter-

est on his loan from Reuven. By paying Reuven's interest debt to the bank, Shimon is actually paying interest to Reuven on his own loan. A heter iska must be implemented.

Reuven and Shimon are partners in a new venture. The partnership is not creditworthy, so to fund it, they agree that Reuven will take out a personal loan, and in the event that the business cannot pay, Shimon will pay half the debt.

Here, too, the bank is lending to Reuven and Reuven is then lending to Shimon. A heter iska will solve the problem.

HALACHOS OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer OU Kosher Halacha Yomis

One Hundred Daily Brachos Part 3: The 100 Daily Brachos



Following is the recommended list of daily brachos according to the *Mishnah Brurah* (46:14), based on the assumption that the obligation begins at night:

BEFORE BED

Hamapil (1)

IN THE MORNING

Al Netilas Yadayim (+1 = 2)

Asher Yatzar (+1 = 3)

Elokai Neshama (+1 = 4)

Morning blessings (+15 = 19)

Blessings on Torah study (+3 = 22)

Tzitzis (+1 = 23)

Tefillin (+2 = 25)

SHACHARIS

Baruch Sheamar (+1 = 26)

Yishtabach (+1 = 27)

Blessings of Shema (+3 = 30)

Shemoneh Esrei (+19 = 49)

LUNCH

Al Netilas Yadayim (+1 = 50)

HaMotzi (+1 = 51)

Birkas Hamazon (+4 = 55)

MINCHA

Shmoneh Esrei (+19 = 74)

MAARIV

Blessings before Shema (+2 = 76)

Blessings after Shema (+3 = 79)

Shemoneh Esrei (+19 = 98)

DINNER

Al Netilas Yadayim (+1 = 99)

HaMotzi (+1 = 100)

Birkas Hamazon (+4 = 104)

This arrangement gives a person 104 daily brachos without even taking into account brachos that one would recite before and after food and drink outside of those two meals, after using the washroom, on smelling pleasant fragrances, on witnessing natural phenomena, and for other purposes.

Other authorities may have varying lists of suggested daily brachos. See, for example, *Mishneh Torah*, *Hilchos Tefillah u'Birkas Kohanim* 7:14. There, the Rambam counts tefillin as one

bracha (rather than two), each *Shemoneh Esrei* as 18 brachos (rather than 19), and each bentsching as three brachos (rather than four). These subtractions bring one's daily count down to below 100 brachos. However, Rambam assumes that one will recite bentsching at each meal over a cup of wine, entailing a bracha before and a bracha after each cup, which adds another four brachos back in.

(continued from front pg.)

Jews that could have dangerous reprisals, it is permitted to send it. The Rema reiterates this leniency in his glosses on Shulchan Aruch⁶.

The Shu"t Beer Sheva⁷ speaks at length on this topic and posits that Rabbi only sent a *mezuzah* to Antoninus out of a concern of *eivah*. The Beer Sheva does quote a possible leniency that this prohibition only applies to a gentile who is an actual idol worshipper; however, a gentile who does not serve idols is not suspect to defile the *mezuzah* or treat it improperly and one may present him with one. However, the Shu"t Rav Pe'alim⁸ says that the Beer Sheva only suggests this as a possibility and does not actually endorse this leniency.

HOW MUCH HATE IS NEEDED?

Regarding what actually falls under the category of *eivah*, Rav Moshe Feinstein *zt"l* writes in Shu"t Igros Moshe⁹ that this simply means that the non-Jew will hate you for what you did to him, which will certainly have some form of negative ramifications. It does not have to be such a severe hate that

6 The Levush agrees with the Rema and permits this in a case of possible *eivah*

7 Siman Lamed Vov

8 Chelek Daled, Yoreh Deah, Siman Chaf Bei

9 Yoreh Chelek Aleph, Siman Kuf Pei Daled

it could lead to a danger of possible loss of life. Rather, even if he will only severely injure the person or cause a serious loss of money, it is still considered *eivah*.

As an example, Rav Moshe poses a theoretical case of a Jewish landlord. One of his non-Jewish tenants asks him to affix a *mezuzah* on his doorpost or to keep up a *mezuzah* that was left there by a previous tenant. If the landlord knows for certain that if he denies this request, the non-Jewish tenant will move out of the apartment, causing him to lose a considerable amount of rent money until he can find a new tenant, it is considered *eivah* and the landlord may leave up the *mezuzah*.

Rav Moshe stresses that two conditions must be met to fall under the category of *eivah*: 1. Renting out apartments must be the landlord's main source of income. And 2. He must be certain that the non-Jewish tenant will vacate if he refuses his request for a *mezuzah*. If these two conditions are not met, the leniency of *eivah* cannot be used.¹⁰

When a school gives a public official a *mezuzah* unsolicited, there is obviously no concern of *eivah* had they not given it. Therefore, it would be very difficult to permit gifting a *mezuzah* to a non-Jew in such a scenario.

10 Rav Moshe goes so far as to say that it would even be prohibited to give a non-Jew a *posul mezuzah* if the leniency of *eivah* does not exist.

(continued from front pg.)



observes the Lev Aryeh, the problem is averted where a *shomer* is

Gan Hamelech to the effect that a *shomer* is ineffective where constant monitoring—as distinct from a one-off reminder—would be required throughout a meal.

appointed to remind someone of his responsibilities. Here, too, Avraham was acting as a *shomer*, making sure his guests would not unthinkingly eat meat and milk together. For this reason, he needed to be standing by before the meal commenced.

This places the Lev Aryeh at odds with Rabbi Akiva Eiger (Y.D. 88), who approvingly cites the



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מסכת מנחות

This Week's Topics

RAV MOSHE ZEEV GRANEK

דף ע"ד What is the Minimum Amount of Challah That Needs to Be Separated

דף ע"ה The Korban of the Miluim

דף ע"ו Give Thanks: Halachos of Birchas HaGomel

דף ע"ז Civil Discourse

דף ע"ח You Have Three Seconds: Cancelling a Kinyan Toch Kdai Dibur

דף ע"ט Hekesh: How & When?

דף פ' The Kashrus Bone Utensils

Medical Halacha Hotline Now Live!

The Medical Halacha Center Hotline of the Bais HaVaad is now live! Under the leadership of Rabbi Yehoshua Greenspan, shlit'a, and staffed by renowned poskim, Rabbi Eliezer Gewirtzman, Rabbi Yosef Fund, Rabi Moshe Feldman and Rabbi Yosef Jacobowitz, the new Hotline is available to provide guidance in medical matters as they relate to halacha.

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