

BUSINESS WEEKLY

RESTORING THE PRIMACY OF CHOSHEN MISHPAT

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



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CASE FILE

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לע"נ הרב אהרון בן הרב גולדבוים ע"ה

SEFER TORAH

In *Parashas Vayeilech*, Moshe Rabbeinu tells *Bnei Yisrael*: "Now, write this Song for yourselves" (*Devarim* 31:19). *Chazal* interpret this as a *mitzvah* incumbent upon each individual to write his own *sefer Torah*, the last of the 613 *mitzvos*.

For years, Mr. Lerner dreamed about having a *sofer* write a *sefer Torah* for him, but the price was beyond his reach. He had an extensive library of printed *sefarim* but yearned for a *sefer Torah*.

The family needed to relocate on account of Mr. Lerner's work. They sold the house they had bought 20 years before for an enormous profit, which enabled buying a house at the new location, and they set aside *maaser kesafim* from the profit. Mr. Lerner suddenly found himself with a very substantial sum of *maaser* money.

"Now I can fulfill my dream!" Mr. Lerner exclaimed to his wife. "I can use the *maaser* money to commission writing a *sefer Torah*!"

Mr. Lerner contacted a *sofer* about writing the *sefer Torah*. "What suddenly made you decide to write a *sefer Torah*?" asked the *sofer*.

"I've been dreaming of this for years," explained Mr. Lerner. "I recently sold my house and have a substantial amount of *maaser kesafim*. I decided to use it for this purpose."

"Is the *sefer Torah* for you or for your community?" asked the *sofer*.

"It's for me," said Mr. Lerner. "I suppose that I'll house the *sefer Torah* in my shul and let them read from it, but I intend to keep ownership of it to fulfill the *mitzvah* of writing a *sefer Torah*."

"If it's for you," said the *sofer*, "I heard that there's a question whether you can use *maaser kesafim* for that. You should consult your rabbi."

"Thank you for alerting me," said Mr. Lerner. He called Rabbi Dayan and asked:

"Can I use money of *maaser kesafim* to pay for a *sefer Torah*?"

"*Sifrei* derives *maaser kesafim* from *maaser ani*," replied Rabbi Dayan. "Accordingly, some maintain that *maaser kesafim* is designated only for the needs of poor people" (*Rama*, Y.D. 249:1).

"Others maintain that *maaser kesafim* can be used also for other *mitzvah* purposes, such as shul upkeep, public *sefarim* library, *mikveh*, etc. Most authorities maintain that *maaser kesafim* is not an absolute requirement, but rather a

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לע"נ ר' שלמה ב"ר ברוך וזוג מורת ריאכלה בת החבר יעקב הלוי ע"ה וויל

STEALING SLEEP, PART 2

Q: I'm in camp, and *Shacharis* is at eight in the morning. Many *bachurim* learn before *davening*, but some don't. The *bachurim* who wake up early would like to set an alarm, but those who don't claim that it's *gezel sheinah* (stealing sleep). The same issue replays itself at night, when some boys want to go to sleep late and make noise in the bunkhouse, while others want to go to sleep.

My questions are: Is there a source for the concept of *gezel sheinah*? And can a group of boys prevent someone from setting an alarm or demand that they keep quiet at night?

A. Last week, we established that while stealing sleep may not fall under the category of typical "theft," if a person wakes someone else in order to cause him pain or out of disregard toward his feelings and preferences, he is likely transgressing the prohibition of *onaas devarim*. But when he has no intention of causing pain, and is merely going about his own business, this prohibition might not apply.

The remaining question is whether there are halachic grounds for one boy to stop another from setting an alarm clock.

The *poskim* (*Shulchan Aruch*, C.M. 156:2) deliberate whether a person can prevent his neighbor from making disruptive noise on his own property.

The *Rema* maintains that one neighbor has no right to prevent another from making noise, but even according to his view, if the person being disturbed by the noise is ill, he does have the right to protest (*ibid.*).

Based on this *halachah*, contemporary *poskim* rule that a person has a right to protest noise being made at times when it disturbs sleep, because the person complaining falls under the category of an ill person (*Mishkan Shalom* 10, fn. 69; see Issue #165 for a discussion of a complaint about an air conditioner that is disturbing the neighbors).

Until now, we have been discussing a person making



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well-accepted practice. Accordingly, since the general practice nowadays is to use *maaser kesarim* also for other *mitzvos*, most people undertake the practice with this understanding, and certainly if the *maaser* was initially set aside with this intention" (*Shach*, Y.D. 249:3; *Pischei Teshuvah*, Y.D. 331:12; *Tzedakah Umishpat* 6:1).

"Even so, since the *mitzvah* of writing a *sefer Torah* is a personal obligation, most maintain that a person cannot use *maaser kesafim* to fulfill his personal *mitzvah* obligations" (*Pischei Teshuvah*, Y.D. 249:2; *Meishiv Davar* 2:75; *Hilchos Maaser Kesafim* 14:38).

