

HALOCHOSCOPE

This week's question:

There is a gap between an air-conditioner and a window frame. May it be filled in or covered with paper, rags a towel or other convenient item?

The issues:

- A) *Boneh*, the *melacha* forbidding building on Shabbos
- B) Doors, windows and curtains
- C) *Psik raisha*, *davar she'aino miskavain*, causing a *melacha* to result indirectly

A) *Boneh*

This Scriptural *melacha* forbids building or adding to a structure attached to the ground. The same is true of *sosair*, demolishing to facilitate further building. Destructive demolition is not forbidden Scripturally. The smallest improvement or demolition that allows for building on a site is forbidden Scripturally. Building a utensil is generally not included in *boneh*. However, many poskim maintain that this exclusion applies only in the early stages of its construction. Completing a *kli* is forbidden Scripturally. Others consider this *makeh bepatish*, finishing touches, rather than *boneh*. The difference between the two opinions lies in *sosair*. The first view considers demolishing a utensil *sosair*. Note that *mekalkel*, destructive activity, is forbidden Rabbinnically where the same activity would be a *melacha* when done constructively.

What about temporary minor repairs, such as returning a door handle to its spindle, or returning its screw? Tightening either of these involves a *melacha*. On a structure, it is unquestionably forbidden Scripturally. On a complete utensil it is either *makeh bepatish* or *boneh* (or both). Putting them back loosely is forbidden Rabbinnically, as a precaution against tightening them. Where there could be no possible Scriptural violation, such as when the utensil will remain incomplete, they may be repaired loosely.

Rabbinnically, building an *ohel arai*, temporary structure, is forbidden, as a precaution against *ohel kavua*, a permanent structure. The Rabbinical prohibition does not apply to minor construction. The *ohel* must have characteristics of *mechitza*, partition, and according to many poskim *gag*, a roof. These must also confer new status on the spaces behind or under them. Thus, the third wall of a *sukah*, validating it *halachically*, may not be erected. A single wind shield on a beach may be erected. Opening a folding chair does not 'create' a new usable space underneath. However, adding a *gag* on top of existing *mechitzos* is forbidden even when the space underneath is not needed.

Another difference between *ohel arai* and Scriptural *boneh* is that adding to an existing structure is *boneh*. Adding to an existing *ohel arai* is permitted. If one covers a *sukah* with one *tefach*, hand-breadth, of tarpaulin [excluding the rolled up part] before *Shabbos*, he may roll the rest over on *Shabbos*. The first *tefach* constitutes a *gag*, and *mosif*, adding to *ohel arai* is permitted. Some things only give the appearance of adding to a structure.

They are forbidden as *nireh kemosif al habinyan*. This is not an issue with *ohel arai*.

Sometimes, as in our case, the two seem to overlap, such as hanging a temporary curtain across a doorway in a permanent house. There is a special requirement that this *mechitza* not be attached too well, to avoid the appearance of *mosif al habinyan*. It may not be tied down at the sides and the bottom. If it does not serve as a partition, such as a curtain covering a glass window, it is not a *mechitza* at all, and certainly not a status-affecting one. One may hang this curtain and tie it down, temporarily. One may not use nails to attach it. Nails involve Scriptural *boneh* in their own right. Attaching it permanently would also involve *boneh*. [See Shabbos 31b 47a-b 102b 122b 125b-126a 146a Eruvin 34b-35a 102a etc., Poskim. Tur Sh Ar OC 313-315, commentaries. Ch. Ish 52:13.]

B) Doors and windows

Doors and windows made to open and close do not involve *boneh* and *sosair*, though they fill spaces in the structure. However, if a door is not permanently attached but is moved in and out of its space, it presents a problem. One may not attach it, even temporarily. It may not be placed in a track, top or bottom. Talmudic doors worked like our swing doors, with a pin that fit in a hole at the top and bottom of the frame. If the top pin came out, some forbid returning it Scripturally. Wedging the bottom back in is definitely forbidden Scripturally. Therefore, if it did not fall all the way out it may be eased back in loosely. If it fell out, it may not be eased back, lest one tightens it.

