Shailos V'teshuvos
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Dovid Lichtenstein: The message of the עגלה ערופה

תלמוד בבלי מסכת מכות דף יא עמוד א

מתני'. אחד משוח בשמן המשחה, ואחד המרובה בבגדים, ואחד שעבר ממשיחותו - מחזירין את הרוצח; רבי יהודה אומר: אף משוח מלחמה מחזיר את הרוצח. לפיכך, אימותיהן של כהנים מספקות להן מחיה וכסות, כדי שלא יתפללו על בניהם שימותו.

לפיכך אימותיהן של כהנים וכו'. טעמא דלא מצלו, הא מצלו מייתי, והכתיב: כצפור לנוד כדרור לעוף כן קללת חנם לא תבא! (א"ל) +מסורת הש"ס: [אמר]+ ההוא סבא, מפירקיה דרבא שמיע לי: שהיה להן לבקש רחמים על דורן ולא בקשו. ואיכא דמתני: כדי שיתפללו על בניהם שלא ימותו. טעמא דמצלו, הא לא מצלו מייתי, מאי הוה ליה למעבד? הכא אמרינן: טוביה חטא וזיגוד מנגיד? התם אמרי: שכם נסיב ומבגאי גזיר? אמר (ליה) ההוא סבא, מפירקיה דרבא שמיע לי: שהיה להן לבקש רחמים על דורן ולא בקשו. כי הא דההוא גברא דאכליה אריא ברחוק תלתא פרסי מיניה דר' יהושע בן לוי, ולא אישתעי אליהו בהדיה תלתא יומי.

תלמוד בבלי מסכת גיטין דף מה עמוד א

אין פודין את השבויין יתר על כדי דמיהן, מפני תיקון העולם.

תוספות מסכת גיטין דף מה עמוד א

דלא ליגרבו ולייתו - והא דתניא בפ' נערה (כתובות נב.) נשבית והיו מבקשין ממנה עד עשרה בדמיה פעם ראשון פודה שאני אשתו דהויא כגופו יותר מבתו דהכא ועל עצמו לא תיקנו שלא יתן כל אשר לו בעד נפשו.

שולחן ערוך יורה דעה סימן רנב סעיף ד

אין פודין השבויים יותר מכדי דמיהם, מפני תיקון העולם שלא יהיו האויבים מוסרים עצמם עליהם לשבותם. אבל אדם יכול לפדות את עצמו בכל מה שירצה. וכן לת"ח, או אפילו אינו ת"ח אלא שהוא תלמיד חריף ואפשר

שיהיה אדם גדול, פודים אותו בדמים מרובים. (ואם אשתו כאחר דמי או לא, עיין בטור אבן העזר סי' ע"ח). **ובפתחי תשובה שם ס"ק ד** עי' באשל אברהם בשם שו"ת נחלה ליהושע דבמקום דאיכא למיחש לקטלא פודין ועיין בתשובת יד אליהו סימן מ"ג שלא כתב כן אלא דאפילו בעומד להריגה אין פודין יותר מכדי דמיו דתירוצא קמא שבתוספת פרק הניזקין לא קאי אליבא דאמת ע"ש.

ש"ך חושן משפט סימן קסג ס"ק יח

המלך או שר שמטיל איזה דבר על עשיר א' או ב' ויש ליהודי א' כח בהיכל המלך והשר להשתדל לפוטרם אם הדבר ברור ודאי שאם יפטרם לאלו יטיל על אחרים אי רשאי להצילם לאלו או לא פסק בתשו' מהריב"ל ח"ב סי' מ' דאם כבר הטיל המלך על אנשים ידועים ופרט אותם ונלכדו ברשתו אזי אין יהודי רשאי להשתדל לפוטרן בשום ענין שיזיק לאחרים בודאי אבל אם יצא גזרה להטיל על ב' אנשים בסתם יכול יהודי להשתדל על איזה אנשים שרוצה שלא יהיו בכלל הגזירה אף שבודאי יכנסו אחרים והביא ראיה ברור' ממפיבש' בפרק הערל שהתפלל דוד עליו שלא יקלטנו הארון (אבל בעכו"ם) אמרי' דמשוא פנים יש בדבר עיין בש"ס ולענין ממון אצל העכו"ם הוי כמו נפשות כתוא מכמר והאריך ע"ש ודוק כי נכון הוא עיין בתשובת ר"א ן' חיים סי' מ"ט ובתשובת מהרשד"ם סי' ש"ד ובתשו' מהרא"ן ששון סי' מ"ח דף ע' ע"ג ובתשו' ן' לב דף ע"א וע"ב ובספר א' ריש כלל י"ב

שו"ת חוות יאיר סימן רכב

שאלה דבר זר נעשה באמשטרדם ומפורסם שם. שאחד נעדר בלי בן וצוה לפני פטירתו שילמדו עשרה כל יום תוך י"ב חודש בביתו בשכרם ואחר הלימוד תאמר הבת קדיש [עי' שו"ת ר"ש מדינא חלק א"ח סי' ו'] ולא מיחו בידה חכמי הקהילה והפרנסים. ואף כי אין ראיה לסתור הדבר כי גם אשה מצוות על קידוש השם גם יש מנין זכרים מקרי בני ישראל ואף כי מעשה דר"ע שממנו מקור אמירת יתומים קדיש בבן זכר היה מ"מ יש סברא דגם בבת יש תועלת ונחת רוח לנפש כי זרעו היא. מ"מ יש לחוש שע"י כך יחלשו כח המנהגים של בני ישראל שג"כ תורה הם ויהיה כל אחד בונה במה לעצמו ע"פ סברתו ומחזי מילי דרבנן כחוכא ואטלול' ויבואו לזלזל בו וכ"כ התוס' בפ' אין עומדין על הבא לשחות בסוף כל ברכה לתירוץ ואין לומר שאני שם שהוא תקחז"ל ונזכר בגמ' י"ל דכ"ש זה שלא נזכר בגמ' ומ"מ בא ממדרש ומנהגן של ישראל תורה וצריך חיזוק כמבואר בגמ' יבמות דף ל"ו ע"ב ובכמה דוכתי דע"כ חז"ל עשו חיזוק לדבריהם יותר משל תורה. ואף על פי שלא נאמר שם רק מלמדין אותו שלא לשחות ולא אמר מוחין ואפי' ה"ז מגונה כמו בשמע שמע לא אמר ונ"ל דע"כ לא זכרו הרמב"ם מ"מ י"ל שאני התם דעביד לגרמי' ולא ילמדו ממנו רק יחשבוהו לגס רוח כמ"ש התוס' באמת לטעם ג"ז. ולכן בנדון זה שיש אסיפה ופרסום יש למחות. והנלפענ"ד כתבתי יאיר חיים בכרך.

הגאון רבי זלמן נחמיה גולדברג שליט"א
אב"ד בירושלים

מעבר בשבת במקום שפועלות בו מצלמות קבועות

שאלה:

בעיר העתיקה בירושלים התקינו בכל רחוב מצלמה הפועלת כל שעות היום ומצלמת כל מה שנראה ברחוב, והשאלה אם מותר לילך בשבת ברחובות אלו, שהרי על ידי הליכתו מצטלמת תמונתו?

וכבר נשאלה זו ממו"ח זצ"ל והתיר בפשיטות, ואמרו לי שטעמו שהוא פסיק רישא דלא ניחא ליה. אמנם נראה שלא מטעם זה לבד התיר, שהרי נחלקו הראשונים בזה, ודעת הערוך דמותר דנחשב אינו מתכוון, אבל דעת התוס' שאף שנחשב מלאכה שאינה צריכה לגופה מ"מ אסור מדרבנן, ואין כאן היתר של פסיק רישא דלא ניחא ליה שכל שהוא פסיק רישא דינו כמתכוון.

