

S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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



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FLY BY NIGHT

*When a Plane Arrives on Shabbat
What should you do if your plane
lands on Shabbat?*

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 *Shabbat*, *Shomer Shabbat* 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 observant 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 *Shabbat*. (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 *Shabbat* to risk this outcome. Should *Oness* (duress) bring it about, *Halilla*, here is a general guide to some of the issues one might face.

PRE-SHABBAT PREP

If you become aware that your flight will land on *Shabbat*, there are some things to do before *Shabbat* 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 *Shulhan Aruch* O.H. 310:7, *Rama*). As a result, walking with money in a trouser pocket is not *Tiltul* (carrying) *Muktze* and, according to some, doesn't require shaking out (*Mishna Berura* ibid. 30). However, the pocket does become a *Basis* (base) for *Muktze*, with the implication that one may not move the pocket with his hand on *Shabbat*.

NER SHABBAT

At the appropriate time, turn on your overhead lamp *L'Shem Mitzva*. Because the lights on modern aircraft do not utilize incandescent bulbs, no *Beracha* is recited.

CARRY-OFF BAGS

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

TEHUM SHABBAT

One may not travel beyond two thousand *Amot* from the settlement in which he finds himself at the onset of *Shabbat*, where he is *Kone Shevita* (lit. acquires settlement for *Shabbat*, where he is stationed). Even if *Tehumin* don't exist above the level of ten *Tefahim* from the ground (see *Mishna Berura* 404:7), you are nevertheless *Kone Shevita*, it would seem, when the plane descends to an altitude of ten *Tefahim*, moments before landing. The runway is an uninhabited area larger than

(continued on back)



By Rav Yosef Greenwald

JUST CAUSE:

HOW SIGNIFICANT IS GERAMA?

וַיֹּאמֶר אֱלֹהִים רְאוּבֵן אֶל תִּשְׁכַּחוּ דַם הַשְּׂלִיכוּ
אֹתוֹ אֶל הַבּוֹר הַזֶּה אֲשֶׁר בְּמִדְבָּר וְיָד אֵל תִּשְׁלַחוּ
בּוֹ לְמַעַן הִצִּיל אֹתוֹ מִיָּדָם לְהַשִּׁיבוֹ 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. (Bereshit 37:22)

How causation correlates with doing.

Reuven was arguing that the brothers 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* on *Pasuk* 26).

Indirect causation, *Gerama*, 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 liable under the laws of Heaven.

The distinction between *Gerama* and *B'Ya-dayim* also holds in *Halachic*

spotlight

Daf Yomi in Halacha

(continued on back)

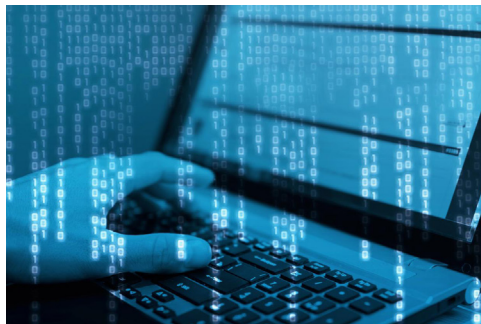
The Bet HaVaad's popular *Daf Yomi in Halacha* series continues with *Masechet Hullin*. This week features a fascinating *shiur* by Rabbi Shmuel Binyomin Honigwachs, *shlit"a*, on the topic of *Commerce and Hametz*. Rabbi Honigwachs is a *Dayan* at the Bet HaVaad, and in this *shiur* he presents the specific *Halachic* challenges why the standard sale of *Hametz* may not suffice.

GENERAL HALACHA

HACK ATTACK AND HALACHA

Is hacking allowed according to Halacha?