The Talmud discusses filling a space quasi-permanently with something that is not a real door. This could occur in a storage area, where the 'door' is used only occasionally. Putting this 'door' in place is forbidden as *nireh kemosif al habinyan*. If it is already tied to the wall, but must be lifted into place, it still gives this appearance. If it is hanging, has a hinge, or has the semblance of a proper door, it does not give the appearance of *boneh*. Some consider this passage to be following a minority stringent view, while others follow it fully. A third view maintains that it refers to an infrequently used doorway. If it is used frequently, it may be 'opened and shut'. This view is followed in practice.

The Talmud then discusses *deless almanah*, a 'widowed' door. This is explained in two ways. (i) There is no door frame and the gap in the wall is filled with a plain board. Shutting this gives a very clear appearance of building to fill the space. (ii) The space is filled with unconnected boards. A variation of this is the absence of a threshold in the doorway, leaving no indication that this is a door. For a frequently used entranceway tying the 'door' to the wall beforehand permits its use. Window shutters need not be tied, provided this was the use one had in mind before *Shabbos*. Modern applications of this include the adjustable type of mosquito screen, and child safety gates on hook hinges. Based on the laws of *muktzeh*, one may often place a fan into a window.

In light of this discussion, our case raises a few issues. First, even if there were no actual gap, the issue of true *boneh* arises if one attaches something permanent to the house. Thus, filling the gap with something intended to stay for the duration would raise this issue. Permanence in this context is debated. Some consider it the intent to leave it there for a few days, while others say it is thirty days. Either way, the intent to fill the gap for the duration of the presence of the air conditioner seems to have some permanence. Some materials commonly used to fill such gaps for the season include paper, plastic bags and rags, that may or may not then be covered with duct tape. Usually, professional

materials, such as foam, would be used if they were available and if it were not *Shabbos*. However, the existence of the use of the other materials makes this an issue. Some would say that the air conditioning unit is not placed there permanently. Therefore, one could not consider the material stuffed into the space part of a building. Still, at the very least, stuffing the items into the space would be forbidden Rabbinnically due to appearances.

Filling the gap raises the issues of doors and windows. Assuming one does not stuff the items into the space, but covers it, it may not be done such that the issues of *nireh kemosif al habinyan* arise. If one closes an opening temporarily it falls into the category of *mosif al ohel arai*, and is permitted. Even if it were so, some poskim only permit using an item that was set aside for this purpose (both placing and removing it) before *Shabbos*. Some add that it must even be designated as a utensil for other uses as well. This turns it into an independent item. Otherwise, it is considered building with building material. Accordingly, scrap newspaper could not be used here. Rags could conceivably be considered utensils designated for use. The ideal would be to use a towel or garment.

Currently, the space in our case is not really an opening. This could mean that even closing the space raises an issue, because this is not meant as an opening that will be opened and closed regularly. Certainly to fasten it down should raise an issue here. Hanging or placing materials in the space without attaching them will not raise these issues, if it is obvious that they are not being added to the structure. They may not be materials that would otherwise be left there to stay. However, while the gap itself does not *currently* function as an opening, it is part of a true window. The presence of the air-conditioner, plus the item used to fill the gap, is not closing the opening permanently. This means it really is a true window. The problem is that the manner of closing the gap does not allow for normal use of the opening. This makes it look like *boneh*, and if it is fixed in place, makes it true Scriptural *boneh*, according to many.

Our particular case does not seem to be addressed by major poskim. The poskim address the case of a chimney, both in the ceiling and on a wall. Plugging a vent in the wall, using a straw 'pillow', is permitted. The plug is not placed there permanently. Rather, the vent is permanent, and is plugged short term. [Contemporary poskim permit covering a broken window with a cloth, including holding the bottom down. This could be compared to our situation. While in our case the gap could remain sealed this way for much longer, the idea is the same in both situations.] The least problematic way to address our issue is to temporarily hang a good towel, sock, or garment over the gap. To hold it down at the bottom one might use a heavy item that is not *muktzeh*. This way there is no issue of *boneh*, and the space will not let hot air into the room. [See Shabbos 122b 124b-126b Eruvin 101a-102b, etc., Poskim. Tur Sh Ar OC 308:8-10 22, 313:1 3-5 9, 315:1 3, etc. commentaries, Chayei Adam 39:9. Ch. Ish 42 52:13-14 Sh Sh Kehil. 23:37 24:24.]