ובסימן ש"כ סי"ח השו"ע הביא שתי הדעות, ומסיים והעולם נוהגים היתר ויש ללמד עליהם זכות וכו', וטוב להנהיגם שלא יהא כלי תחת החבית בשעה שפוקקים הנקב, [ובמ"ב סקנ"ה] וילך הנסחט לאיבוד ויסמוך על דעה ראשונה [הערוך], ומ"מ צריך שיהיה גם כן ברזא ארוכה שיהיה תרתי לטיבותא [ובמג"א משמע דאפילו בלא ברזא ארוכה הניחם על מנהגם עיין שם טעמו, מ"מ למעשה קשה לסמוך על זה], וטעמו של המג"א הוא שגם בלי הערוך יש להתיר כשאין כלי תחת החבית כיון שהולך לאיבוד אינו דומה לאב של סחיטה], עכ"פ חזינן שאין להתיר על סמך הערוך, ובהכרח שכוונתו שיש להתיר מכח עוד טעמים.

ונראה שענין זה שמכונה מצלמת ובא אחד והכניס חפץ וצלמו המכונה אינו אלא גרמא, והרי זה דומה למה שכתב המג"א בסימן רנב שהטוחן חטה ברחיים של מים אינו חייב חטאת שאינו אלא גרמא. והנה עיקר הדבר שדבר זה נחשב גרמא מבואר בגמ' חולין ונפסק ביור"ד סימן ז' יכול אדם לקבוע סכין בגלגל של אבן או עץ ומסבב הגלגל בידו או ברגלו ומשים צוואר הבהמה עד שישחט בסביבת הגלגל ואם המים הם המסובבים את הגלגל ושם הצואר כנגדו בשעה שסבב ושחט בסביבתו ונשחט הרי זה פסולה וכו' עכ"ל. הרי מפורש שאם הגלגל מסתובב בכח של אחר והאדם רק מחזיק הבהמה נחשב גרמא, וא"כ הוא הדין הנותן חטה והרחיים

מסתובבים מכח המים נחשב גרמא. ונראה שמה שהמג״א הביא הוכחה לדינו ממקומות אחרים וכו׳, וכן מה שהרבה אחרונים חולקין על המג״א, גם הם מודים שזה גרמא ומ״מ סוברים שחייבין על זה בשבת מטעם מלאכת מחשבת, וכמו שאמרו בב״ק ס׳ זורה ורוח מסייעתו והזיק פטור שזה גרמא, ומה שחייב בשבת הוא משום שמלאכת מחשבת אסרה תורה ולכן גם רחיים של מים יש לדמותו למלאכת מחשבת וחייב, וכן הביאו ראיה מצד חיות על ידי כלבים שחייב משום צידה. ודעת המג״א מבאר החת״ס שסובר שאימתי מחייבין משום מלאכת מחשבת כשאין אפשרות לעשות המלאכה אלא בגרמא, כמו זורה שלא יתכן אלא באופן כזה שהרוח מפריחו, אבל לטחון כיון שאפשר לטחון ברחיים של יד אין הטחינה ברחיים של מים נחשב מלאכת מחשבת, ומה שחייבים על צידת כלבים מסביר החת״ס בהסבר אחר. והנה במחלוקת יש להאריך הרבה, ונראה שנחלקו רש״י והרמב״ם בשאלה זו, והארכתי במקום אחר, ואין כאן המקום.

והנה בנידון דידן לא מבעיא שלדעת המג״א אין כאן אלא גרמא, שהרי כח המצלם הוא מכח החשמל, אלא שגם לסברת הסוברים שגם ברחיים של מים נחשב מלאכת מחשבת, מ״מ נראה שבנידון דידן אין כאן מלאכת מחשבת, שעד כאן לא אמרו מלאכת מחשבת אלא כשכך היא דרך עושה המלאכה לעשות באופן כזה שיותר קל ויותר טוב לטחון כך, אבל במלאכת צילום בודאי שאין דרך המצטלם להצטלם בצורה כזאת שיפעיל מכונת צילום ואדם יתקרב ויצטלם, שבאופן כזה אין התמונה יוצאת יפה, ודרך המצלמים לכוון ביותר איך ובאיזה מקום להעמיד את המצולם קרוב או רחוק וכדומה, ולכן בודאי מסתבר שאין באופן כזה גדר מלאכת מחשבת, ומה שעושים כן כדי להרתיע מחבלים אינו עושהו למלאכת מחשבת. ומעתה כל שהוא גרמא ובסימן שלד התיר השו״ע גרם כיבוי, והרמ״א הוסיף במקום פסידא, ובביאור הלכה שם כתב שלאו דוקא גרם כיבוי שהוא מלאכה שאינה צריכה לגופה אלא אפילו מלאכה דאורייתא מותר, ומעתה יש לומר שגם ללכת ברחובות העיר יש בזה צורך גדול וגם צורך מצוה שיש להתיר על ידי גרמא, אבל בודאי שבגרמא יש לסמוך על הדעה שפסיק רישא דלא ניחא ליה מותר.

אכן גם אם נאמר שגם בזה שייך מלאכת מחשבת עדיין יש לומר לפי סברת האבני נזר בסימן קצד שכתב סברה בדעת הרשב״א שמותר לסגור דלת כשצבי בבית אם כוונתו בסגירת הדלת היא לשמור הבית, וגם כשכוונתו לשני דברים גם לצידת הצבי וגם לשמירת הבית מותר, והקשה הר״ן והרי פסיק רישא שהצבי ינצד וכש״כ כשכוונתו גם לצידה, לזה תירץ שצידת צבי גרמא, וכדחזינן ברא״ש שהסוגר דלת בבית שנמצא שם ובטל ממלאכתו אינו חייב משום שֵׁבֶת כיון שהוא גרמא, וא״כ גם צידת צבי על ידי סגירת הדלת גרמא, ומ״מ חייב משום שמלאכת מחשבת אסרה תורה וצידת צבי בדרך זו מלאכת מחשבת היא ולכן צריך כוונה, שכל שאינו מתכוון לצוד אף שהוה פסיק רישא אין כאן מלאכת מחשבת.

ולפי״ז נראה שהזורה ורוח מסייעתו אם לא היה לו כוונה לזה כגון שזרק תבואתו מהגג כדי להצילם מגשם אף שפסיק רישא הוא שהרוח תפזר המוץ מ״מ אין כאן מלאכת זורה. ומעתה גם אם נאמר שאדם המתקרב למכונת צילום ומצטלמים יש בזה מלאכת מחשבת מ״מ כשאינו מתכוון לכך אף שהוא פסיק רישא מותר, ועיין ברכת שמואל ב״ק סימן יז שהביא סברת האבני נזר אבל באופן אחר עיי״ש.

עוד יש לדון שכל הצילום הזה אינו מלאכה, שאף שהמצייר צורת אדם או צורה אחרת יש לחייבו משום רושם שהוא תולדה של כותב, מ״מ כל זה במצייר על נייר שנראה הצורה, אבל הצילומים האלה אינם מצטיירים על נייר אלא נקלטים בקסטה, וכשרוצים לראות התמונה מכניסים אותו למכונה ואז נראה התמונה על המסך, וזה מסתבר מאד שאינו נחשב כתיבה כלל. ואף שהפרמ״ג דן בסימן שמ במשבצ״ז סק״ג בכותב בחלב ונבלע בנייר ואין רישומו ניכר וכשבא לחבירו נותן אותו אצל האש ושלהבת ומתחמם ונכר הכתב ההוא עיין ירושלמי כעין זה אם עשה כן בשבת יש לומר דחיוב חטאת ליכא ומ״מ מדרבנן אסור דדומה לכותב וכו׳ ע״ש, וכש״כ בנידון דידן שאפשר שאפילו איסור דרבנן ליכא, שאינו דומה לכותב כלל, שבכותב בחלב אחר ששם אצל האש נקרא מה שכתב קודם, אבל הנידון דידן גם אחר כך אינו נקרא ונראה התמונה על הקסטה רק שרואים במקום אחר אפשר שאפילו איסור דרבנן אין. ומעתה בודאי שבצירוף כל זה אין איסור כלל אפילו לכתחילה, שהרי דעת התה״ד שהביא המג״א בסימן שיד ס״ה שפסיק רישא בדרבנן מותר, ואף שהמג״א חולק, אבל פסיק רישא דלא ניחא ליה בדרבנן וכש״כ בגרמא ושאר צירופים שכתבנו שבודאי מותר לכתחילה.

