Parshas Toldos 5774 Vol. XVII No. 4 בס"ד

HALOCHOSCOPE

This week's question:

Recently, (Vol. XVI:41) the use of an elevator on *Shabbos* was discussed. Part of the discussion involved the absence of any action by the passenger. Indeed, in one situations, the passenger does nothing. The activity takes place anyhow, but his presence changes the amount of electricity used. The question has been raised: where do we ever find one held liable for the effect of his presence? If there is a precedent, can that be applied here?

The issues:

A) Active and passive violations

B) *Kilayim, yoshaiv bakaron*, a passenger in a car pulled by mixed species

C) *Shehiya baazarah,* becoming defiled and remaining inside the temple compound

A) Active and passive violations

Before discussing the subject, it should be noted that one need not be liable for something to be forbidden or required. Liability is for punishment after the fact. It is entirely possible for something to be forbidden, even Scripturally, but not punishable. Many *Shabbos* activities are *patur aval asur*, not liable but forbidden. Some of these are Rabbinic. In addition, certain *mitzvos* are violated by remaining passive. In this case, the issues are twofold. On *Shabbos* the prohibition against *melacha* is to refrain from activity. How could passivity be considered activity? There is, however, a positive *mitzvah* of *shabason*, to rest or desist. Part of this is fulfilled by remaining passive. It can also mean to take measures to ensure that activity does not take place. Furthermore, many activities are completed indirectly, often by passive agreement. These can include some types of transaction, some of which can be accomplished long distance, without the knowledge of the person, provided he does not object.

However, this discussion will focus on liability as a way to determine whether something can be considered an action. Consequently, where an action might be necessary for a prohibition to apply, the activity could be forbidden. If it can be shown not to be considered action, the activity could not be forbidden under that particular prohibition.

To recap: A cable elevator uses a counterweight. This is proportional to the average load. If the load, including the passengers and the car, are perfectly balanced with the weight of the counterweight, little or no energy is needed. It works like a see-saw. If there are no passengers, the car can go upwards with no energy, because the counterweight pulls the cable down. This remains true until the weight of the counterweight is reached. Let us guess this is the weight of the car plus 600 lbs, the average weight of four passengers. The first three passengers on the way up cause no extra electricity to be used. After that each passenger is contributing to the extra energy needed to pull the car upwards. On the way down the opposite is true. If there are more than four passengers, no

energy is needed. If the car is empty, power is needed to pull up the counterweight. Each of the first four passengers going down reduces the amount of electricity needed to pull the counterweight. Thus, each passenger affects the energy used. On the way up, a passenger in a fuller car causes more electricity to be used. On the way down, a passenger in an emptier car causes less to be used.

On *Shabbos,* one cannot use a regular elevator. Pressing the buttons involves a direct action of using electricity. An automatic elevator is programmed on a timer to stop and turn off at each floor for a few minutes. During this time the passengers enter. When it turns on again, the passengers present are sensed and weighed. The elevator gages the energy needed according to the weight of the passengers. The passenger did nothing at this point. When he entered the operation was off. When it comes on, it is his mere presence that causes the activity. Can this be considered an action? For example, one standing in a private domain who allows someone in the public domain to place something in his immobile hand is not held liable at all. Indeed this is permitted, from the *Shabbos* perspective, despite his interest in it. Being there is not an action. What about our passenger?

The Talmud debates whether *mechamer*, working one's pack animal, can be punished. The view we follow derives from a juxtaposition that all violations that are atoned by an offering must involve an action. The source is *avoda zara*, idolatry. This is violated by bowing or another act of service. This can be extended to apply to other liabilities, the death penalty, excision, and lashes. Therefore, one who is *mechamer* cannot be punished. He violated, but did no active action. The animal is coaxed by voice commands alone.

There is a separate debate on whether one atones for cursing Hashem unintentionally with an offering. In one view, the movement of the lips is not considered an action. In the other view, an action is not required. There is a similar idea with regard to lashes, the punishment for violating negative *mitzvos.* All negative *mitzvos* automatically should carry this penalty. This is derived from the juxtaposition of the *mitzvah* forbidding *chasimah*, muzzling a threshing animal, to the passage about lashes. There are exceptions. One exception debated by the Talmud applies to a *mitzvah* violated with speech. Since there is no action, it does not compare with *chasimah.* The Talmud debates *chasimah bekol*, using verbal commands to stop the animal from eating the grain, while not physically muzzling it. One view holds the violator liable. The action was accomplished through the voice commands. Therefore, though the actor did not do a physical action, he caused one. Thus, muzzling by voice command is distinct from cursing, which has no physical result. The same idea is applied to *kilayim.* One may not plow with two species harnessed together. This includes moving the pair with voice commands. The same action can be accomplished by physically pulling them. The verbal commands also lead to a physical action. Accordingly, one who is *mechamer* using his voice should be liable! Various answers are suggested, but our concern here is with the concepts.

What emerges is that one must do a physical activity. A verbal activity can sometimes count. It seems that anything less, such as one's presence causing the action, does not count as an action. And yet, as in the case of *mechamer,* causing the effect can certainly be forbidden. The only objection is that in that case, one did indeed shout a command. In our case, one's body is simply present in the car. [See Shabbos 3a 153b-154a

(RAE) Baba Metzia 90b-91a Sanhedrin 63a 65a-b Makos 4b 13b etc., Poskim.]

