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CHAIRMAN OF THE HOARD:

A Yeshiva's Cash Cushion

Adapted from a Shiur by Rav Daniel Dombroff

THE CASE OF THE OVERSTUFFED CHAIR

Several Yeshiva boys sat recently in their Yeshiva's 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 boy 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 Yeshiva's many *Bate Midrash*, and a spirited Torah debate soon engulfed the Yeshiva: To whom does the money belong?

A number of candidates quickly emerged:

THE SALVAGER

The boy who retrieved the discarded chair years earlier clearly owns the chair. But when he performed a *Kinyan Hagbaha* - a transactional act of lifting - by lifting the ownerless furniture with intent to acquire it, did he also acquire the hidden hoard that lay within?

The Pithe 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* (transactional act) requires *Da'at* (intent), 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 Hatzer* - one's property acquires anything inside it that is subject to acquisition - even without his knowledge (see Bava Metzia 10b). 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 utensils 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 an opinion that something hidden in a way that it isn't likely to be found is not subject to *Kinyan Hatzer* - being acquired via one's property. 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 Hatzer* works on something not normally contained there—say, money in a seat cushion.

THOSE PRESENT AT THE FIND

MideRabanan, the four *Amot* of a person can acquire on his behalf like his property. All agree that this rule applies in a *Simta* (alleyway) and in *Tzide Reshut HaRabim* (the sidewalk of a public domain), which are places which individuals may treat as their own temporarily. A dorm room is effectively a *Hatzer 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 Amot* 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 Amot* belong, for *Kinyan* purposes, to the first to arrive.) There is a view that an entire room is considered as one *Dalet Amot*. Perhaps we can apply this approach to *Kinyanim*, in which case the first person to have entered the room would own the money.

(continued on back)



Parasha & Halacha Shiur Summary on Parashat Vayakhel, by Rav Mordechai Lebhár

MODERN DAY ERUVIN: RENTING FROM AN AKUM

One of the 39 Melachot which are forbidden on Shabbat is carrying from a private to a public domain. Enclosing a public domain with an Eruv can sometimes turn it into a private domain.

Even in an enclosed space, in order to carry, all of the inhabitants of the houses must convene and place an "Eruv" - a joined amount of food which is considered to be a community meal. If there are non-Jews in that enclosure, Hachamim required that the Jew rents the Akum's domain, and thus raise suspicions and discourage intermingling. The Rashba writes that this rental requirement is very lenient and one can even give a symbolic dollar (obviously as per Halacha) to rent the Akum's domain and fulfill this requirement.

How about a city with hundreds of thousands of Akum? The Halacha is that one is allowed to rent from a worker, or other proxy, of the Akum. Who is an acceptable proxy? The Shulhan Aruch, as well as Rashba and Rivash accept the renting from a Sar Ha'Ir - governor - as he has the right to station his troops and confiscate property in times of war. Maharsham and others accept a police chief. However, Rav Elyashiv held that today's government officials have to obtain warrants before entering your property, thus renting from a governor or police officer should be a problem.

Nevertheless, Rav Shlomo Z. Auerbach cites

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GENERAL HALACHA

WEBSITES ON SHABBAT

Adapted from an article by Rabbi Baruch M. Levine



In today's business environment, most companies understand that they can no longer rely on a storefront and local community marketing to survive and turn a profit. Globalization, large corporations, and the dominance of digital media have forced business owners to find ways to establish a significant presence on the web. Many businesses rely exclusively on internet commerce, which raises the question of maintaining an operating website or webstore on Shabbat and Yom Tov.

THE VENDING MACHINE DEBATE

Although websites are a new phenomenon, and the discussion in the *Poskim* is limited to the most recent *Halachic* literature, we may draw some insight into this issue from the debate between the *Halachic* authorities at the turn of the 20th century regarding vending machine sales on *Shabbat*.

