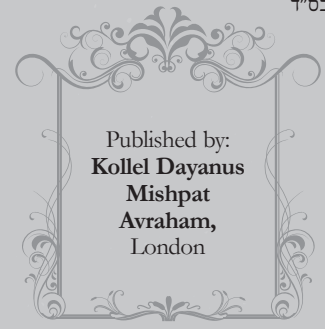


# THE Devar Hamishpat BULLETIN



Clarifications in the Laws of Choshen Mishpat and Ribbis | #32 Adar 5785

## - Halacha Insights -

### Hilchos Purim

ע"י הרב הג"ר ברוך אברהם עסטרייכער שליט"א  
ראה"כ ומוכרי היכל הוראה דיבר המשפט

**If a person thinks to give *matanos la'evyonim*, is he obliged to give as he thought, just as is the *din* with *tzedakah*?**

The Mishnah Berurah writes in *hilchos Purim* (694:6) in the name of the Beis Yosef, who cites the Hagahos Ashri: Money one thought to distribute to the poor on Purim may not be changed for another purpose. The reason is, because he holds that *matanos la'evyonim* has the *din* of *tzedakah* which is similar to *hekdesh*, where one must fulfill one's thought even without saying it explicitly with his mouth. And the Shaarei Tziyun (8) writes: This is written in Beis Yosef. See *Yoreh Deah* end of *siman* 258, and *Choshen Mishpat* 212:8, where he brings varied views regarding this *din*, and he concludes that one should be *machmir*.

The *sefer* Tzedakah Umishpat writes that one's mind only obliges him if he **decided in his mind** to give a certain amount of money to *tzedakah*. This follows the ruling of the Magen Avraham in *hilchos Ta'anis* (562:11), that the rule of thought being considered speech (מחשבה הוא כאמירה) is only if he was **mekabel on himself to do so**, but not with a mere thought to do so. The Gilyon Maharsha (*Yoreh Deah* 258) writes similarly, and he refers to the Magen Avraham.

But we can ask: The Shach (*Choshen Mishpat* 87:51) rules that one who says he will give charity to a certain poor person, he may not give the money to another poor person. If so, what is the *din* regarding one's thought? If he decided in his mind to give to a certain poor person, is he obliged to give to that poor person?

The Derech Emunah writes in the name of the Chazon Ish, that regarding a certain poor person, one isn't obliged to give to that poor person if he didn't actually say so, but only thought so. And it has been said in the name of the Cheshev Ha'efod, if during *davening* one sees a *meshulach* and one intended to give him *tzedakah*, and then he no longer saw that *meshulach*, this isn't considered a thought that obliges a person, since only because he saw that *meshulach* did he think to give him the *tzedakah*.

**A person went to a fundraising event and didn't think beforehand how much to give, as is usual that people only give at the actual moment when they are asked to sign, without making a resolution beforehand. He wanted to pay with a credit card and he wrote how much they should take, but the credit card didn't go through. Does he have to nevertheless pay due to his thought?**

One may say that although he didn't say how much he wants to give, and even the writing isn't considered as saying, since he didn't write that he **obliges** himself to pay to *tzedakah*, but merely wrote a number how much he wants to give, he might still be obliged to pay the money due to his thought.

But we could say this depends on the *machlokes* between the *poskim* regarding somebody who wanted to actively give

## Editorial

With thanks to Hashem, we present *halachos* from our Beis Medrash.

In the run up to Purim, we have brought the *halachos* that appertain to Purim, following the words of the Gemara (Sanhedrin 101a), "whoever reads a *passuk* on time, brings goodness to the world." Similarly, the Gemara Eruvin (54a) cites the *passuk* "Happiness to man is in his mouth, and how good is something at the correct time," and expounds (as Rashi explains): "When is a person happy? When he knows to teach the *halachos* of each Yom Tov at its given time."

We have also added relevant *halachos* that have recently aroused.

We must note, although these *halachos* have been clarified by expert Rabbanim, since practical *halachah* can change with a slight change in the situation – especially *halachos* of *Choshen Mishpat* – one must always ask a Rav.

In the name of the Kollel's Rabbanim, let us bless our readers, and all of *Klal Yisrael*, with a kosher and happy Purim, and many Hashem do miracles with us just as He did to our ancestors in the times of Mordechai and Esther, sending us His Moshiach, and we will continue to rejoice with the *simchah* of Purim, as *Chazal* say (Yalkut Shimoni Mishlei 944), all the *Yamim Tovim* will be annulled except for Purim, which will never be annulled.