וגם יש לדון שמסתבר שלהצטלם באופן כזה שהמכונה פועלת והאדם נכנס במקום שהמכונה מצלמת אותו מסתבר שאין זה הדרך ונחשב שינוי וכלאחר יד ואין בזה איסור תורה.

ועיין במ״ב סימן שכא סקנ״ז וז״ל כתב המג״א נראה לי דאסור להשתין על טיט משום גיבול, וכוונתו אפילו לרוב הפוסקים דסבירא להו שבדבר שהוא בר גיבול אינו חייב עד שיגבל מ״מ איסורא מיהא איכא וכו׳, ואף דאינו מכוון ללישה מ״מ פסיק רישא וכו׳, ומצאתי בספר בית מאיר דמתיר מטעם זה במקום הצורך אפילו להשתין על טיט, ונראה דיש לסמוך על זה במקום שהטיט אינו שלו, ובשער הציון ז״ל דהוא פסיק רישא דלא ניחא באיסור דרבנן עכ״ל, הרי שמתירין פסיק רישא דלא ניחא ליה בדרבנן, וא״כ בגרמא פסיק רישא דלא ניחא ליה בדרבנן.

והנה מה שהבאנו שלהביא בהמה לסכין השוחט מכח המים נחשב לגרמא, אין להקשות למה מקרב דבר אצל אש נחשב מעשה בידים, והרי האש שורף והאדם רק קירב לאש, נראה ששאני אש שהוא עצמו דבר השורף, ולכן המקרב דבר לאש ונדלק הרי זה מעשה אדם, אבל סכין המסתובב מכח המים נמצא שיש כוח מבחוץ שדוחף הסכין, ולכן מתיחס כח השוחט למים ולא לאדם.

ואין להקשות על זה שמצינו שגם מקרב דבר אצל דבר שמכח טבעו שורף או מוחק או מנקב נחשב כגרמא, וזה מצינו ברש"י קידושין כ"א ב ד"ה מיעט סם שלא יתן סם על אזנו של הנרצע ויקבנו דהא לא דמי למרצע שאינו נוקב מכח אדם אלא מאליו עכ"ל, הרי שמקרב סם נחשב גרמא, וקשה מאי שנא סם מאש והרי שניהם עושין מכח טבעם. וכן מה שאמרו בגמ' שבת שאם שם כתוב על בשרו מותר לטבול, שלא אסרה תורה אלא מעשה כמו שכתוב לא תעשון כן לד' הא גרמא מותר, הרי שלהכניס שם במים והשם נמחק מכח המים נחשב גרמא. וכן מצינו ברש"י שבת עד ב שלכן השורף כלי חרס בכבשן אינו חייב משום מכה בפטיש שמאליו נעשה הכלי, וקשה מה שנא משורף חפץ באש. ונראה שכל אלו שמדובר שזה מאליו מדובר שלא מיד פועל פעולתו כמו שפועל אש שמיד מדליק את החפץ, משא"כ סם שנוקב פועל לאט לאט, וכן מחיקת המים לשם הכתוב על בשרו, וכן כלי חרס בכבשן הכלי מתקשה לאט לאט, ולכן נחשב כל אלו לגרמא. אמנם ברשב"א בחידושיו בשבת ק"כ ד"ה לעולם יורד וטובל כתב וז"ל תמיהא לי דהא מכיון שמכניס ידו במים הרי זה כמקרב את כיבויו, וי"ל דלא קרינן מקרב כיבויו אלא בכענין נותן מים בכלי שתחת הנר ואי נמי בנותן בצד הטלית שאחז בו האור משום דאם יפלו שם ניצוצות או תגיע הדליקה ודאי תכבה אבל כאן אפשר דלא ימחק שאלו ודאי נמחק היינו משפשף שהרי הוא ידו במים עכ"ל. ולא זכיתי להבין, שאם אינו ברור שימחק השם במים א"כ יש להתיר משום שאינו מתכון כשטובל שימחק השם, וכיון שאינו ברור א"כ אינו פסיק רישא ומותר, ולמה התירו משום גרמא, וצ"ע. ואולי כוונתו שאינו ברור שמיד ימחק ולא אינו נחשב למעשה אף שודאי ימחק במשך הזמן, וצ"ע.

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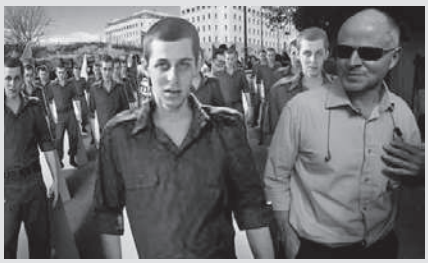
Israel divided over price of freedom for captive soldier Gilad Shalit

More than 1,000 Palestinian prisoners are to be released in exchange for one serviceman

October 16, 2011. Phoebe Greenwood in Tel Aviv
The Observer, Saturday 15 October 2011



Noam Shalit stands near cardboard cut-outs of his son Gilad in Jerusalem. Photograph: Ronen Zvulun/REUTERS

Fresh lilies are regularly laid at a monument by the Tel Aviv Dolphinarium bearing witness to an evening in 2001 when 21 Israeli teenagers were killed while queuing outside a nightclub. Another 132 were injured in the attack by Saeed Hotari, a young Palestinian suicide bomber affiliated with*Hamas*.

But last week flowers arrived more in protest than in sorrow. Husam Badran, the former head of Hamas's military wing in the West Bank and instigator of the Dolphinarium attack, is expected to be among 477 Palestinian prisoners released on Tuesday in a deal to free Israeli soldier Gilad Shalit. A further 550 will be freed within two months.

"It's surreal. It's beyond belief," said one young mother angrily as she looked at the monument. "I may be the only one against it, but no good deal sees the release of 1,000 killers. People say Netanyahu showed courage in agreeing to set them free, but I say he has given in to terrorism."

Over the past five years, the parents of captive soldier Gilad Shalit have won the Israeli public with their tireless campaign to free their son, demanding the Israeli government do whatever it takes to rescue him from his captors in the Gaza Strip. *Israel* celebrated last week when they finally succeeded. But the nation's joy is tempered with grave misgivings.

To Palestinians, the 1,027 prisoners exchanged for Shalit are freedom fighters. To Israelis, they are terrorists responsible for some of the country's bloodiest atrocities. Israel wants Shalit free but is struggling to stomach the cost of his freedom.

Gustav Specht, 47, who runs a restaurant close to the Dolphinarium on Tel Aviv

Beach, shares the broad public reaction as described in the Israeli media: “I think it’s the least bad result. Everyone I know is happy Gilad will be free.”

But his colleague Alon Reuvney, 28, thinks differently. His friend lost his father in a suicide attack in Jerusalem several years ago: “He heard about the release of his father’s killer on the news. No one thought to tell his family. He is very angry.”

The official list of prisoners agreed for release has not been published, but several leaked versions have appeared on Arabic news websites. Israelis recognised some of the region’s most notorious terrorists. There was Muhammad Duglas, implicated in a suicide bombing at the Sbarro pizza restaurant in Jerusalem in which 15 people were killed. Abdel Hadi Ghanem of Islamic Jihad, responsible for the 1989 attack on a public bus in which 16 Israelis died. And hundreds more like them. Others were convicted of lesser offences.