Dayan Yitzhak Grossman



With each passing election, the specter 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 HEREM OF RABBENU GERSHOM

There is a medieval tradition, generally attributed to *Rabbenu Gershom Me’or Ha’Golah*¹ of a *Herem* [ban /anathema] against reading (or opening) a letter addressed to another.² Some *Poskim* take for granted that the

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

RELATED PROHIBITIONS

The *Aharonim* 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

V’Ahavta L’Re’acha Kamocho: “Thou shalt love thy neighbor as thyself” - “that which is hateful to you, do not do unto your friend”.⁶

Lo Telech Rachil B’Amecha: “Thou shalt not go up and down as a talebearer among thy people”.⁷

*Genevat Da’at*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 (*Gerama BiNzikin 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 applicability of the prohibition against unauthorized 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’IYA

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 HaRa*), 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

18 cols. 452-54; Nahum Rakover, HaHagana Al Tzin’at HaPrat – Herem D’Rabbenu Gershom BiDvar Keriat Michtavim; R. Avraham Naftali Zvi Roth, Al Devar HaHerem Al Keriat Igeret Shelo BiRshut, HaMaor, Year 32 Issue 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 Piske-Din Shel Bate HaDin HaRabbaneyim BYisrael, Vol. 14 p. 292 s.v. Barur she’en hevdel ekroni (R. Avraham Sherman); Piske-Din ibid. p. 307 s.v. U’Pashut hadavar sheyesh l’harviv hadavar (R. Chaim Shlomo Rosenthal); Mishpete HaTorah Helek 1 Siman 92 os 4 pp. 337-38; R. Yitzhak Zilberstein, cited in Binat HaShidduch, Perak 7 She’elah 16 p. 379; Emek HaMishpat Hilchot Shechenim, Siman 26 Ot 4.

4 Shut. V’Darashta V’Hakarta, Helek 1 Y.D. Siman 46 Ot 1 (in response to R. Tzvi Spitz, the author of Mishpete Torah); Shut. Shevet HaKehati Helek 4 (Inyanim Shonim) Siman 327 Ot 2.

5 Shut. Torat Hayim (Maharhash) Helek 3 Siman 4; Shut. Kol Gadol, Siman 102.

6 Shut. Hikeke Lev, Y.D. Siman 49.

7 Shut. Halachot Ketanot, Helek 1 Siman 276; Hikeke Lev ibid.

8 Hikeke Lev ibid.

9 Rakover ibid. (note 15) defends the invocation of Genevat Da’at in this sense and cites other instances of such usage.

10 Torat Hayim ibid.

11 Shevet Ha’Kehati ibid. forbids the operation of “eavesdropping equipment that is called ‘scanner’” due to, inter alia, the concern of the Halachot Ketanos for Rechilus; V’Darashta V’Hakarta ibid. Ot 6 forbids eavesdropping on telephone conversations due to the concerns of V’Ahavta L’Re’acha Kamocho, Rechilus and Genevat Da’at.

12 Piske-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. Mahane Hayim 2:HM:49 s.v. U’L’Da’ati that plagiarism of the Torah of another constitutes Geneva or Gezela (theft), 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 Piske-Din ibid. p. 307. See Rakover ibid. (note 17).

14 Rama, Hoshen Mishpat 154:7.

15 Shulhan Aruch HaRav, Hoshen Mishpat, Hilchot Nizke Mamon, Se’if 11.

16 Shevet HaKehati ibid.; R. Zilberstein ibid. p. 380.

17 Emek HaMishpat ibid.

1 Shut. Bene Banim, Helek 3 beginning of Siman 17 and note 1 of Rakover’s article (cited below).

2 Shut. Maharam B. Baruch, Prague Ed., Siman 1022; Kol Bo, end of Siman 116; Shut. Maharam Mintz, Siman 102. For more or less comprehensive discussions of the Herem, see Encyclopedia Talmudit Vol. 17 end of entry “Herem D’Rabbenu Gershom” Ot

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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, a form of Ribbit). 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 under the terms 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 Halacha 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 Halacha 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 “Pesika,” and is a form of *Avak Ribbit* (lit. Ribbit “dust” – pro-

hibited for its resemblance to Ribbit). 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 Ribbit.

If two parties enter into a Pesika agreement, Halacha 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 Ribbit. There are various solutions offered for this problem and one should consult his rabbi.

There are some who justify this practice with the following rationale. The reason Pesika is prohibited is because it resembles Ribbit. People may interpret the lower 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.

