

# HALOCHOSCOPE

## This week's question:

May one give a gift to an *avail* who is under *bar* or *bas mitzvah*? What about giving it to someone else on the recipient's behalf? What if the gift is intended as a *bar mitzvah* gift? What if the gift is to be given on *Shabbos*, when *availus* is relaxed somewhat?

## The issues:

- A) *Availus* for a minor
  - B) Gift-giving to an *avail*
  - C) *Zechia*, acquiring something on behalf of another
  - D) Gifts on *Shabbos*
- A) *Availus* for a minor

There is a general Rabbinical *mitzvah* to educate and to train children in the performance of *mitzvos* and other meritorious practices. There are two ways to view this: it is to familiarize them with the behavior; or it is to treat them as though they are adults in training. The difference is when adults in such circumstances would be exempt, but the children will not be in those same circumstances as adults. Trainees adults would not be obliged, but they should become familiar with it so that it is easy for them as adults.

The Talmud says that *availus* does not apply to minors. Some poskim maintain that it refers to very young children. Minors of *chinuch* age practice *availus*. Most poskim say this means that there is also no *chinuch* on *availus*. The Talmud says that it would disrupt their Torah study. Some take this to mean that *availus* could apply when it does not disrupt it. Others maintain that it means that this is the reason that it was never instituted. One practice of *availus*, that of *kriah*, to rend the garments in grief, is applied to minors. The reason given is *agmas nefesh*, to cause anguish. Most commentaries explain that it will cause anguish to the adults. This practice does not detract from their Torah study.

If the *avail* becomes *bar mitzvah* during the *availus* period, for most practices, he starts observing them immediately. There is some debate about whether the *availus* works retroactively. However, in our case, if one relies on the view that *chinuch* on *availus* does not apply in this case, the gift may be given before his *bar mitzvah*.

The poskim debate whether the rules mentioned apply across the board. Those who exempt children from *availus* above the age of *chinuch* might obligate them in some practices. The debate applies to both the *availus* practices that do not detract from Torah study and to the part of the *mitzvah* that includes other *mitzvos*. Thus, an *avail* during *Shiva* does not study Torah, but he has other practices that bear no relation to this. Do the other practices apply to minors? Secondly, after *Shloshim*, only children observe *availus* for the twelve months, as opposed to other relatives. Part of the reason is *kibud av va'eim*, honoring the departed parent by refraining from joy and frivolity. *Chinuch* applies to this

aspect. Gift giving and receiving comes under this category, as we see in the next section. [See refs to section B. Moed Katan 14a-b Yevamos 43a (Tosafos), Poskim. Tur Sh Ar YD 340:27 384:5 389:2 396:3, commentaries. Availus Bahalacha 30:5, notes 9-12.]

### B) Gifts to an *avail*

Many of the restrictions on one in mourning are derived from the *Navi Yechezkel*. He was told to remain silent in mourning. This is taken to mean that he should not extend greetings, known as *she'ailas shalom*. Greetings are generally seen as a form of socializing. They are meant to be upbeat and joyful. The *avail* should be grieving, as a reflection of the judgment visited upon him, and in respect for the person for whom he mourns. It is certainly forbidden for others to extend greetings to an *avail*, if they know he is in mourning. This is the opposite of sharing in his grief and comforting him.

As the *availus* progresses through its phases, this restriction is progressively relaxed, according to many poskim. The first three days of mourning are the days of weeping. In this period the *avail* may greet no-one. If another person greets him he may not respond in kind, but must inform his greeter that he is in mourning. This is because the word *shalom*, peace, is inappropriate at this time. For the remainder of the *shivah*, the *avail* may not greet, but may respond to a greeting extended by a person to whom he is obliged to show respect. For the remainder of the *shloshim*, thirty days of mourning, or the year when mourning a parent, the *avail* may greet others, who are in 'peace'. However, others who know of his situation may still not greet him. Some poskim show leniency with regard to the types of greeting that do not include the word *shalom*. Others maintain that all greeting involves pleasant wishes to the same effect, and would be forbidden.

