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BAIS HAVAAD HALACHA CENTER
105 River Ave. #301, Lakewood NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org
info@baishavaad.org
Lakewood • Midwest • Brooklyn • South Florida

לע"נ הרב יוסף ישראל
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PART II—BATTLE OVER DRAFT PROTECTION: SHOULD YESHIVA STUDENTS BE CONSCRIPTED?

Adapted from the writings of Dayan Yitzhak Grossman

In our previous article, we noted that the Gemara asserts what seem to be three distinct principles exempting *talmidei* chachamim from certain categories of communal obligations. We began to discuss the first of these, the principle that “the Rabbis do not require protection,” and its possible application as a basis for exempting yeshiva students from service in the Israeli military. In this article, we begin by continuing to discuss this principle and its relevance to the question of *giyus bnei* yeshivos (the drafting of yeshiva students), and we subsequently consider the other two principles and their relevance to that question.

TALMIDEI CHACHAMIM WHO FEEL THE NEED FOR TEMPORAL PROTECTION

Another argument against the applicability of the principle that the Rabbis do not require protection to the question of *giyus bnei* yeshivos emerges from a *teshuvah* of R' Dovid ibn Zimra (the Radvaz), who rules emphatically that *talmidei* chachamim who demand protection, and thus concede that they require it, cannot then invoke the rule that the Rabbis

do not require protection to exempt themselves from contributing toward such protection:

When the king or the city governor orders the placement of hired watchmen in each neighborhood—or orders that the residents themselves go out and keep watch, each one on his night—in such circumstances the *talmidei* chachamim are exempt, for they do not need protection...But in our case, the householders say “We do not need watchmen, because we are poor,” and the scholars are crying out, saying “Place watchmen,” and they themselves concede that they need protection, is it fair or logical for them to compel the householders to place watchmen and not to help them and to compel them?! Such a thing was never said by anyone, and if someone did say so, we do not listen to him, because this would be grossly unfair (*laksah midas hadin*)...

But do not misunderstand my words, for I am only speaking about the case where the householders claim “We do not require protection unless



PARSHAS VAYEITZEI

MEANS TESTING

Excerpted and adapted from a shiur by Dayan Yehonoson Hool

Whatever You will give me, I shall repeatedly tithe to You.

Bereishis 28:22

The Da'as Zekeinim quotes a Midrash that infers from this *pasuk* that Yaakov was the first person to give Hashem *ma'aser ksafim*, a tithe from his earnings. According to Tosfos (Ta'anis 9a, citing the Sifri), *ma'aser ksafim* is a mitzvah *de'Oreisa*; according to the Chavos Ya'ir, it is a mitzvah *deRabanan*; according to the Bach and many others, it is a worthy *minhag*.

There is a possible ramification of this dispute with regard to testing Hashem. The Gemara (Ta'anis 9a) says that one who gives *ma'aser* will become wealthy, and it derives from a *pasuk* in Malachi (3:1) that although one may not generally test Hashem, he may do so by giving *ma'aser* to see if this promise is fulfilled. The Rama (Y.D. 247:1) codifies this halacha, but the Pis'chei Teshuvah writes that the Gemara is speaking only of the mitzvah to take *ma'aser* from produce. Others say it applies to *ma'aser* from income too.

(continued on page 2)

everyone participates,” and the scholars are saying “Appoint watchmen regardless.” In such circumstances I say that they may compel one another.

And even though there is another consideration, for I am uncertain whether there is now anyone

(continued on page 2)

Q&A from the
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Beyond Repair

Q I obtain broken electronic devices and refurbish them for resale. I could boost profitability by replacing certain external features to give a device the appearance of a later model. Is that permitted?

A The Mishnah (Bava Metzia 60a) warns a merchant against enhancing his merchandise prior to sale, e.g., polishing old dishes to make them look newer than they are (see Rambam Hil. *Mechirah* 18:2).

The Tur (C.M. 228) explains that although the dish's value does in fact increase as a result of the treatment, the gleam falsely makes the item look new and enables it to be sold at a price beyond its real value, which will become apparent to the buyer only later, when the sheen wears off.