HALACHOS OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou
Kosher Halacha Yomis



Why do we wash Netilat Yadayim before we eat bread?

The requirement to wash one's hands is rabbinical. The *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, *Hachamim* required them, as well as all of *Klal Yisrael*, to wash their hands before eating “regular” non-*Teruma* (*Hullin*) bread (*Hullin* 106a). Although *Teru-*

ma is not eaten in our days due to our general status of impurity, *Hachamim* maintained this requirement, even in the diaspora, so that this *Halacha* will remain familiar to us when the *Bet Hamikdash* is rebuilt (*Aruch HaShulhan*, 158: 2, 3).

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

What's the proper procedure for Netilat Yadayim before eating bread?

One should pour at least one *Revi'it* (about three 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 *Mishna Berura* writes that one should ideally pour a second time on the right hand (162:2). 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* (*Shulhan Aruch*, 162:2),

a practice Rav Belsky, *zt"l* felt is too often overlooked (*Shulhan HaLevi*, Ch. 3:1b).

One should then make the blessing *Al Netilat Yadayim* and then dry them (*Mishna Berura*, 158:42).

Am I permitted to speak during Netilat Yadayim or between Netilat Yadayim and HaMotzi?

While a person washes one's hands it is forbidden to speak until one makes the blessing *Al Netilat Yadayim* (*Derashot HaTzlah*, 4:22). The *Beracha* applies to the *Mitzvah* of washing and there should be no interruption between the *Mitzvah* and the *Beracha*.

If a person did speak before making the blessing he should wash *Netilat Yadayim* again. One should first rub his scalp or touch his shoe so that a blessing on the new *Netila* will be justified (*Piske Teshuvot*, 158:122).

After *Netilat Yadayim* it is preferable not to talk until *HaMotzi* is recited (*Shulhan Aruch* 166:1). *B'Dia'avad*, if one did speak, he is not required to wash *Netilat Yadayim* again provided that he did not have *Hesech HaDa'at* – any distraction from maintaining the cleanliness of his hands (*Mishna Berura* 166:6).

(continued from front pg.)

a *Bet Sa'atayim*, so the *Tehum* count begins immediately at that point (O.H. 396:2).

Your arrival gate will generally be more than 2,000 *Amot* from that spot, so when you get there you're already out of *Tehum*. This leaves you with only your *Dalet Amot* in which to maneuver for the balance of *Shabbat*. However, both the plane and the jetway are *Reshuyot HaYahid* and considered an extension of that *Dalet Amot*.

But what of the airport itself, beyond the jetway? Although enclosed, it is generally larger than a *Bet Sa'atayim* and so is considered a "*Karfef*" (lot) rather than a *Reshut HaYahid* with regard to carrying—and so, it would seem, your *Dalet Amot* 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.

SE'UDOT SHABBAT

If wine and bread are not available but *Mezonot* items are, one should be *Kovea Se'uda* on them and use them for *Kiddush*. (See *Pit'he Teshuva* 168 that a mere *KaZayit* may suffice.)

Bread isn't valid for the daytime *Kiddush*, but by then you will have made enough friends in

the terminal to finagle a *Hamar Medina* (nationally accepted wine-like beverage), 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 Reshe D'la Niha Leh* (a *Melacha* that will surely happen as a result of you engaging in another act, while you have no interest in the *Melacha* that takes place) on a *D'Rabbanan* (rabbinic prohibition), with *Kavod HaBeriyot* (human dignity) 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 fulfill the *Mitzvot* of *Kevod* (honor) and *Oneg* (enjoyment) on every *Shabbat* of our lives in the best way possible, *Amen*.

(continued from front pg.)



realms as diverse as murder and *Shabbat*.

It must be understood that

Gerama is not treated differently to direct ac-

tion because the likelihood of result is smaller. The *Halachic* status of *Gerama* is the same even where the outcome is guaranteed.

Also to be noted is that being responsible only *B'Dine Shamayim* doesn't mean that the perpetrator is basically absolved of guilt but has

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This Week's Topics

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- 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

BAIS HAVAAD KEHILLA EVENTS

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 Poskim 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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