**The Editors**  
Adar 5785

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*tzedakah* but was prevented from doing so, if this is considered a thought to *tzedakah* which obliges him, or perhaps it isn't a thought since he intended to actively give the *tzedakah*.<sup>1</sup> However, our case could be more lenient than that of the *poskim* [see footnote], and therefore it could be that all would agree that it isn't considered a *neder*.

### **The custom is to send mishloach manos to Rabbanim. Is this an issur of bribery?**

The Devar Shmuel (191) writes that since he doesn't intend to bribe with the *mishloach manos*, and he only sends the *mishloach manos* because it is customary to do so, it is permitted. Nevertheless, one who is in the middle of a *din Torah* by the Rav and he sends a larger *mishloach manos* than usual, or if he only sends a *mishloach manos* this year yet never sent the Rav a *mishloach manos* in previous years, it is certainly prohibited to send, and it is prohibited for the Rav to receive.

The Botatsher Rav that he didn't receive the *mishloach manos* that were sent, and instead only his Rebitzen received the *mishloach manos*, and a person would write down who sent *mishloach manos* in order to know who to return a *mishloach manos*.

### **Can one rely that whatever is in a mishloach manos is kosher?**

It is worth citing the words of the Chasam Sofer (*Drashos*, drush 4 year 5596): *Chazal* write that *קיימו מה שקבלו כבר*, the Jews accepted anew what they accepted at *matan Torah*. The rule is that one witness is believed regarding *issurim*, which is why one may eat at another person's home, but that is only where there is a *chezkas kasbrus*. When the Jews came with a claim that *לאורייתא* and that they were forced to receive the Torah, they told Yechezkel that they want to be like all the gentiles. Nevertheless Hashem didn't accept

their argument and said *שפוכה וחמה שפוכה* ביד חזקה וזמה שפוכה. They were then forced to do the mitzvos, and if so they won't be believed in *issurim* with one witness, since they had lost their *chezkas kasbrus*, and if so, no person could eat in the home of the other person. In fact, we know that they were suspected of not keeping the laws of *kasbrus*, since they ate at Achashverosh's *seudah*.

And the Chasam Sofer concludes: **But now they willingly received the Torah anew with joy and happiness, they were permitted to eat from other people's food since they now have a *chezkas kasbrus*, and that is why Chazal initiated the mitzvah of mishloach manos.**

### **If a person brought the mishloach manos into his friend's home without informing him about it, and the home was koneh the mishloach manos with the din of kinyan chatzer, has he fulfilled the mitzvah?**

It appears that this depends on the two reasons given by the *poskim* for *mishloach manos*: 1) to increase friendship, or 2) so that he has what to eat for the *seudas Purim*.

If the reason is to increase friendship, in such a case he hasn't fulfilled the mitzvah since his friend didn't know that he brought him the *mishloach manos*, and even if he will find out after Purim who gave the *mishloach manos*, it still isn't reckoned *mishloach manos*, because the friendship was increased after Purim and it is as if he gave the *mishloach manos* after Purim. But if the reason is so that he has food for *seudas Purim*, he now has food for the *seudah* even without knowing who brought the food, and if so he has fulfilled the mitzvah of *mishloach manos*.

But the Aruch Hashulchan (695:16) writes, if the person receiving the *mishloach manos* isn't at home and will not arrive home until

after Purim is over, he hasn't fulfilled the mitzvah even if the person's family receive the *mishloach manos* on his behalf [but many *poskim* disagree and hold that the family can receive the *mishloach manos* on his behalf], because the *passuk* states *ומשלוח מנות איש לרעהו*, that the *mishloach manos* must come to the other person, or at least must know about it. According to this, our question doesn't depend on the two reasons of *mishloach manos*, and according to all reasons he hasn't fulfilled the mitzvah if the person receiving the *mishloach manos* doesn't know about it, since it lacks in *מנות*.

On the other hand, the Mahari Assad writes in his teshuvos (207), if he is *mezakeh* the *mishloach manos* to another person who is *zocheh* on his behalf, even if the *mishloach manos* doesn't reach him on Purim he has fulfilled the mitzvah, since the other person received the *mishloach manos* on his behalf.<sup>2</sup> We see from this ruling that as long as the *mishloach manos* belongs to the one receiving it, he fulfills the mitzvah, and it doesn't have to actually reach him. This seems to disagree with what we wrote above. But it could be that Mahari Assad is only discussing the case where the one who is *zocheh* for the person is his *shliach* to do so, and if so there is at least the reason of increasing friendship [and the Aruch Hashulchan agrees that if the recipient knows about the *mishloach manos*, he has fulfilled the mitzvah].