C) Psik raisha; Davar she'aino miskavain

The purpose of closing this gap is two-fold. It will keep out warm air, cooling the room. The air-conditioner will also work better. The back of the unit is outside because during operation, heat is given off. That heat would reduce its ability to function. By closing the gap, one helps the unit work. Does this mean that closing the gap on *Shabbos* is like adjusting the controls, causing the compressor to turn off or lower its energy use? Doing this directly involves the *melachos* involved with use of electricity. According to

some, these are Scriptural, including *boneh* and *makeh bepatish*. According to others, they can be Scriptural when a 'flame' is used, and are still forbidden Rabbinically when no flame is involved, as *tikun kli* or a Rabbinical form of *mavir*, burning the energy. Extinguishing a circuit would involve *sosair* or *kibuy*. This *kibuy* could not be Scriptural, as no charcoal could be produced. It could be forbidden Rabbinically, depending on how one interprets Rabbinical *kibuy*. Reducing or increasing fuel in a lamp is also *kibuy* or *mavir*. In our case, the *melachos* are caused indirectly. [See e.g. Tzitz Eliezer 1:20.]

When a permissible activity is done on *Shabbos* that could result in *melacha*, the issue of *melechtes machasheves* arises. The Torah only forbids *melacha* when it is done in the way that activity was performed in construction of the *mishkan*. This means it must have that kind of intent and purpose. If the permissible activity might not result in *melacha*, the Talmud debates whether it is forbidden anyhow. We follow the lenient view. Even if it does result, the person who did it is not considered having violated. However, if the result is inevitable, it is likened to cutting the head off a rooster to play with it, while having no interest in killing it. *Psik raisha* is considered true *melacha*. Sometimes, the intent makes a difference, such as when the person does not want the result. Then it is either Rabbinically forbidden or permitted. If there is neutral desire for the result, the poskim debate its status. Due to the lack of intent, if the activity does not involve a Scriptural *melacha*, certain leniencies apply. *Grama* is activity that is less direct than those mentioned, but sometimes has more intent. Under certain circumstances, *grama* can be permitted. Under others, it is forbidden Rabbinically.

One may not open a door facing a nearby fireplace. This is *psik raisha* to help the fire burn by introducing air. If it is open, one may close this door. Though the air helps the fire burn, closing the door is not considered actively extinguishing it. Similarly, in our case, the action of closing the gap is not considered directly extinguishing. [See E.g. Shabbos 73b 75a 102b 106a 110b 120b, Sukah 33b, Kesubos 6a, Poskim. Ramban, Shabbos, 1, 9:13. Tur, Sh. Ar. OC 277:1-2, 337:1, commentaries.]

On the Parsha ... Hashem's angel stood in the path of the vineyards, a fence on this side and a fence on this side. The donkey saw the angel, and she squeezed over to the wall, and she squeezed Bilam's leg to the wall ... [22:24-25] Many explanations abound on a midrashic level. On the simple level, why did the angel need the middle encounter? Why did he let Bilam through at the side? Why didn't the donkey just sit down here? This was no ordinary donkey, but rather miraculous. [See Ramban] When she first saw the angel, she understood that she was to veer of the road, to show Bilam that he was on the wrong track. The second time, she saw that the angel had left a small gap at the side. She understood that she was to squeeze through the gap, and to squeeze Bilam's leg. This was not a proper opening. This time, the lesson for Bilam was that he was pushing through a space that was not meant to be open to him.

♠ In honor of my mother, Yitole bas R. Shimon a'h, Henriette Silver, whose *shloshim* is on the 7th of Tammuz.

Sponsored by Robin Knee in memory of her mother, Michla bas Meir a'h, whose

yahrzeit is on the 10th of Tammuz. ♠

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