The *Giv'at HaLevona*^[1] and others maintained that it is forbidden keep an operating vending machine on *Shabbat* even if all the purchases would be made by non-Jews. They based their opinion on the ruling of Rav Akiva Eiger^[2] that one may not execute a *Ma'aseh Kinyan* – an act of acquisition – on *Erev Shabbat*, with the stipulation that the actual acquisition go into effect on *Shabbat*. Seemingly, in Rav Akiva Eiger's view, merely being a party to a sale that takes place on *Shabbat*, even when all the arrangements are made prior to *Shabbat*, is also included in the rabbinic prohibition against commerce on *Shabbat*. Both the *Kaf HaHayim*^[3] and *Teshuvot Torah LiShma*^[4] – attributed to

the *Ben Ish Hai* – follow this opinion *L'Halachah*.

However, the *Maharshag*^[5] and others permitted keeping the vending machines in operation throughout *Shabbat*, arguing with the opinion of Rav Akiva Eiger. They pointed to the *Mishna* in *Masechet Shabbat* which permits one to set up an irrigation system before *Shabbat* in order to water a field on *Shabbat*. This proves that there is no prohibition to make prearrangements for a *Melacha* to automatically take place on *Shabbat*. Indeed, many *Aharonim* – such as the *Sho'el U'Meshiv*, the *Hazon Ish* and more – argue on Rav Akiva Eiger, based on this *Mishna*^[6]. *Hacham Ovadia Yosef* זצ"ל sides with their opinion as well^[7].

They argue further, that even in the opinion of Rav Akiva Eiger, it is only prohibited to prearrange that a sale should specifically take place on *Shabbat*. 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 chooses to buy the item and effect the sale on *Shabbat*. Such an arrangement would possibly be permitted even according to Rav Akiva Eiger.

Indeed, with regards to vending machines or similar arrangements, the general custom today seems to rely on the *Maharshag's* lenient ruling and allow vending machines to operate on *Shabbat*.^[8]

ARE WEBSTORES LIKE VENDING MACHINES?

In the case of webstores, most contemporary *Poskim* maintain that we can draw a parallel from the vending machine leniency and allow them to remain in operation on *Shabbat*. Furthermore, they argue, even the *Poskim* who prohibit vending machines would permit webstores, 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 *Shabbat* is not an actual sale, but rather just a contract to buy or sell the item in the future, with the buyer pre-paying for the item. This is evident from the fact that if the seller's entire warehouse were to burn down before the merchandise was shipped to the buyer, the seller would be expected to refund the buyer his money because the sale actually never went through.^[9]

This is not to say that one may enter a contract on *Shabbat*. There is a general prohi-

bition to tend to one's business matters on *Shabbat* – which includes speaking about one's business or doing other arrangements – that is derived from the verse "*Mimetzvo Heftzecha*"^[10]. That, however, applies only when one involves themselves with business on *Shabbat* itself, unlike the prohibition to engage in actual commerce which is may be subject to Rav Akiva Eiger's injunction.

On the other hand, according to Rav Yisrael Belsky זצ"ל, even if the item does not change ownership on *Shabbat*, such a transaction is still included in the rabbinic prohibition of commerce on *Shabbat*.^[11]

Furthermore, he argues, even the *Poskim* who permitted vending machines would prohibit a webstore, 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 their sale and thus he is not considered to be associated with the eventual sale on *Shabbat*. With a webstore 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 *Shabbat* even though he did not actually do any action on *Shabbat* itself.

According to Rav Belsky, the only permitted form of selling merchandise through a webstore on *Shabbat* would be by placing a notice on the website stating that all sales taking place on *Shabbat* or *Yom Tov* are not final until after *Shabbat* or *Yom Tov*, which means that both the buyer and the seller have the right to back out until then.

SUMMARY

According to the majority of the *Poskim*, selling merchandise on *Shabbat* through a webstore does not constitute *Hillul Shabbat* in any way and is therefore permitted. The same is true for selling an item, or placing a bid to purchase one, through an auction listing on websites such as Ebay, even if the auction is scheduled to end on *Shabbat*. However, according to some *Poskim*, most notably Rav Yisrael Belsky זצ"ל, such sales stand in violation of the rabbinic prohibition against conducting business on *Shabbat*, and keeping a webstore open on *Shabbat* would only be allowed if the buyers are notified that the sales will only be final after *Shabbat*.

(footnotes on the next page)

MATTERS OF INTEREST

AVISSAR FAMILY RIBBIT 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 Havruta session with him. Is this an issue of Ribbit?