Few doubt that securing Shalit’s return has boosted prime minister*Binyamin Netanyahu*’s popularity but Jerusalem Post columnist Jonathan Spyer warns he has taken a gamble for public affection. “Within six months time, we will see terrorist attacks linked to these men who are being released. And at that point Bibi [Netanyahu] will pay a very serious price,” Spyer said. “In all of this, the Shalit family and Hamas are the winners; the Israeli public will be the loser.” Israeli terror expert Boaz Ganor agrees the release of these political prisoners has provided Hamas with legitimacy but predicts they will not pose an immediate threat to Israeli security.

Hamas, listed by the US and the UK as a terror organisation, has proved itself a pragmatic negotiating partner. By insisting on the release of prisoners from all factions, it has regained popular support across Gaza and the West Bank, undermining the Palestinian Authority midway through its UN bid for statehood. It would not serve Hamas’s interests, Ganor says, to let the situation deteriorate by allowing released prisoners to wage a campaign of terror. “But I’m not ruling out further kidnappings. This has proved so strategically effective in the past, I believe they [Hamas] would try to kidnap more Israeli soldiers and civilians to gather more power in their hands.” Boaz also said it was the prisoner swap negotiated in 1985 by Shimon Peres — 1,150 Palestinian prisoners for three Israeli soldiers captured in the Lebanon war — that ignited the first intifada.

Despite a history of militants freed in swaps killing again, Israel has always negotiated to free its soldiers. Nimrod Kahn, 33, who runs a cookery school in Tel Aviv, says, however unpalatable the deal, Israelis expect their state to make this compromise. It is a guarantee for every high-school graduate expected to devote three years to military service.

“I don’t object to the releasing of these prisoners in principle; they would be released in a peace deal sooner or later. I object to this deal because it opens the gate for blackmail,” Kahn said. “But it’s expected our state will take responsibility for its soldiers. In Israel, the soldier is the holy cow — it cannot be slaughtered under any circumstances.”

Many Terrorists for One Israeli? The Gilad Shalit Deal Through the Prism of Halacha

On June 25, 2006, IDF soldier Gilad Shalit was captured by Hamas operatives near the Kerem Shalom crossing along Israel's border with the Hamas-controlled Gaza Strip. Shalit was held captive for over five years, until October 2011, when Israel and Hamas signed an agreement brokered by Egypt whereby Schalit was returned to Israel in exchange for 1,027 prisoners held by Israel on charges of terrorist activities. The released prisoners included an operative serving twenty-nine life sentences for his participation in the infamous 2002 suicide bombing in Netanya's Park Hotel on the night of the *seder*, in which thirty Israelis were killed. Another prisoner who was released took part in the September 2003 bombing of Café Hillel in Jerusalem, which killed seven Israelis and wounded fifty-seven others. Also included in the deal were two Palestinian terrorists who were responsible for the abduction of IDF soldier Nachshon Wachsman in 1994.

The deal was met with great euphoria throughout the Jewish world, which celebrated the long-awaited release of the young prisoner. At the same time, however, the transfer triggered a great deal of controversy and criticism, as many decried the release of hundreds of terrorists whose hands are stained with the blood of innocent Jewish men, women, and children.

From a halachic standpoint, the validity of the Shalit deal must be addressed on two levels:

1) Does the transfer of hundreds of convicted terrorists violate the prohibition against ransoming captives for an exorbitant price, a prohibition established by the Mishna (*Gittin* 45a) and codified in the *Shulchan Aruch* (Y.D. 252:4)?
2) Statistically speaking, convicted terrorists have been shown to resume their deadly operations after their release from prison, and releasing security prisoners thus poses a risk to Jewish life. Does this risk make it forbidden to free terrorists in exchange for a Jewish prisoner?

I. יתר על כדי דמיהן — Ransoming Prisoners for an Exorbitant Price

The Mishna (*Gittin* 45a) forbids ransoming captives יתר על כדי דמיהן — "for more than their value" — because of "תיקון העולם." The Gemara proposes two possible explanations for what תיקון העולם means in this context. The first possibility is דוחקא דציבורא — to avoid imposing too heavy a financial burden upon the Jewish community. In other words, there is a limit to the expense the community must incur for the sake of securing the release of a fellow Jew in captivity. The second possible explanation is דלא לגרבו ולייתו טפי — we do not wish to encourage further kidnappings. Complying with a captor's unreasonable demands to secure a prisoner's release provides incentive for further abductions, and it is perhaps for this reason that *Chazal* forbade paying exorbitant sums for ransom.

The practical difference between these two possibilities, the Gemara notes, is the case of a prisoner whose family has the means to pay the exorbitant ransom being demanded. If the family is prepared and able to bear the outrageous cost of the prisoner's release, then there is no concern of דוחקא דציבורא — draining the community's resources — and the deal would be permissible. If, however, the prohibition was enacted to avoid providing further incentive for kidnappings, then paying an exorbitant ransom would be forbidden regardless of the family's financial capabilities. The Gemara leaves this question unresolved, noting that although there is a recorded case of a wealthy man named Levi bar Darga who ransomed his daughter for a price of 13,000 gold coins, it is uncertain whether the rabbis of the time approved of his decision.

The Rambam (*Hilchos Matnos Aniyim* 8:12) adopts the second explanation, that exorbitant ransoms are forbidden because they encourage additional kidnappings:

> אין פודין את השבויים ביתר על דמיהן מפני תיקון העולם, שלא יהיו האויבים רודפין אחריהם לשבותם.
>
> Captives may not be ransomed for more than their value, out of concern for the public welfare, so that the enemies do not chase after them to capture them.

The Rambam's formulation is cited also in the *Shulchan Aruch* (Y.D. 252:4).[1] Thus, according to the accepted *halacha*, it would be forbidden to pay an exorbitant ransom for a captive, even if an individual or group of individuals is able and willing to incur the cost.

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1. As for the reason why the Rambam and *Shulchan Aruch* decided upon this second reason, see the Ran (*Gittin* 23a in the Rif) and *Bei'ur Ha-Gra* (Y.D. 252:6).

However, some *Rishonim* qualify this ruling, claiming that it does not apply to cases of *sakana*, when the prisoner's life is in danger.

The basis for this qualification is the story told later in *Gittin* (58a) of Rabbi Yehoshua ben Chananya, who came across an impressive and promising Jewish child who was being held captive in Rome. Rabbi Yehoshua determined that the child had the potential to become a towering Torah sage, and he pledged to ransom him for whatever price the authorities set — העבודה שאיני זז מכאן עד שאפדנו בכל ממון שפוסקין עליו. The Gemara relates that soon after making this pledge, Rabbi Yehoshua indeed paid an exorbitant sum for the child's release, and the child grew to become none other than Rabbi Yishmael ben Elisha, the famous *Kohen Gadol* and sage. Tosfos (ד"ה כל ממון שפוסקין עליו) raises the question of how to reconcile Rabbi Yehoshua's pledge with the prohibition against ransoming captives יתר על כדי דמיהן, and they answer that in a case of סכנת נפשות (danger to life), a captive may be ransomed at any price. Tosfos draws a comparison to the Gemara's discussion earlier in *Gittin* (44a) concerning one who sold himself as a slave to gentiles, whom a community must ransom if his life is danger, even if he repeated the offense several times. Regarding יתר על כדי דמיהן as well, Tosfos claims, this restriction does not apply in situations of life-threatening captivity. This answer is also mentioned by the Ramban and Meiri (*Gittin* 45a).

It is unclear whether Tosfos' exception is limited to situations in which the captive would certainly be killed or applies even if there is only a risk of death, but it would seem that in the case of an Israeli captive held by Hamas operatives, this question is irrelevant. An Israeli held by Hamas would certainly qualify as a case of ודאי סכנה, as the captors would not hesitate to kill a Jewish prisoner. Thus, in light of Tosfos' comments, it would appear that an Israeli prisoner may be ransomed from terrorists at any price.