### **If he placed the mishloach manos in the beis medrash and wrote his name on it, writing that whoever wants to take the mishloach manos can take it, has he fulfilled the mitzvah? [The same can be asked if a person makes a *seudah* in the beis medrash or at home and whoever wants can come and eat, has he fulfilled the mitzvah?]**

Seemingly, it depends on the two reasons

1) This is based on the Turei Even (Chagigah 10 s.v. dilma), who explains that a person who utters a promise and for whatever reason the *neder* isn't chal, isn't obliged due to his thought, since he wanted to actually do as promised, so his thought has no place. [But that is only in a circumstance where he uttered the *neder* and therefore didn't intend that the *neder* should become a *neder* by thought. But if he decided beforehand to give *tzedakah* or the suchlike, he is already obliged because of his thought and therefore his action can't annul his thought.] But the Shach (Yoreh Deah 258:5) holds that even if he intended to utter the *neder*, he is nevertheless obliged because of his thought, unless he explicitly had in mind that his thought won't oblige him until he actually expresses the *neder*.

If so, our case depends on these two views.

But possibly, in our case there was no actual thought or a *neder* at all, since the dispute between the Turei Even and the Shach is only if a person wanted to oblige himself by speech, if the thought helps. But in our case he never even intended to oblige himself to give, only he wants to give when he can. If so, there is no thought and no *neder* at all, and according to both the Turei Even and the Shach he need not pay.

2) Mahari Assad seems to hold that the *mishloach manos* need not reach the recipient on Purim, and even if he doesn't know about it, the sender has fulfilled the mitzvah. But this doesn't operate according to either of the reasons, be it to increase friendship or to have food for the *seudah*, since there is no friendship if he doesn't know about it, and he doesn't have a meal if it didn't reach his home! We can explain following the ruling of the Rema: If the friend doesn't want to receive the *mishloach manos*, the sender is nevertheless *yotze* the mitzvah, and the Chasam Sofer explains, that by showing that he wants to bring a *mishloach manos* he has fulfilled the increased friendship. We see from here that it is enough if the sender himself increases friendship, even if the receiver doesn't. This can also be the reasoning of Mahari Assad: Since the sender did an act of sending *mishloach manos* and increasing friendship, he has fulfilled the mitzvah.

But we can ask on the ruling of Mahari Assad that being *mezakeh* the person via another person is okay to fulfill the mitzvah of *mishloach manos*: How does this accord with the *passuk* *ומשלוח מנות*? This isn't a *משלוח* but a *זכייה*! But it could be that the word *משלוח* doesn't mean that it actually has to be sent, and that *זכייה* is also included in the mitzvah.



given above for *mishloach manos*, if it is to increase friendship he isn't *yotze* [since neither the giver nor the recipient feel more friendship from such a *mishloach manos*], but if it is so that he has what to eat on Purim, he has fulfilled the mitzvah.

However, it could be that even according to the second reason he hasn't fulfilled the mitzvah, since it has to *משלוח מנות* – to give over from one to another. According to the views that one must perform the mitzvah with *shlichus*, he certainly hasn't performed the mitzvah since he didn't give the *mishloach manos* via a *shlich*. But even according to those who hold that one need not necessarily send the *mishloach manos* via a *shlich*, it nevertheless has to be a *משלוח* and must be **delivered** to his friend. In this case, the *mishloach manos* wasn't delivered, and if so he didn't fulfill the mitzvah. Indeed, the Beis Yosef writes that when the Gemara writes that the amoraim were *מחלפי סעודות* – they ate at the other's home, they didn't fulfill the mitzvah of *mishloach manos* with this, since they didn't give the *mishloach manos* as a *משלוח*. But the Darkei Moshe holds that even one who invites a person to a *seudah* fulfills the mitzvah of *mishloach manos* since this is also considered *משלוח*.

From the Beis Yosef and Darkei Moshe we see that the *משלוח* factor is a necessary element to fulfill the mitzvah of *mishloach manos*, and they only disagree over inviting a person to eat if it is considered *משלוח*. But if he didn't give over the *mishloach manos* at all, and merely left it in the *beis medrash* for anybody to take, he certainly didn't fulfill the mitzvah of *mishloach manos* since he lacks the factor of *משלוח*.