Based on the Tur, one may polish a *new* utensil to increase its value, because there is no deception

(continued on page 2)

(continued from page 1)

who does not require protection,¹ I do not enter into this question now, for my words would upset some scholars, so silence is preferable to speech. Nevertheless, what I have written appears clear to me, without disagreement.

Still, if the matter is clear that the householders, too, require protection, and they only claim that they do not in order that the scholars should help them, in this case it is clear that if the scholars claim that they do not require protection, or if they are silent, they are not obligated to help. But if they concede that they require protection, and they cry out "Appoint watchmen," it is clear to me that they are obligated to help, because the admission of a litigant is similar to one hundred witnesses,² and they say that they require protection...³

The Chazon Ish, however, in his discussion of the rule that the Rabbis do not require protection, suggests that perhaps rabbis may even compel the other inhabitants of the city to exclusively fund their mutual security:

We must consider: Are not even *talmidei* chachamim required to conduct themselves in accordance with the way of the world and not rely upon miracles...?

Perhaps in a city that consists entirely of rabbis, they may compel each other to build a wall. But in a city inhabited by ordinary people, and among them are rabbis, we place the responsibility for the wall on the multitudes and we exempt the scholars...The chachamim of the Gemara decided that we should not take from them money for protection, and since, in truth, their Torah protects them, and they are not subject to natural events like other people—because Hashem's providence is proportional to one's *midas bitachon*, where a person casts his burden on his Creator, may He be blessed—it is therefore appropriate to exempt a *talmid* chacham from responsibility for protection, and to place the responsibility for the wall on the other inhabitants of the city. According to this, perhaps rabbis may even compel the other inhabitants of the city to build a wall.⁴

The Chazon Ish seems to at least entertain precisely the position that the Radvaz cannot imagine anyone espousing.⁵

R' Yaakov Rosenthal (a disciple of the Chazon Ish, as well as of the Brisker Rav, R' Isser Zalman Meltzer, and R' Yaakov Moshe Charlap) attempts to reconcile their positions by suggesting that the Chazon Ish's discussion is limited to the case where the ordinary residents of the city desire protection, while in the case of the Radvaz, they did not (due to their poverty),

and only the *talmidei* chachamim desired protection.⁶ So according to the simple reading of the Radvaz, if the yeshiva students acknowledge themselves to be in need of the military's protection, they would be barred from invoking the principle that the Rabbis do not require protection to exempt themselves from serving in it, while the Chazon Ish appears uncertain about this (although he may, of course, have had other grounds of opposition to the drafting of yeshiva students). According to Rav Rosenthal, however, even the Radvaz might allow yeshiva students to invoke the principle that they do not require protection if the general public certainly does desire military protection.⁷

FREEDOM FROM THE YOKE OF NATIONS AND GOVERNMENTS

As mentioned, the Gemara articulates two other bases for exempting *talmidei* chachamim from certain communal obligations. The first of these is a general privilege of freedom from the yoke of nations and governments:

Rav Nachman bar Rav Chisda once imposed a head tax (*karga*) on the Rabbis as part of a general levy. Rav Nachman bar Yitzchak said to him: You have violated a precept of the Torah, the *Nevi'im*, and the *Ksuvim*.

You have violated a precept of the Torah, for it is written: "Even as He loves the peoples, all His holy ones—they are in Your hand." Moshe said before Hakadosh Baruch Hu, "Master of the universe, even at a time when You cherish the peoples, all the holy men of Yisrael will be in Your hand." (Even when you shine Your countenance upon the nations and enable them to subjugate Your children, the holy ones, i.e., the *talmidei* chachamim, will remain under Your protection. Therefore, they do not require human protection and need not contribute toward it.)...⁸

THE RABBIS ARE NOT PEOPLE WHO GO OUT...