However, not all halachic authorities accept Tosfos' distinction between life-threatening situations and other cases. Tosfos themselves offer an alternate answer, suggesting that Rabbi Yehoshua was prepared to pay an exorbitant price for the child's release because of his extraordinary scholarly potential (מופלג בחכמה). According to this answer, it seems, the prohibition of יתר על כדי דמיהן applies even in life-threatening situations of captivity and an exception is made only for scholars. The *Shulchan Aruch* appears to accept this second view of Tosfos:

> וכן לת"ח או אפילו אינו ת"ח אלא שהוא תלמיד חריף ואפשר שיהיה אדם גדול פודים אותו בדמים מרובים.
>
> …[And] likewise a Torah scholar or someone who is not a Torah scholar but is a gifted student and may become a great scholar is ransomed even for a high price.

Indeed, the *Pischei Teshuva* (Y.D. 252:4) cites several responsa from leading *Acharonim* who do not accept Tosfos' ruling concerning prisoners in life-threatening situations. Among the sources he cites is a responsum of the *Kenesses Yechezkel* (38), who notes that Tosfos's answer presumes that paying יתר על כדי דמיהן is forbidden because of the financial strain it imposes upon the community. From this perspective, it stands to reason that when a captive's life is in danger, the community is required to do whatever it takes to rescue him. But if we assume that the Sages forbade paying יתר על כדי דמיהן in order to avoid incentivizing abductions, then this prohibition would presumably apply even if a prisoner's life is in danger, as rescuing his life does not warrant jeopardizing the community by encouraging further kidnappings. Hence, the *Kenesses Yechezkel* writes, Tosfos' answer must follow the reason of דוחקא דציבורא; and since the *Shulchan Aruch* explicitly cites the reason that we want to avoid encouraging kidnappings, we must conclude that Tosfos' view is not accepted as normative *halacha*.[2]

Accordingly, the unfortunate reality that Israelis held by Hamas terrorists are in grave danger does not necessarily allow the public to secure their release יתר על כדי דמיהן.

II. The Danger of Freeing Convicted Terrorists

Another reason to forbid the release of hundreds of terrorists in exchange for a Jewish prisoner is the danger the prisoners' release could pose, in light of the statistical evidence that convicted terrorists tend to resume their nefarious activities after their release.

This issue may be compared to the question addressed by the *Shach* (C.M. 163:18) concerning a case in which a gentile ruler imposed a heavy tax upon a certain wealthy Jew and another Jew was in a position to lobby on his behalf and have him exempted, but this would result in the tax being levied upon another Jew. The *Shach* cites the Mahari Ben Lev (2:40) as ruling that if several Jews were already chosen by name to pay the stipulated sum, it is forbidden for a Jew to intervene and have them exempted if this would certainly result in the edict being transferred onto somebody else. If, however, the edict was issued but no particular person or persons were chosen, one may advocate on behalf of certain people to ensure that they are not chosen.

It would seem that this ruling may be applied to the case of terrorists who are

2. It should be noted, however, that the Meiri accepts the reason of avoiding an incentive to kidnap, and yet he also cites Tosfos' distinction between life-threatening situations and other situations of captivity.

demanding the release of prisoners in exchange for the release of a Jewish captive. Here, too, a Jew has been singled out, and the question arises as to whether the Israeli government may secure his release by subjecting other citizens to danger through the release of deadly terrorists.

Moreover, it seems clear that the *mitzva* of *pidyon shevuyim*, which requires Jews to secure the release of their fellow Jews in captivity, applies only to paying money or making efforts on behalf of the captive's release. Nowhere do we find an obligation upon the community to endanger itself for the sake of releasing a Jewish captive. The rationale of מאי חזית דדמא דידך סומק טפי — "why do you think your blood is redder" — which forbids killing someone to save one's life, presumably applies here, as well. The captive's blood should not be regarded as "redder" than anyone else's, and thus there seems to be no justification to free a Jewish prisoner at the expense of public safety.

We might go even further and argue that given the high likelihood that the released terrorists will engage in terrorism upon leaving prison and seek to take the lives of innocent Jews, Heaven forbid, one who works toward their release may be regarded as a רודף ("pursuer"). There are indications that the status of רודף applies not only to one who seeks to kill directly, but also to one who seeks to do something that will cause a person to be killed. One such source is the Rambam's ruling (*Hilchos Chovel U-Mazik* 8:10) concerning a מוסר — someone who provides the gentile authorities with information about a fellow Jew or a fellow Jew's assets:

> It is permissible to kill a מוסר anywhere, even nowadays, when we cannot preside over capital cases. It is permissible to kill him before he gives over [the information], once he says, "I am now giving over so-and-so" regarding his body or his money — even a small sum of money…

The *Shuchan Aruch* codifies this *halacha* in *Choshen Mishpat* (388:10) and explains that a מוסר may be put to death because he is regarded as a רודף. Even though a מוסר does not actually seek to kill, but rather seeks to act in a way that will likely cause a fellow Jew to be killed, he is assigned the status of רודף. It might thus be argued that seeking the release of a Jewish captive in exchange for the release of dangerous terrorists might also qualify for the status of רודף and would be strictly forbidden.

III. Conclusion

In summary, then, there are three factors that must be addressed when considering the exchange of one thousand terrorists for a Jewish captive:

1) "Paying" one thousand terrorists for a captive would be considered יתר מכדי דמיהן, which, as we saw, is likely forbidden even to rescue a prisoner from life-threatening captivity.
2) The *mitzva* of *pidyon shevuyim* does not require a community to endanger itself for the sake of securing a prisoner's release.
3) To the contrary, freeing terrorists from jail may render someone a רודף, given the likelihood of this resulting in the death of innocent Jews, Heaven forbid.

It goes without saying that this analysis is presented only as a theoretical basis for discussion, and not for the purpose of issuing a practical halachic ruling, a responsibility which lies with the *poskim* of our generation. There are many other factors and considerations that must be taken into account when deciding issues of life and death, and this brief essay is in no way intended as a comprehensive study of this very complex and painful question that the Jewish State has unfortunately been forced to confront.

We hope and pray for the protection of our soldiers and of all אחינו בני ישראל, and for the quick and immediate release of all our imprisoned brethren, השתא בעגלא ובזמן קריב ונאמר אמן.

The Webcam in Halacha

Many *halachos* depend upon direct contact between individuals, whether through sight or sound. There are some laws that require directly seeing a certain object, person, or sight, and some that require directly hearing a sound. With the advent of technology, which allows people to hear and/or see each other despite being separated by vast geographic distances, the question arises as to whether such contact meets the criteria of sight or communication required in each respective area of Halacha. This question has become especially pressing in recent years, when webcams and smartphones have become widespread and people routinely speak to each other face-to-face via Skype and other programs.

I. Introduction: The Halachic Status of a Reflected Image

A possible Talmudic basis for this discussion is a passage in *Rosh Hashana* (24a) dealing with עדות החודש — testimony as to the sighting of the new moon. The Gemara establishes that one who sees the reflection of the new moon in a body of water or in the glass of a lantern cannot serve as a witness to the appearance of the new moon. Only one who viewed the new moon directly in the sky is eligible to serve as a witness.

This *halacha* can be understood in two ways. One could explain that indirect viewing does not qualify as formal, halachic "sight." The court must declare the new month based on the testimony of witnesses who saw the moon, and seeing a reflection of the moon is not halachically equivalent to seeing the moon. Alternatively, however, one might say that fundamentally, seeing a reflection is no different than seeing the actual moon, but practically, one cannot definitively ascertain that the reflection he saw was indeed that of the moon.