Mourning practices are affected by *Shabbos* and *Yomtov*. One may not make any public display of mourning on these days. Only private mourning practices are observed, and only when they are not obvious or conspicuous. The Talmud discusses greeting an *avail* on *Shabbos* and *Yomtov*. Refraining from greeting is considered somewhat like a public display of mourning. Therefore, it depends on the local custom. In places where the precedent is not to greet, one may not do so. However, many poskim maintain that on *Shabbos she'ailas shalom* is permitted.

Giving or sending gifts is considered a true form of *she'ailas shalom*. In fact, it is an even more obvious case of joyful and pleasant social activity. Therefore, one may not send a gift to an *avail*. In addition, while an *avail* in the later phases may respond or even initiate greetings to others, he should not engage in gift giving. The reason for laxity in his greeting others is that unlike him, they are in a state of peace. Giving a gift involves the giver more than a greeting involves the greeter.

There is a practice in some communities to send *manos* (portions of food) on *Shabbos*. The poskim discuss sending these *manos* to an *avail*. The consensus seems to be that the locales that forbid greeting on *Shabbos* also forbid sending *manos*. In general, when there is a minhag in some communities but not in others, one may assume that his community does not have that minhag unless he knows otherwise. Furthermore, the rule is that one tends to the lenient view regarding *availus* practices, if there is no clear consensus. However, if the issue here involves *kibud av va'eim*, this might not help. [See Yechezkel 24:17. Moed Katan 15a, Poskim. Sefer Chasidim 713. Maharil p 60-61. Tur

Sh Ar OC 529 (BhT 7 MB 19) 696:6 YD 385: esp. 3, commentaries.]

### C) *Zechia*

*Zachin le'adam shelo befanav*, one may self-appoint as an agent of others to do something that will benefit them. In our case, this would be by the giver of the gift asking a third party to make the acquisition of the gift on behalf of the *bar mitzvah*. *Ain chavin le'adam ela befanav*, to perform a detrimental *kinyan* for another, one must have his consent. Thus, if acquiring the gift will cost the recipient more than he stands to gain, he might not agree to the agent doing it for him.

In our case, the question is whether a third party making the acquisition avoids the *availus* issue. The "greeting and socializing" aspect is not present at the time the gift is given and received. On the other hand, when the *avail* does receive it, he will feel the joy and camaraderie. If there is an issue with the simple acquisition, the *avail* might be in violation of his *mitzvah*. Thus, it might not be considered a *zechus*, but a *chov*. Nonetheless, if the *zechia* avoids the issue, the *avail* does not violate his *mitzvah* of *availus*.

There does not seem to be specific discussion on whether *zechia* would make a difference on behalf of an *avail*. The theory would be that since the *avail* is not participating in the transaction himself, it cannot be considered greeting. However, the poskim do discuss giving *mishloach manos* to an *avail* on *Purim*. They do not suggest an easy way to avoid the issue by giving it through *zechia*. This might be because there is indeed no difference. Or it might be due to the nature of the *mitzvah*. *Mishloach manos* is meant to show friendship. However, the gifts are given, it involves this social greeting in some way. Perhaps a *bar mitzvah* gift does not involve the same level of socializing. There is some discussion about a similar case. A woman's acquisitions are automatically transferred to her husband. If one sends *mishloach manos* to the wife of an *avail*, he acquires the gift. This is permitted, because the *avail* is not restricted from acquiring things. The greeting aspect does not apply, because the gift was not sent to the *avail* himself. While our case is more direct, the concept might mitigate this case as well. [See Ervin 81a Gitin 11b etc. Kidushin 23a 42a etc., Poskim. Refs to Section B. Tur Sh Ar OC 696:6 MB19, Dirshu 37. Availus Bahalacha 34:note 71a.]

### D) Gifts on *Shabbos*

*Mekach umemkar*, buying and selling, or commercial transactions are forbidden on *Shabbos*. In one opinion it is a Prophetic institution included in the *passuk*: *mimtzo cheftzecha vedaber davar ...*, [and you honor *Shabbos* by ... refraining ...] from seeking your affairs and discussing mundane words [Yeshaya 58:13]. Conducting business and talking about anything that is forbidden on *Shabbos* would seem to be quasi-Scripturally forbidden. This is also indicated elsewhere in Scripture [Nehemiah 13:17, Rashi, Beitza 27b]. Other authorities maintain that it is a Rabbinical decree to prevent writing. Most transactions can involve a record of some sort. Writing is a Scriptural *melacha*.