The final section of the Gemara's discussion of the exemption of *talmidei* chachamim from various communal obligations sets forth a third basis for such an exemption, that "the Rabbis are not people who go out...":

Rav Yehudah said: We collect from everyone to install doors to enclose the city gates (*le'aglei gapa*), even from orphans, for they also need protection. But the Rabbis do not need human protection, so they are exempt. We collect from everyone for the digging of a well (*lecharya pasya*), even from the Rabbis, for they also require drinking water. But this is stated only when the townspeople do not go out themselves in turns when called to dig the well, but they hire workers

⁶ Mishnas Yaakov *ibid.* os 8.

⁷ For further discussion of the principle that the Rabbis do not require protection and its applicability to the question of *giyus bnei yeshivos*, see: Yeshiva O *Tzava cheilek* 3; R' Moshe Bar-Tzion, *Giyus Lomdei Torah* *Latzava*; R' Yair Hoffmann: *Torah Study and the IDF—A Halachic Overview* (another version, and see here); A Response to Rabbi Silfren.

⁸ Bava Batra 8a, and cf. *Nedarim* 62b. We have assumed that this rule is distinct from and unrelated to the previous principle that the Rabbis do not require protection. But the language of the Tur and Shulchan Aruch Y.D. 243:2 and the *Levush Ateres Zahav* *ibid.* seif 2, suggests that they are actually related; for discussion of this point, see *Bach* *ibid.*; *Mishnas Yaakov*, *Hilchos Talmud Torah* 610 os 5.

(continued from page 1)

(Gemara *ibid.* and Sma *ibid.*). The Shulchan Aruch Harav (C.M. 228:18) takes this further and says it is permitted even if the polishing increases the price beyond what is warranted by the upgrade, because the buyer is willingly choosing to pay a high price for a small upgrade.



RAV ARYEH FINKEL

Applying these laws to electronics:

- You may not refurbish a device and resell it as new, even if it's as good as new.
- You may install add-ons and features to bolster the item's value even though the price may exceed the fundamental value of the upgrade.
- If by replacing parts, the device is given the appearance of a later model, you must notify the customer.
- If it's apparent which model the device is, but the newer parts make it more appealing without deceiving the buyer, you don't need to notify him, because he knows what he's buying and willingly pays extra for the enhanced appearance.

to do it; it is then that the Rabbis must contribute. But if they go out in turns when called to dig the well themselves, the Rabbis are not people who go out and perform manual labor when called.

The Rambam explains:

Talmidei chachamim do not go out to engage personally with the entire community in building, digging...and the like, in order that they not be shamed before the ignoramuses.⁹

The Chasam Sofer invokes this rule as providing for the exemption of yeshiva students from the military draft (of nineteenth-century European powers).¹⁰ While he initially applies this to "*bachurim* who study Torah," he subsequently mentions "those who are studying and succeed at leading communities," and so it is not entirely clear whether he would actually assert a blanket exemption for all yeshiva students today. R' Shmuel Vosner (the Sheivet Halevi), however, argues that the exemption does indeed extend to all yeshiva students.¹¹ Beyond Rav Vosner's brief discussion, I am not aware of much discussion of this rule in the context of the topic of *giyus bnei yeshivos*.

⁹ *Hilchos Talmud Torah* 610.

¹⁰ *Shu"t Chasam Sofer cheilek 6 siman 29 sv. V'al dvar am Bnei Yisrael.*

¹¹ *Sheivet Halevi* *ibid.* os 16.

(continued from page 1)



It would seem that the Pis'chei Teshuvah holds that *ma'aser ksfaim* is either deRabanan or a minhag, and that's why the *navi's* promise does not apply to it, because if *ma'aser ksfaim*

is *de'Oreisa*, the promise should apply to it as well. But the Chafetz Chaim (Ahavas Chesed 18) argues that the promise could apply to *ma'aser ksfaim* even if it's mideRabanan. (The Maharsha, Chasam Sofer, and Aruch Hashulchan concur.) He explains that

Malachi lived at the start of *Bayis Sheini*, when the obligation of *trumot uma'asros* from produce was only mideRabanan (see Shulchan Aruch Y.D. 331:2), yet he allows using it to test Hashem, so the same should apply to *ma'aser ksfaim*.

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