These two approaches would affect the question of whether indirect viewing suffices in situations in which there is no reasonable doubt as to what the person saw. According to the first approach, one who sees a reflection of the moon cannot serve as a witness even if we could somehow conclusively establish that he saw an accurate reflection, since he did not see the moon itself.[1] According

1. One might, however, distinguish between עדות החדש and other areas of Halacha. Rav Yitzchak Elchanan Spektor (*Ein Yitzchak*, E.H. 1:31) notes that when it comes to declaring the new month, the rule of כזה ראה וקדש requires that the witnesses view the actual moon. Conceivably, then, even if we understand that one who saw the reflection is disqualified because he did not see the moon itself, this disqualification could be unique

to the second possibility, however, he would be eligible to testify as long as there is no doubt that he saw the moon's reflection.

Rabbenu Chananel, in his commentary to the Gemara's discussion, appears to follow the second approach. He understands the Gemara as referring to a case in which one saw the moon's reflection in the water (or lantern), but when he lifted his head to see the moon in the sky, he did not see it. Apparently, according to Rabbenu Chananel, the Gemara disqualifies this person's testimony not because he saw the moon's reflection, but because he did not then see the moon when he looked for it in the sky. His inability to see the moon in the sky casts doubt as to whether he indeed saw the moon's reflection, and for this reason he cannot serve as a witness. This would imply that if one sees a reflection which can be definitively identified, he is indeed eligible to testify.

This point is made explicitly by the anonymous commentator to the Rambam's *Hilchos Kiddush Ha-Chodesh* (the *Mifaresh*). Explaining this *halacha* as codified by the Rambam (2:5), he writes, "In all these instances, **it is possible that he saw an image resembling the moon, but it is not definitely the moon**."

The comments of the *Mifaresh* are cited by the Chida (*Birkei Yosef*, C.M. 35:11), who addresses the question raised by Rav Yisrael Yaakov Chagiz (*Halachos Ketanos* 2:82) as to whether one who witnessed a violation in a mirror can testify. Rav Chagiz makes reference to the Gemara's ruling regarding witnesses who saw the moon's reflection, but the Chida refutes this proof, noting that, as the *Mifaresh* explains, the image seen in water or a lantern cannot be identified with certainty. The reflection in a mirror, however, is clear and accurate beyond reasonable doubt, and the Chida thus leaves open the possibility that seeing a reflection in a mirror would suffice for testimony.[2]

We might, at first glance, apply this discussion to the issue of the webcam. When one sees another person or an event through a live stream, he sees a "reflection," a reproduction of the image on his screen, just as one sees a

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to the context of קידוש החודש, and it cannot necessarily be applied to other situations in which testimony is needed (see below, section IV).

2. The *Shevus Yaakov* (126) addresses the somewhat similar question of whether viewing through eyeglasses suffices as a halachic viewing, and he proves that it does from the Gemara's account (*Sota* 30b-31a) of the miracle of the *Yam Suf*. The Gemara comments that the unborn children in their mothers' uteruses were able to see the sea split because the mothers' stomachs became transparent (כרס נעשה להן כאספקלריא המאירה), and they thus joined in the song of praise to God. This seemingly proves that viewing something through a transparent surface — such as a glass — is halachically equivalent to direct viewing. Clearly, however, this ruling does not necessarily affect the question of whether viewing a reflection is akin to direct viewing, because when viewing through a transparent surface, one still sees the actual object or event.

reproduced image in a mirror. Thus, at least according to Rabbenu Chananel and the *Mifaresh*, we might conclude that viewing via webcam constitutes halachic "viewing" that would suffice for testimony, and perhaps for the purposes of other *halachos*, as well.

Whether or not this is indeed the case might depend upon the well-known controversy regarding the use of a microphone for *Megilla* reading and *havdala*. Rav Moshe Feinstein (*Iggeros Moshe*, O.C. 2:108) rules that strictly speaking, one can fulfill his obligation of *Megilla* by hearing the reading through a microphone. He explains that even if we regard the sound produced by the microphone as a new sound, and not merely an amplification of the reader's voice, it is nevertheless halachically equivalent to the original human voice, since the sound is created by the reader.[3] Elsewhere in his responsa (O.C. 4:91:4), Rav Moshe writes that a hospital patient whose only option for hearing *havdala* is via a telephone should hear the recitation over the phone, and he makes reference to his earlier responsum regarding *Megilla*.[4]

This is also the view of the Chazon Ish, as cited by Rav Shlomo Zalman Auerbach (*Minchas Shlomo* 1:9:1). The Chazon Ish claims that since the sound is produced by the speaker and heard immediately by the listener, it may be treated as the actual human voice. This was the position taken by Rav Tzvi Pesach Frank, as well (*Mikra'ei Kodesh*, Chanukah and Purim, p. 96). The *Minchas Elazar* (1:72) similarly ruled that one fulfills the *mitzva* of *Megilla* by hearing the reading over a telephone.

By contrast, Rav Shomo Zalman Auerbach rules that the sound produced by a telephone or microphone cannot be regarded as the original sound, and thus one does not fulfill his obligation by listening to a required recitation via these instruments.

Seemingly, this debate surrounding the status of a technologically reproduced sound should apply to reproduced images, as well. It stands to reason that according to Rav Moshe Feinstein and the Chazon Ish, viewing an event via webcam would be halachically equivalent to viewing the event directly. According to Rav Shlomo Zalman Auerbach, however, viewing via webcam, whereby one sees a reproduced image, is not the same as seeing the event directly.

In the pages that follow, we will examine several different *halachos* that

3. As a matter of practice, Rav Moshe rules that microphones should not be used for *Megilla* reading, in the interest of discouraging innovations and changes in the traditional service.
4. Significantly, however, Rav Moshe writes that one should not rely on a microphone or telephone for Torah obligations such as *shema* and *birkas ha-mazon*, indicating that he did not determine conclusively that it may be regarded as equivalent to the original voice.

require viewing and determine whether or not the use of a webcam in these contexts would be allowed and whether this might depend upon the aforementioned debate concerning telephones and microphones.

II. Answering "*Amen*" to a *Beracha* Heard Via Webcam

If a person hears a *beracha* over a webcam, should he answer "*amen*"? For that matter, if he hears *Kaddish*, *Kedusha*, or *Borchu*, should he respond, as though he were there with the congregation?

Rav Avraham Yitzchak Kook (*Orach Mishpat*, O.C. 48) addresses the question of whether one should respond to *Kedusha* or *Borchu* heard live over a telephone or radio, and he rules that one should, indeed, respond just as he would if he had heard it directly. He cites the *Shulchan Aruch*'s ruling (O.C. 55:20) that once ten men are assembled together in one place, one may respond to their *Kaddish* and the like even if he is situated very far away. This applies to one who hears the recitation broadcast live via technology as well, and thus one may respond to *Kaddish* or *Kedusha* heard over a telephone or radio. Rav Kook dismisses the argument that we must distinguish between the actual sound and its technological reproduction, claiming that *Chazal* drew a distinction between an original sound and an echo only with respect to *shofar*. When it comes to other areas of Halacha, such as *tefilla*, *berachos,* and the like, an echo is treated like the original sound.

Rav Kook concedes, however, that it is preferable not to hear a *beracha*, *Kedusha*, or the like via telephone or radio, because the *Shulchan Aruch* cites a view that one may not respond if there is filth or articles of idolatrous worship situated in between him and the congregation. In the case of a telephone or radio, the likelihood certainly exists that there is filth situated somewhere in between the listener and the congregation reciting *Kedusha*, and thus he might be unable to answer according to this stringent ruling cited by the *Shulchan Aruch*. However, Rav Kook nevertheless concludes that if one does hear *Kaddish*, *Kedusha*, or the like, he should respond, as he may rely on the lenient position among the *poskim* and, additionally, it is possible that since the sound is transmitted electronically and heard only over a machine, it is not considered as passing through an area of filth.