"Nonetheless, nowadays we primarily fulfill this *mitzvah* through *sefarim* that we learn from. Therefore some allow using *maaser kesafim* to buy a *sefer Torah* if the person is unable to purchase one otherwise, but recommend that he should not pay entirely with *maaser kesafim*, only partially" (Y.D., 270:2; *Aruch Hashulchan* 270:7-9; *Yalkut Yosef, Tefillin*, p. 550; *Ateres Paz*, vol. 3, Y.D. #2).

"Furthermore, if the person intends to donate the *sefer Torah* to a shul that needs one, and not maintain personal ownership, it is like other *mitzvos*, for which the practice is to use *maaser kesafim*.

"Similarly, one can contribute toward a *sefer Torah* campaign from *maaser kesafim*," concluded Rabbi Dayan, "since most maintain that one does not fulfill his personal obligation in this way, and the excess money of the campaign often benefits needy people" (*Shevet Halevi* 3:147).

Verdict: Many authorities do not allow buying a personal *sefer Torah* with *maaser kesafim*, but some allow it, at least partially, if otherwise one will be unable to fulfill the *mitzvah*. However it is permissible to use *maaser kesafim* to purchase a *sefer Torah* for a shul that needs one and to contribute to a *sefer Torah* campaign.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

APOTROPUS #15
FIDUCIARY GUARDIAN
Investing the Orphans' Money

לע"נ ר' חייאל מיכל ב"ר חיים זוג' חי' בת ר' שמואל חיים ע"ה

Q: How should the apotropus invest the assets that he is entrusted with?

A: The *apotropus* should manage and invest the orphans' assets in their best interest. He should sell unnecessary items, and invest the assets with trustworthy people or financial institutions, ideally in a manner that sustains them from the profit, while ensuring that the principal is secure (C.M. 290:7-10).

Chazal allowed investing the orphans' money even in certain investments that might otherwise entail *ribbis d'Rabbanan*, such as with a potential to gain and a guarantee about the principal, so that the principal will not be lost. The *poskim* dispute whether the practice is to do so, or to invest only with a *heter iska*. In any case, the *apotropus* may not invest by granting a loan that entails *ribbis d'Oraya* (*Sma* 290:17; Y.D. 160:18; *Shach* 160:26; *Pischei Teshuvah* 160:20).

The practice now is to invest in a conservative investment, which provides some profit with minimal risk to the principal (*Aruch Hashulchan*, C.M. 290:13).

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noise in his own property that carries to another person's property. If the noise is being created in shared area (such as stairwell or courtyard of an apartment building), then the neighbors certainly have the right to protest (*Mordechai, B.B.* 512, cited in *Beis Yosef* 156). The partnership agreement governing such an area would allow only for standard use that would be agreed to by all partners. Since loud noise is not standard and not something the partners agreed to at the outset, they can stop one neighbor from making noise.

Even in such a case, however, we find an exception. A person who has a house (or apartment) surrounding a shared area is allowed to bring children into his house to teach them Torah, even if the noise will disturb the neighbors. Although neighbors are entitled to prevent a resident from opening a store in his apartment on the grounds that the foot traffic of the customers disturbs them (*Shulchan Aruch*, ad loc.), Yehoshua ben Gamla instituted an exception for teaching Torah, in order to expand Torah knowledge (see, however, *Shevet Halevi* [7:24], who writes that if a person is learning aloud at a very late hour when quiet is generally expected, the neighbors are entitled to stop him).

According to many *poskim*, the exception of teaching Torah applies to all *mitzvos* (C.M. 156:3).

Now, considering that you want to get up to learn Torah, you might think you have a right to set an alarm clock regardless of your roommates' preferences.

This assumption is incorrect, however. The *Levush* (156:3, cited in *Pischei Teshuvah* 2) writes that the exception allowing a person to teach Torah despite the neighbors' objections to the noise applies only to a person who is doing so in his own dwelling. If, however, a few people share a single residence, those affected by the noise certainly have a right to complain, because few people can handle noise within their own dwelling, and they never agreed to join the partnership with that usage in mind (unless the noisy partner stipulated in advance that he should be allowed to do so).

Since roommates are akin to partners in one dwelling, they can do only what is considered a typical activity for the majority of people (see *Halichos Shlomo, Tefillah*, ch. 13, fn. 69). Therefore, if most of the boys in camp do not rise early, and the *bachur* who wants to get up will disturb others with his alarm clock, he should not set it. But if most *bachurim* wouldn't be bothered – for instance, if he uses a quiet alarm that doesn't disturb most people – and one person is particularly sensitive to noise, that individual does not have the right to prevent him from setting his alarm.

The same guidelines apply to bedtime.

In any case, a person should always try to be *maavir al midosav*, not to demand that his "rights" be met when others suffer as a result, as *Chazal* say (B.M. 30b) that Yerushalayim was destroyed because people insisted on exercising strict justice and would not go beyond the letter of the law to accommodate others.

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