

THE BAIS HAVAAD

# HALACHA JOURNAL

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## CHAIRMAN OF THE HOARD:

### The Mir Yeshiva's Cash Cushion

Adapted from a shiur by Rav Daniel Dombroff

The case of the overstuffed chair

Several *bochurim* sat recently in a Mir Yeshiva dorm room. One was on an old upholstered chair that another boy had rescued from the trash a couple of years earlier. The chair felt uncomfortable, so he rose, flipped it over, and began to fiddle with it, inadvertently breaking open the upholstery. Hundreds of bills in United States currency cascaded to the floor.

One *bochur* quickly gathered the fallen funds. The chair inspector managed to pick up a lone hundred-dollar bill. The day's take came to \$30,000.

Word of the find spread quickly through the Mir's many *batei medrash*, and a spirited Torah debate soon engulfed the yeshiva: To whom does the money belong?

A number of candidates quickly emerged:

#### THE SALVAGER

The *bochur* who retrieved the discarded chair years earlier clearly owns the chair. But when he performed *hagbaha* by lifting the ownerless furniture with intent to acquire it, did he also acquire the hidden hoard that lay within?

The Pis'chei Teshuva discusses the sale of a tin candlestick in which the tin was later discovered to comprise only a thin veneer over a base of solid gold. Because a *kinyan* requires *da'as*, he writes, it does not incorporate anything that wasn't known to be present.

But even if his *hagbaha* on the chair didn't acquire the cash for the chairman, another

argument can be made in his favor. With *kinyan chatzer* (see Bava Metzia 10b), one's property acquires anything inside it that is subject to acquisition, even without his knowledge. For example, if a lost object of a sort that the finder may keep lands in a man's courtyard, it is his, even if he isn't present and doesn't know it's there. As one's *kailim* have the same ability to acquire on his behalf as his real property, would not the chair acquire the money on behalf of its owner?

There is a *shita* that something hidden in a way that it isn't likely to be found is not subject to *kinyan chatzer*. And even if it was likely to be found (the owner argued that he had already begun to tinker with the chair, because it had become uncomfortable, so he was bound to find the money soon), it is questionable whether *kinyan chatzer* works on something not normally contained there—say, money in a seat cushion.

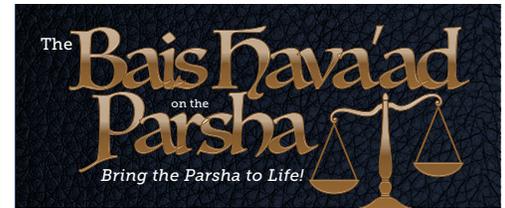
#### THOSE PRESENT AT THE FIND

*MideRabanan*, the four *amos* of a person can acquire on his behalf like a *chatzer*. All agree that this rule applies in a *simta* (alley) and in *tzidei reshus harabim* (the sidewalk of a public domain). A dorm room is effectively a *chatzer shel shutfin* (a courtyard owned in partnership), which is generally treated like a *simta* with regard to *kinyanim*.

If no one else was within the *dalet amos* of the money, the one who freed it would acquire it by proximity. In this event, it seems, multiple people were within range, and it was unclear who had been there first. (The *dalet amos* belong, for *kinyan* purposes, to the first to arrive.) There is a view that an entire room is considered as one *dalet amos*. Perhaps we can apply this approach to *kinyanim*, in which case the first person to have entered the room would own the money.

#### THE ROOMMATES

(continued on back)



Adapted from a shiur by Rav Mordechai Lebhav for Parshas Vayakhel

### TALKIN TECH: Using the Nest Thermostat on Shabbos

לא תבערו אש בכל מושבותיכם

The Nest is an energy efficient thermostat that senses when people are in the house through cameras and the occupant's smartphone and then 'learns' the occupant's behavior, too.

If the heating or air conditioning is off, and one passes the Nest, it automatically turns on. Obviously, this function must be disabled before Shabbos.

What about the other 'smart' functions where the Nest is constantly 'learning' your habits and patterns to determine when you generally sleep or go away? Based on that, it automatically activates utilities in the home.