This ruling would likely apply to a live webcast or Skype session, as well, and thus one who hears a *beracha*, *Kaddish*, *Kedusha*, or *Borchu* over a webcam should respond.[5]

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5. Clearly, however, a webcam hookup is not halachically equivalent to physical presence. Thus, a person viewing a prayer service via webcam cannot be counted toward a

III. Commissioning a *Get* Via Webcam

The question surrounding the halachic status of digital communication becomes vitally important in the area of *gittin*. Unfortunately, there are many cases of husbands who leave their wives without ever returning, remaining in distant countries and turning the wives into *agunos*. A *get* must either be transferred directly from the husband to the wife or given to the wife by somebody explicitly commissioned by the husband. (Likewise, the wife may commission someone to receive the *get* on her behalf.) The husband must also explicitly instruct the *sofer* to write the *get* and designate the witnesses.[6] In cases in which the husband is far away and has no intention or possibility of returning, the wife remains an *aguna*. But if the husband can give the instruction via webcam, many otherwise intractable situations of *aguna* can be resolved so that the wife is free to remarry.

The issue of commissioning a *get* and designating witnesses over the telephone was already addressed by the *Sha'arei Dei'a* (1:194), who writes that if the listener can recognize the speaker's voice as that of the husband, his instructions over the phone suffice for writing and delivering the *get*. This is also the ruling of the Maharshag (2:250), who advocates the use of the telephone in situations in which the husband cannot come to the *sofer* and witnesses to instruct them directly. He notes the Mishna's ruling that if a person stuck in a pit shouts an instruction to write and deliver a *get* to his wife, people who hear his voice may do so.

According to the *Shaarei Dei'a* and Maharshag, then, one does not have to see the husband's face or hear his actual voice to write the *get* at his behest, and thus a husband may instruct the scribe to write the *get* and assign witnesses over the phone.

However, Rav Yitzchak Shmelkes (*Beis Yitzchak*, E.H. 2:13, in the note after the responsum) disagrees. He claims that since the listener cannot definitively identify the speaker based on his voice, the husband's instruction over the phone does not suffice to allow writing the *get*. Rav Shmelkes does, however, allow the woman to assign someone to receive the *get* on her behalf over the phone. Remarkably, in his appendices at the end of this volume, he adds an addendum to this responsum, where he writes that if someday a device is created that allows one to see the person to whom he is speaking on the phone, then there would be even greater room to allow a woman to appoint someone via telephone to receive her *get*. Rav Shmelkes, who passed away in 1905, foresaw the development

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minyan. This should be obvious, although unfortunately there are reports of people who included those hooking up digitally to make a *minyan*.

6. See *Shulchan Aruch*, E.H. 120:4.

of teleconferencing technology, and ruled that a husband cannot commission a *get* even through such a system, and it may be used only for the woman to appoint an agent to accept the *get* on her behalf. Apparently, he maintains that the voice created by the telephone is not the speaker's actual voice, but rather a reproduction,[7] and that one must hear the husband's actual voice commissioning the writing of the *get* and designating the witnesses.

Many other *poskim*, however, permit writing a *get* on the basis of the husband's instructions issued over the phone. They argue that even if the telephone creates a new sound, nevertheless, for the purposes of *gittin*, we do not require hearing the husband's voice; any form of direct instruction suffices. Proof to this position may be drawn from the Mishna's ruling (*Gittin* 67b) concerning a husband who became mute. The Mishna allows writing a *get* for his wife after asking him if he wishes to have the *get* written and he then nods his head. The husband should then be "tested" three times to verify that he nods to express consent, and then the *get* may be written. This appears to prove that his voice need not be heard commissioning the *get* and that it suffices for the husband to clearly express his desire that the *get* be written. As such, commissioning a *get* over the phone should similarly suffice for the *sofer* to write the *get*.

Although there are several *poskim* who forbid the use of the telephone for *gittin* out of concern that someone might imitate the husband's voice, it would seem that even they would allow the use of a webcam. Since the speaker is visible and it is all taking place on a live broadcast, there is no more reason to suspect deception than there is when the husband is present. Thus, a husband's commissioning of a *get* via webcam should suffice to allow the *get* to be written.

IV. Testifying About a Husband's Death Via Webcam

Rav Yitzchak Elchanan Spektor (*Ein Yitzchak*, E.H. 1:31) permits a woman to remarry on the basis of a photograph taken by the police of her dead husband. The basis for his ruling is the Gemara's discussion in *Nidda* (20b) concerning a woman who saw blood on her garments, which she then lost. If she is able to point to a shade of red and assert that the blood she saw was that same shade, and that shade of red is one which does not render her a *nidda*, then we may rely on her claim and consider her *tehora*. As Rav Yitzchak Elchanan notes, we rely on her claim despite the fact that this requires considerable precision and an exceptional memory, and despite the fact that the majority of shades of red indeed render a woman a *nidda*. Certainly, then, if a woman confidently

7. Rav Shmelkes' ruling may thus serve as a precedent for Rav Shlomo Zalman Auerbach's position concerning *Megilla* reading, cited above.

identifies a photograph of a dead person as her husband, she may rely on the picture and assume her husband has died, so that she may remarry.

This ruling would likely apply to a webcam as well, and thus in a case in which someone saw a man dead via webcam or surveillance camera, his or her testimony should suffice to permit the wife to remarry.

V. "Digital Witnesses" for *Kiddushin*

Kiddushin — a groom's betrothal of a bride — is not valid if it is not performed in the presence of two eligible witnesses. Even if the man and woman both later avow that *kiddushin* took place, they are not halachically married if the *kiddushin* was not performed in the presence of witnesses (*Shulchan Aruch*, E.H. 42:2). The Rama (42:4), based on a responsum of the Rashba (1:780), adds that the witnesses must see the actual transfer of the ring (or other object of value) from the groom to the bride. Even if they heard the groom tell the bride that he wishes to betroth her through the object he gives her and they later see that object in the bride's possession, the betrothal is not valid if they did not see the act of transfer.

Would it suffice for two witnesses to view the act of *kiddushin* over a webcam?

Seemingly, this should depend on the question discussed at the outset as to whether viewing a reflection is halachically equivalent to viewing the actual object. Since Halacha requires the witnesses to see the actual transfer of the ring, such a betrothal would be valid if we assume that viewing a technologically reproduced image is akin to direct viewing. Thus, according to the *poskim* mentioned earlier who allow hearing the *Megilla* reading or *havdala* over a telephone or microphone, is appears that witnesses viewing the *kiddushin* via webcam should suffice to validate the *kiddushin*.

Moreover, the *Beis Shmuel* cites the view of the *Mordechai*, who disagrees with the Rashba and rules that the *kiddushin* is valid even if the witnesses did not see the actual transfer. The Mordechai notes that when *kiddushin* is accomplished through intercourse, it suffices for the witnesses to see the couple go together into a secluded room; they do not have to witness the act of cohabitation (הן הן עידי יחוד הן עידי ביאה). The Rashba distinguishes between this method of *kiddushin* and betrothal through the transfer of an object of value, arguing that in the latter case, the witnesses must see the transfer. The Mordechai, however, claims that even regarding this form of *kiddushin*, the witnesses merely have to see enough that it is clear to them that the transfer took place.

According to the Mordechai, it stands to reason that viewing *kiddushin* via webcam suffices as valid testimony, for even if viewing a digital image is not

equivalent to viewing the actual event, the witnesses saw enough to know with certainty that the *kiddushin* took place.

Thus, there are two reasons to validate a *kiddushin* that was witnessed only via webcam:

1) According to some halachic authorities, Halacha equates viewing a reflection with viewing the actual object, and thus witnessing a live digital feed of the act of *kiddushin* is equivalent to witnessing it in person.
2) According to the Mordechai, the witnesses do not have to see the actual transfer and need only see enough that it is clear to them that the betrothal took place.

One might, however, question the validity of "digital witnesses" for *kiddushin* in light of the fact that when all is said and done, they are not present at the *kiddushin*. Even if we consider them as witnessing the actual *kiddushin* or we deny the need to see the actual transfer of the ring, we must acknowledge that the betrothal takes place without the presence of witnesses, and it should thus seemingly be invalid.