There is a view that it is forbidden Scripturally, as a positive *mitzvah* of *Shabason*, to rest or desist. One should not be spending all day doing business. In a town with walls and an *eruv* one could load up his wares, buy and sell, and the entire day would pass no differently than a regular workday. For this reason the Torah gave the *mitzvah* of *Shabason*. Some add that the terminology used by *Nechemiah* implies that the commercial ac-

tivity would be considered Scriptural *chilul Shabbos*. References to a Rabbinic ordinance forbidding business on *Shabbos*, refer to occasional buying and selling. A fixed business open on *Shabbos* involves a violation of *Shabason*. [See Emor 23:24, Ramban.]


Checking up on one's business, discussing transactions, and even the appearances of *mekach umemkar* are forbidden. Though it is not included in this prohibition, thinking of such matters is to be avoided. It disturbs *oneg Shabbos*, enjoying the peace of *Shabbos*. Indeed, the context in the Navi Yeshaya is clearly one of *oneg Shabbos*.

Gift-giving is not commercial activity. Theoretically, it should not be included in this restriction. Borrowing food and articles needed for *Shabbos* is expressly permitted, provided one does not use the usual commercial language. However, giving gifts is forbidden on *Shabbos* and *Yomtov* by many authorities. The exception is when the gift is given to facilitate performance of a *mitzvah*. The terminology *cheftzecha*, **your** business, implies that *cheftzei shamayim*, business relating to *mitzvos*, is not restricted. In regard to the other reason for the restriction, while the Rabbis were concerned for the possibility of the *melacha* of writing, they would not institute something that prevents performance of a *mitzvah*. Nonetheless, direct commercial activity is restricted in all but a few cases (such as the *mitzvah* to buy property in Israel). Indirect activity or semi-commercial activity is permitted for a *mitzvah*. Thus, one may give an *esrog* to his fellow on the first day of *Sukos*, to facilitate it being considered personally owned. One may stipulate that it must be returned as well. A host may give *matzo* to his guest, for the same reason. One may not buy an *esrog* or *matzo* from a dealer.

Part of the above dispensation is based on *tzorech Shabbos* or *Yomtov*, the needs of that holy day. This might even permit giving something that will not be used on that day, but will bring joy to the recipient. Joy is part of the *mitzvah* of *oneg Shabbos* or *simchas Yomtov*. However, giving a gift to a *choson*, *kallah* or *bar-mitzvah* is forbidden. [This might be a reason *shuls* give a *siddur* to a *bar-mitzvah*. He can use it that very day.] In one view, during *sheva brochos* week, when there is a *mitzvah* to bring joy to the couple, giving the gift would be permitted. Another view permits giving a gift to a Jew on *Shabbos*. Commercial activity involves give and take. One may not give a gift to gentile even during the week, unless it is not given gratis, but with an eye to the return of the favor. This is commercial. To a Jew, the gift is wholehearted gratis.

To avoid the issue, it is customary to make a *zechia* transaction before *Shabbos* and to present the gift on *Shabbos*. In our case, the *zechia* can take place before the *avail* turns *bar-mitzvah*. The issue of greeting, which seems to be present at the time of presentation, does not apply on *Shabbos*, according to many poskim. [See Brochos 31b Shabbos 54a-b 19a 113a-b 116b 148a-151a 126b etc. Eruvin 66a Beitza 37b Sukah 35a-b 41b Gitin 8b Avoda Zara 20a, Poskim. Tur Sh Ar OC 246 288: esp. 4 306:6 (MA15, MB33 Ar Hash 17) 11 etc. 307 454:4 516 658:3-4, commentaries.]

In conclusion, the gift may be given through *zechia* before the boy becomes *bar mitzvah*, and it may be presented to him on *Shabbos*.

Sponsored by 'your name here' 

© Rabbi Shimon Silver, January 2024.

Subscriptions and Sponsorships available. (412) 421-0508. [halochoscope@hotmail.com](mailto:halochoscope@hotmail.com)