#### The potential issurim:

Activating the air conditioning is probably *medrabanan*; the heater is more likely a *de'oraysa*.

(continued on back)

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# GENERAL HALACHA

## Commerce on Shabbos and Yom Tov: Maintaining a Website

By: Rabbi Baruch Meir Levine



As the Yom Tov season draws closer, many business owners are faced with Halachic considerations they may not need to deal with throughout the year. Businesses which are typically closed over the weekend can face new questions when an extended Yom Tov season, which includes Shabbos, Yom Tov and Chol Hamo'ed, approaches.

### WEBSITES ON SHABBOS

**Q.** I run an online retail business in which I sell products primarily through my own website. I have always kept the website open throughout Shabbos and Yom Tov and receive orders during these times. Recently someone told me of a prominent *frum* retailer that shuts down their website for Shabbos and Yom Tov. Is one actually required to do so?

**A.** The answer, in a nutshell, is that according to the majority of poskim, selling merchandise on *shabbos* through a web store does not constitute *chillul Shabbos* in any way and is thus permitted. The same would go for selling an item, or placing a bid to purchase one, through an auction listing such as with eBay, even when the auction is scheduled to end on Shabbos. However, according to some poskim, most notably Harav Yisroel Belsky<sup>1</sup>, such sales are a violation of *mekach umemkar b'Shabbos* - a *gezaira* that Chazal enacted against buying and selling on Shabbos out of fear that it would lead one to write on Shabbos.

### VENDING MACHINES

This *machlokes* is essentially related to a famous *machlokes* which took place in the early 1900's regarding vending machine sales on Shabbos.

The *Givas Halevona*<sup>2</sup> and others prohibited keeping a vending machine operable on Shabbos even when all the purchases would be made by non-Jews, based on the *shita* of R' Akiva Eiger. R' Akiva Eiger<sup>3</sup> rules that it would be *assur* for one to make a *maaseh kinyan*, an act of acquisition, on *erev Shabbos* with the stipulation that the actual acquisition go into effect on Shabbos. Seemingly, in R' Akiva Eiger's view, merely being a party to a sale that takes place on Shabbos, even when all the arrangements are done prior to Shabbos, is included in the *issur* of *mekach umemkar*.

However, the *Maharshag*<sup>4</sup> and others permitted this practice, based on the following two reasons:

Firstly, they disagreed with R' Akiva Eiger's *chiddush* altogether. They pointed to the *mishnah* in Shabbos which permits one to set up an irrigation system before Shabbos in order to water a field on Shabbos. This demonstrates that there is no *issur* to pre-arrange before Shabbos for a *melacha* to take place on Shabbos. Indeed many *Achronim* argue on R' Akiva Eiger, based on this *mishnah*<sup>5</sup>.

Furthermore, they argued, R' Akiva Eiger prohibited a sale on Shabbos when it was specifically arranged for the sale to take place on Shabbos. In the case of vending machines however, the Jew arranges the item to be ready for sale at any time and it is rather the non-Jew who directs for the sale to go into effect on Shabbos. Such an arrangement would possibly be permitted even according to R' Akiva Eiger.

### TODAY'S MINHAG - VENDING MACHINES

The general custom today seems to be to rely on the *Maharshag's* ruling and allow vending machines to operate on Shabbos.<sup>6</sup>

### WEB STORES

Getting back to the issue of web stores, most contemporary *poskim* maintain that we can draw a parallel from the vending machines to permit their use on Shabbos. Furthermore, they argue, even the *poskim* who prohibited vending machines would permit web stores because in the case of the latter the buyer does not actually take ownership of the item until it is physically delivered to him. Hence

what is taking place on *shabbos* is not an actual sale, but rather just a contract to buy/sell the item in the future, with the buyer pre-paying for the item. This is evident if we consider a scenario where the seller's entire warehouse burns down before he had a chance to ship out the item; would he then tell the buyer "sorry your item is lost, thank you for your business"?! Rather, he would be expected to refund the buyer his money because the sale actually never went through<sup>7</sup>.