B) Kilayim, yoshaiv bakaron

The Talmud debates whether a passenger in a carriage pulled by *kilayim* is liable for lashes. He did no physical action. However, the animals are trained or it is in their nature to pull the cart when they feel the presence of a person. The poskim debate which view we follow. There is also a slight debate according to the lenient view whether it is permitted to ride there, or forbidden Rabbinically but not punishable Scripturally. We generally follow the view that forbids it. There is some question on whether we consider it liable Scripturally or Rabbinically forbidden.

Furthermore, if there is a driver at the same time as the passenger, both are liable. The extra work done by the animals is attributed to both. Even if there are many drivers, each is liable. Would the same be true of many passengers? There is a view that if the car would be pulled without this passenger, he is not liable. It is still forbidden, possibly due to *maris ayin*, appearances. The question is raised: if an activity that could have been done by one person is done by two people, both are usually not liable. Why should *kilayim* be treated differently? Some say that the exemption of two partners in the activity applies to the atonement offering alone. They are still liable for lashes.

What if one enters the carriage when only a donkey is harnessed. An ox is later harnessed while the passenger sits there. Is the passenger liable in this case? His presence causes the animals to pull. However, he did nothing active. In the normal case, his entering the carriage when the *kilayim* were already harnessed is an action. This case would compare with our case. It is possible that in the case of *kilayim* one's presence could be considered the action. The whole violation is to get the animals to move. In the case of *Shabbos*, the violation is to do a *melacha.* The only cases where getting an animal to do it would be considered the violation would be *mechamer*, which requires some action, such as a voice command, and the *melachos* done using work animals, which also require a command. Our case involves no animal. [See Kilayim 8:6 Baba Metzia 8b Shabbos 3a 92b, commentaries. Rambam Kilayim 9:9, commentaries (Derech Emunah). Tur Sh Ar YD 197:12-13, commentaries. Chavos Yair 150.]

C) Tumah bifnim; shehiya baazarah

Another situational violation exists with regard to *tuma bemikdash*. A *tamei*, ritually defiled person, may not enter the sanctuary, under penalty of excision when done intentionally, and liable for an atonement offering when done without the proper type of prior knowledge and intent. There is also a *mitzvah* to leave the sanctuary as soon as one realizes. This *mitzvah* happens to apply nowadays as well. This is the reason that one may not enter the temple compound. Everyone has been defiled in some way, and the purification and cleansing process cannot be performed fully nowadays. The person who is informed about his defilement while in the compound must leave immediately, by the shortest route. If he remains stationary or delays his route long enough to prostrate himself, he is liable. The Talmud debates *tuma bifnim*, if one is defiled inside the compound. The Torah considers the person who is defiled one who can defile other things with which he is in contact. This even applies to the temple compound. In reality, the compound itself does not become ritually defiled, because it is attached to the ground.

Nonetheless, the Torah calls his presence there a violation of defiling the compound.

The question arises: what kind of action is involved here? If the person was *tamei* when he entered, albeit unawares, his entry can be considered an action. This is compared to one wearing *kilayim* clothing. If he is warned about it and does not remove it, he is liable. His initial donning is considered an action, though at that time he was unaware. [He can even be liable many times over, if he ignores repeated warnings, all based on the initial donning.] If he physically touched the source of *tumah*, the touching is an action. What if the *tumah* touched him? Can his presence be considered an action? Perhaps his feet touching the ground could be considered a type of touching. However, if he does not move at all, it is the presence of his body or feet that make him liable.

The poskim point out that *oness*, one who is not in control of his circumstances, can never be held liable. *Tumas haazarah* can only be applied when the person had control over the activity. He might not have been aware, or he might have been mistaken. This is *shogeg*, unintentional violation, and is liable for atonement. *Oness* would apply if another person touched this person with a source of *tumah*, such as a dead rodent. In this case, he would be totally exempt. It appears that he could not be held liable for remaining in place either. Perhaps he would be required to leave quickly, as a Rabbinic decree.

What if one opens himself to the possibility of becoming defiled? For example, say he positions himself under a canopy with a person in the process of dying. If he is an emergency responder, he would be required to do his work on the grounds of *pikuach nefesh*, life-threatening situations that trump other *mitzvos* except for the three cardinal sins. However, he could still require some atonement. Or would he be considered *oness,* even if he was not involved in life-saving? He did no action.

It is possible to differentiate between the laws of *tumah* and of *Shabbos*. *Tumah* is a state of being by definition. It depends on presence or absence. Though liability depends on an action at some point, remaining in the state while fully aware could be enough for liability. *Shabbos* requires *melacha* activity. [See Shavuos 16b, commentaries. Rambam Bias Mikdash 3:21-24, Mishneh Lemelech, commentaries. Minchas Chinuch 362-363.]

The answers to these questions could reveal to us whether presence in a situation that causes a result that would otherwise be a liable activity counts as an action. We have already pointed out that regardless of liability, one can be forbidden to do something that he knows will result in something forbidden. The question in our case is whether it is indeed forbidden, if nothing was done. The turning on of the power was arranged by a timer before *Shabbos.* The only change is in the amount of power.

In conclusion, we have not found a parallel to our case indicating that presence can be considered a real action here. Nor have we ruled it out. Accordingly, even going upwards in a full elevator could be considered a non-action. Nonetheless, we have already discussed the fact that the poskim consider it *uvdin dechol*, activity not in the *Shabbos* spirit, even if the elevator is not full or is on the way down.