The *Shulhan 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 *Havruta* 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 *Havruta*-style in Yeshiva, which is normally done without payment.

However, if he definitely would have not selected him as a *Havruta* 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...").

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis

Laws related to Berachot

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

It depends on the *Beracha*.

If the *Beracha* is obligatory (such as *Kidush* or *HaMotzi*) and a person fulfills the requirement to recite the *Beracha* by hearing it from another, the



Beracha can be included in a person's daily tally of the one hundred *Berachot* obligation.

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

GENERAL HALACHA FOOTNOTES:

(continued from previous page)

מיה, וכן העלה החיד"א בברכ"א א"כ לדבריהם יש להחמיר במכונות אלו שנעשה בהם מלאכה בפעולות חשמל וכדו'. ואע"פ דקיי"ל כשי' הראשונה בשו"ע שכן פסק הוא בסתם מ"מ מהיות טוב כ' בחזון עובדיה הנ"ל שטוב שיאמר שאינו רוצה שתקנה לו רשותו, שהרי אין חצירו קונה לו בע"כ, ובכה"ח (אות כה) כ' דמדינא אף בלא אמירה שרי משום דאיסורא לא ניחא ליה למקני מדין חצר.

This is in fact Ebay's official policy [9]

[10] ישעיהו נח, יג

[11] שו"ת שלחן הלוי (פ"ד, שאלה ב')

[1] הובא במנחת יצחק (ח"ג סל"ד)

[2] שו"ת קמא סי' קב"ט

[3] סי' ש"ו אות י"ד

[4] ארו"ח סי' ע"ז, ובפרט אם אכן יש חשש שיבא לידי כתיבה

[5] ח"ב סי' קי"ז

[6] שו"מ (מה"ד ר' סי' ז') שו"ת תורת חסד (סי' יג') חזרו"א (דמאי סי' ל' אר"י)

[7] חזון עובדיה, ח"א עמ' קנד-קנד

[8] ועיין בשש"כ פכ"ט סב"ח. ויש להעיר דהשו"ע (ארו"ח סי' רמו ס"א) הביא בשם י"א ששיך דין שביתת כלים בכלים שעושים בהם מלאכה, והרמ"א כ' שהעיקר כדבריהם להח-

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- 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

(continued from front pg.)

THE ROOMMATES

There is a *Halachic* debate whether a renter has *Kinyan Hatzer*. 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 that Yeshiva (in this particular case, the Mir in Yerushalayim), it is common for Yeshivot to reserve the right to change dormitory room assignments at any time, so the Brisker Rav's contention would pertain.

THE YESHIVA

Would the Yeshiva then retain the power of *Kinyan Hatzer*, 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 *Ketzot HaHoshen* suggests that *Hekdesh* might not have the power of *Kinyan Hatzer* at all.

(Note that the *Gemara* says that a *Kinyan Dalet Amot* doesn't apply in a *Reshut HaYahid* – a private domain, 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 Ribbi Yitzhak's rule that one who loses money is aware of it and despairs of retrieving it (*Ye'ush*), 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 *Bet Din* in *Yerushalayim*. The great principle of monetary *Halacha* is *HaMotzi M'Havevo Alav HaRe'aya*. 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.

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the *Ginat Veradim* (3:22) who states that we can be very lenient

with this rental requirement, as in our days we must try to make it easy to live with the *Akum* (contrary to *Hachamim's* original intent) as earning a livelihood is increasingly more difficult. Then he adds, that the government represents all of the people and is not looked at as an individual, thus he can be considered the proxy of all of his constituents. Others rely on renting from a utility company that is permitted to enter your house for various purposes.

Another approach (see *Atze Almogim, Divrei Hayim*), is to rent from the mayor or tax assessor as they have the right to confiscate the land of those who don't pay property tax.

EVENTS & HAPPENINGS

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Did you know that the Bais HaVaad has a consultation line fielding questions running in all sensitive areas of halacha? The Bais HaVaad has Poskim on staff trained to respond to queries coming from all over the world. These could be sensitive questions related to medical and halacha, complex business halacha questions or responding to Rabbanim with time sensitive questions from congregants.

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