Now, even though it is *assur* to personally enter into a contract on Shabbos and Yom Tov, that is not because it is included in the *gezairas mekach umemkar*<sup>8</sup> but rather because of a separate *issur* of *mimtzo cheftecha* (a general *issur* of "taking care of business"), which would not be subject to R' Akiva Eiger's *chiddush* of pre-arranging before Shabbos.

Harav Belsky, on the other hand, feels that even though the item does not change ownership on Shabbos, such a transaction is still included in the *gezaira* of *mekach umemkar b'Shabbos*.

Furthermore, he argues, even the *poskim* who permitted vending machines would prohibit a web store because, in the case of the former, once the seller places the items in the vending machine he is totally removed from the facilitation of its sale and thus he is not considered associated with its eventual sale on Shabbos. With a web store however, the seller is still an active participant in the sale until he ships out the item and is therefore considered the facilitator of its sale on Shabbos even though he did not actually do any action on Shabbos itself.

According to Harav Belsky, the only permitted form of selling merchandise through a web store on Shabbos is by placing a notice on the website stating that all sales taking place on Shabbos or Yom Tov are not final until after Shabbos or Yom Tov, meaning that both the buyer and the seller have the right to back out up until then.

### IN SUMMARY

So, in summary, you definitely have who to rely on in keeping your web site open on Shabbos; nevertheless, you may wish to act stringently.

<sup>1</sup> This is in fact E-bay's official policy.

<sup>2</sup> וכן מוכח מהב"י (סי' ש"ו) שהביא קושיית הר"ן על הא דאיתא דמותר לפסוק צדקה לעניים בשבת משום דהוי חפצי שמים (ואינו בכלל האיסור ממצוא חפצך). והק' הר"ן דממתני' בביצה דאין מעריכין ואין מקדישין משמע שהתחייבות גרידא נכלל בגזירת מקו"מ (שלא הותר במקום מצוה). והב"י הביא הכל בו שתי' וז"ל "דדוקא הקדש מזבח או בדק הבית דיוצא מרשותו לרשות גבוה אבל עכשין שנודרין להקדשות או שמן למאור מותר לפי שאין מייחדין שום דבר שיוצא מרשותו ואינו דומה למקח וממכר" עכ"ל. וכן משמע מתשו' מהר"ם שיק' (סי' קל"א), עיי"ש.

<sup>2</sup> הובא במנחת יצחק (ח"ג סל"ד)

<sup>3</sup> שו"ת קמא סי' קנ"ט

<sup>4</sup> ח"ב סי' קי"ז

<sup>5</sup> שואל ומשיב (מה"ד ר' סי' ז') שו"ת תורת חסד (סי' יג') והחזו"א (דמאי סי' ל' או יב')

<sup>6</sup> ועיין בשש"כ פכ"ט סב"ח

<sup>1</sup> שו"ת שלחן הלוי (פרק ד' שאלה ב')

# MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE:

*Learning With The Lender*



**Reuven borrowed money from Shimon, and Shimon used the opportunity to inquire if Reuven would want to setup a chavrusa session with him. Is this an issue of ribbis?**

The *Shulchan Aruch* writes that a borrower may not tutor the lender, nor the lender's son, unless he had been doing so previously. Some *poskim* write that this is forbidden even if the lender has other *chavrusa* opportunities.

It is possible, however, that this only applies to tutoring, which is usually done for money or as a favor, and not to learning *chavrusa*-style

in yeshivah, which is normally done without payment.

However, if he definitely would have not selected him as a *chavrusa* it would not be permitted.

It is important to note that where Shimon clearly expresses his desire to study with Reuven as a *condition* for the loan, it would be forbidden under *all* circumstances. Hence, it is important to avoid mentioning this, even in casual connection to the loan ("Okay, I'll lend you money, but please learn with me...").

## YOU DAILY LIVING

*Weekly Questions*

*Laws Related to Brachos*



**To be counted towards the one hundred brachos, must one personally recite the bracha, or is it sufficient to respond amen to another person's bracha?**

It depends on the *bracha*.