Of course, this argument works off the assumption that it does not suffice for *kiddushin* to be **seen** by two witnesses, but it must be performed **in the presence** of two witnesses. The *Ketzos Ha-Choshen* (241:1), however, indicates otherwise. He writes that the witnesses' function in *kiddushin* (as well as *gittin*) is to ensure that the act is made public. The concept of עידי קידושין, according to the *Ketzos*, relates not to the ceremony itself, but rather to the need to make known that it took place. As such, the physical presence of witnesses is not important, as it is their knowledge of the event which lies at the heart of their role in *kiddushin*.

VI. A Webcam *Chalitza*

The Torah writes that when a man performs *chalitza* to absolve himself from *yibum*, the act must be done לעיני הזקנים — "in view of the elders" (*Devarim* 25:9) — establishing the requirement that *chalitza* take place in view of *beis din*.[8] Would a *chalitza* be valid if it is viewed by a *beis din* via webcam?

The *Shevus Yaakov* (126) addresses the question of whether members of the *beis din* may view the *chalitza* wearing eyeglasses. He rules that viewing through eyeglasses is considered direct sight and differs from the Gemara's case of viewing the new moon in water or glass. In the latter case, one views a reflection,

8. See *Seder Chalitza Bi-Ktzara*, 1.

as opposed to seeing the actual object through a transparent surface, such as a glass window or eyeglasses.[9]

The question regarding the use of a webcam for viewing *chalitza* would likely depend on our discussion above concerning viewing a reflection and the status of microphones and telephones. According to Rabbenu Chananel and the anonymous *Mifaresh* to *Hilchos Kiddush Ha-Chodesh*, the Gemara disqualifies witnesses who saw the moon's reflection only because they cannot definitively ascertain that they indeed saw the moon. Hence, viewing via webcam would presumably qualify as a halachic "viewing," just as some *poskim* considered the sound of a telephone and microphone equivalent to the original voice. On the other hand, as we saw, according to the view that a microphone and telephone cannot be used when direct hearing is required, it stands to reason that a webcam similarly does not qualify as direct viewing, and it thus cannot be used for *chalitza*.

VII. The *Beracha* Over Seeing Kings and Scholars

The Gemara in *Berachos* (58a) requires reciting *berachos* upon seeing people of distinction: Jewish scholars (שחלק מחכמתו ליריאיו), gentile scholars (שנתן מחכמתו לבשר ודם), Jewish kings (שחלק מכבודו ליראיו), and gentile kings (שנתן מכבודו לבשר ודם). Would one recite a *beracha* if he sees a king or scholar via webcam?

The Chida (*Birkei Yosef*, O.C. 224:1) addresses the question of whether one recites a *beracha* upon beholding a sight that generally requires a *beracha* if he saw it through a glass window. He suggests drawing proof from the fact that Rav Sheshes, who was blind, recited the *beracha* over seeing a king (*Berachos* 58a). If the *beracha* could be recited without seeing the king at all, the Chida notes, then it seems certain that if one sees the sight in question through a glass window, he should recite the *beracha*.

The Chida then suggests distinguishing in this regard between the blessing over the sight of kings and the blessings over other sights. The *beracha* over seeing kings was established on account of the awe and reverence that one experiences in their presence. It thus stands to reason that this *beracha* may be recited even by a blind person, who experiences this awe despite his inability to see the king. When it comes to the other *berachos* recited over sights, in contrast, it would seem that they must actually be seen for a *beracha* to be required.

Applying the Chida's discussion to a webcam, it seems that seeing a king via webcam would be the precise opposite case of that of Rav Sheshes. In this instance, one sees the king's image but does not experience any emotion of awe,

9. See n. 2 above, where we present the source for the *Shevus Yaakov*'s ruling.

as he is not situated anywhere near the king. It thus seems that according to the Chida, one would not recite a *beracha* in such a case. As for the other *berachos* recited over sights, the requirement would presumably depend upon our earlier discussion as to whether viewing via webcam is halachically equivalent to direct viewing.

VIII. *Yichud* in the Presence of a Surveillance Camera

Another question that is worth exploring relates to the prohibition of *yichud*. May a man and woman be alone together in a room with a closed circuit camera system, such that they can be seen by others? If a camera is indeed effective in permitting their seclusion, this could be a viable solution for families with adopted children or stepchildren, where a parent is not biologically related to the child and the *yichud* prohibition thus applies.

The *Shulchan Aruch* (E.H. 22:9) rules that *yichud* is permitted if the door to the home is open and accessible to the public. Thus, at first glance, the presence of a closed circuit camera should suffice to permit seclusion, just like an open door. However, the *Beis Shmuel* and *Chelkas Mechokek* make an exception in the case of לבו גס בה — if the man is comfortable with the woman with whom he is secluded, and the risk of sin is thus greater. Hence, even if we equate a surveillance camera with an open door, this will not help in the situations of adopted children or stepchildren.

Upon further reflection, however, it seems that *yichud* should always be permitted if a surveillance system is in place, even in situations of לבו גס בה. An open door generally permits *yichud* because the man and woman are deterred by the knowledge that someone can enter at any moment. But with a surveillance camera in place, they are actually seen, not merely at risk of being seen. Presumably, this should not constitute *yichud* at all, as the man and woman are not truly secluded.

IX. Turning חלב עכו"ם Into חלב ישראל

In one of his most famous rulings, Rav Moshe Feinstein (*Iggeros Moshe*, Y.D. 1:47–49) permits drinking חלב עכו"ם — milk produced by non-Jews — if it is produced under government supervision, which ensures that no milk from other sources is added. Rav Moshe rules that governmental supervision, which carries the risk of heavy fines for violators, takes the place of the Jewish supervision that is required for milk to be permitted, and thus one may drink חלב עכו"ם in the United States. He adds, however, that it is worthwhile for a בעל נפש (religiously

conscientious person) to be stringent in this regard and avoid חלב עכו"ם even when the production is done under government supervision.

It would appear that if a surveillance system is installed, such that the non-Jews milking the cows are being supervised by Jews via live video feeds, this certainly qualifies as "Jewish supervision" to render the milk permissible, without any need for stringency for a בעל נפש. Milking does not require formal testimony, but merely supervision to ensure the purity of the milk, and there thus seems to be no reason to question the permissibility of milk produced under the watch of Jews via surveillance cameras.

Some, however, have questioned the use of surveillance cameras to permit חלב עכו"ם on the basis of a responsum by the *Chasam Sofer* (Y.D. 107) that indicates that a Jew must actually view the milking for the milk to be permissible. The *Chasam Sofer* writes that even if it can be definitively ascertained that nothing was added to the milk, it is still forbidden if the milking was not seen by a Jew, as *Chazal* enacted a formal prohibition forbidding milk that was not produced under a Jew's supervision.[10] Seemingly, then, if a live video feed is not considered actual "viewing," it should not suffice to permit milk produced by non-Jews.

It should be noted, however, that the *Chasam Sofer*'s theory is novel and far from simple, and it gives rise to numerous questions. (Indeed, Rav Moshe Feinstein, in the aforementioned responsa, discusses the *Chasam Sofer*'s comments at length.) Moreover, it seems clear that had video surveillance systems existed in the times of *Chazal*, they would not have included such an arrangement in the prohibition of חלב עכו"ם. Thus, even according to the *Chasam Sofer*'s theory, having a non-Jew milk a cow while being viewed by Jews via live video feed does not fall under the formal prohibition of חלב עכו"ם, and it should thus be permissible.

10. Although cheese produced by gentiles is permissible because it cannot be produced from the milk of non-kosher animals, the *Chasam Sofer* explains that milk undergoes a fundamental change when it is made into cheese, and thus cheese is not included under the formal prohibition of חלב עכו"ם.