If the *bracha* is obligatory (such as *Kiddush* or *Hamotzi*) and a person fulfills the requirement to recite the *bracha* by hearing it from another, the *bracha* can be included in a person's daily tally of the one hundred brachos obligation.

If a *bracha* is non-obligatory and a person hears the *bracha* from another and answers *amen* (such as a *bracha* on an apple that another party is reciting), it does not count towards the one hundred *brachos*.

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דף צ"ד *Geneivas Daas: Deceiving Others*

דף צ"ה *Rov & Kavua: When Do We Follow the Majority?*

דף צ"ו *Flavor Matters*

דף צ"ז *The Chef Taste Test: Te'imias K'feila*

דף צ"ח *Null and Void: Bittul B'Rov*

דף צ"ט *Taste Matters: Ta'am K'Ikar*

דף ק' *Bosor B'Cholov: A Compound Issur*

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1 Concise Shiur Per Parsha

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Contemporary Halachic Issues Related to Every Parsha

(continued from front pg.)

There is a Halachic debate whether a renter has *kinyan chatzer*. The normative view is that he does, as does a borrower. However, this is the case only when the rental or borrowing is for a fixed term, in which case the user has a *kinyan* in the property. But when the rental or borrowing is for a term of unspecified duration, and the owner can terminate the arrangement at will, it is said in the name of the Brisker Rav that no *kinyan* has been made; the property is just being used with the owner's permission. While I don't know the policy of the Mir Yeshiva, it is common for yeshivos to reserve the right to change dormitory room assignments at any time, so the Brisker Rav's contention would pertain.

### THE YESHIVA

Would the Mir then retain the power of *kin-*

*yan chatzer*, making it the rightful owner of the find? It would seem that a yeshiva has the status of *hekdesh*, and that a yeshiva is owned only in the sense that one "owns" a *korban*, rather than belonging personally to its founder. And the *Ketzos* suggests that *hekdesh* might not have the power of *kinyan chatzer* at all.

(Note that the Gemara says that *kinyan dalet amos* doesn't apply in a *reshus hayachid*, so if the room is considered to belong to the yeshiva, this might negate the earlier argument in favor of the people present at the find.)

### HEIR TO THE CHAIR

Who would discard a chair with \$30,000 inside? Someone who didn't know it was there. Most likely, the person who stashed it there

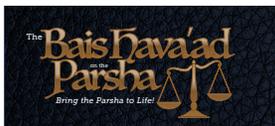
died or later suffered from dementia. Though we normally follow Rabbi Yitzchak's rule that one who loses money is aware of it and despairs of retrieving it (*yiush*), making it ownerless, that wouldn't apply under these circumstances. However, the Rambam says that if an item is lost in a way that it is unlikely to be found, it becomes ownerless.

\* \* \*

The case just came before a Bais Din in Yerushalayim. The great principle of monetary Halacha is *hamotzi meichaveiro, alav haraya*. If A lays claim to something in B's possession, A bears the burden of proof. As we have established, no party has a solid Halachic claim to the money, so the court left it in the hands of its holder.

Possession, as the adage has it, is nine tenths of the law.

(continued from front pg.)



While it is 'learning', the memory is being recorded on the magnetic card.

This could be *tikun mono/make bepatish* or *molid*.

The potential *heterim*:

There are multiple algorithms for the Nest to

decide how - or if - to modify and change the temperature. This means it is a *safek psik reisha*.

Usually *safek psik reisha* is subject to the *machlokes* between the *Taz* and *Rav Akiva Eiger*, and *Poskim* are generally lenient on *isurei derbanan*; however, here, the resident is interested in the Nest learning his behaviors; therefore, we say he is *nicha lay*, which would

necessitate being more stringent.

There is a potential solution, whereby, in addition to removing the auto turn on function when one passes by, the occupant sets an override schedule [and intentionally leaves his phone at home]. This way, he is demonstrating that he does not want the Nest to learn his true habits on this day, thereby resulting in a *safek psik reisha* where it is *lo nicha lay*.

**When time is of the essence.**

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