### One who damages when engaged in simchas Purim is exempt from paying. What are the details of this halachah?

The Rema writes (695:2) ו"א דאם הזיק אחד את, – "some say that if one damages another person because of *simchas Purim*, he is exempt from payment." The Mishnah Berurah adds (14), this is only if the damage was a result of the *simchah*, but if he intentionally damaged, he must pay. He

also writes (13) in the name of the Bach, there is a difference between a large damage and a small damage. Also, only if he damaged his property, but not if he damaged his body. And he concludes, the custom is to be liable for a large damage.

Some want to derive from the wording of the Rema, that only if the damage was caused when he was engaged in the *simchas Purim*, for example in the middle of dancing, but if he damaged due to drunkenness he is liable to pay, since he shouldn't have brought himself to be so drunk that he has no control over himself. The same appears to be the view of the Yam Shel Shlomo (Bava Kama 3:3) who writes: Even on Purim when one is obliged to become drunk, our Rabbis didn't mean till he becomes crazy, but as is written in Rambam one must become drunk until he falls asleep in his drunkenness.

And the Aruch Hashulchan writes (695:10), we no longer rejoice till we come to damage property, and therefore if one damages nowadays he is liable to pay.

But the other *poskim* don't differentiate between nowadays and previous times. ו"ע לדיניא.<sup>3</sup>

### What is the din if he sends the mishloach manos on condition that the recipient returns a mishloach manos?

If he conditions his *mishloach manos* that the person must return a *mishloach manos*, neither are *yotze* the mitzvah of *mishloach manos* since this is considered a loan, and when he returns a *mishloach manos* it is considered returning the loan. So appears from the Taz (965:5) according to Rashi. But according to the Ran, and so rules the Mishnah Berurah, even a conditioned *mishloach manos* is considered *mishloach manos*, and he has fulfilled the mitzvah. However, we could say that even according to the Ran, they only fulfill the mitzvah if they swapped their *seudos* without making any condition, and if so it is considered a present and he fulfills the mitzvah of *mishloach manos*. But if he explicitly makes a condition, it could be that according to all views he hasn't fulfilled the mitzvah of *mishloach manos*.

**It could be that there is even a problem of ribis.** The Taz brings proof to his ruling that they aren't *yotze*, from the law that one may not say to his friend "eat with me what you gave me to eat," because this is *ribis*, since the food is then reckoned as a loan, and if he gives him to eat more than he ate, it is *ribis*. If so, here it could also be prohibited because of *ribis* [and even if he returns the same amount, it could be *assur* due to the *din* of *סאה בסאה* which is prohibited, since the price could fluctuate].

But if he made a condition and the person immediately returned a *mishloach manos*, there is certainly no problem, since he didn't gain from the time the first *mishloach manos* was with him, and the whole *issur* of *ribis* is the time saved between the loan and the repayment. Similarly, he may not mention that he is returning a *mishloach manos* to repay the debt.

From the wording of the Taz it doesn't seem that there is an *issur* of *ribis*, but the Shoel Umeshiv writes in his *sefer* Chelek Shivah that the Taz indeed meant that it is prohibited because of *ribis*. See footnote for more on this.<sup>4</sup>

### If one owes his lender money, he must be careful not to send him mishloach manos due to ribis.

If he hasn't yet repaid the loan it is forbidden to give a *mishloach manos*, as is ruled in *Yoreh Deah* (160), one may not give a present to the lender if he wouldn't have regularly given him a present.

But one can ask, since the borrower is now acquainted with the lender, he would have sent him a *mishloach manos* even if he hadn't lent him money, just as he sends *mishloach manos* to other people. But it seems that it is prohibited, since he is only acquainted with him due to the loan, and therefore he is only giving him the *mishloach manos* because of the loan. And even though *mishloach manos* is a mitzvah, it is nevertheless prohibited because of *ribis*, as is ruled regarding *tzedakah* that it is prohibited to give *tzedakah* when there is a problem of *ribis* (Shulchan Aruch Harav beginning of *ribis*).

### But is it permitted to send a mishloach manos after repaying the

3) See Beis Yosef who cites the Terumas Hadeshen that if one takes other people's food it isn't considered stealing, and the Beis Yosef notes, that this is only in those times when it was customary to take away food from others, but since this is not our custom, there is no difference between Purim and the rest of the year. We see from the Beis Yosef that these *halachos* indeed depend on the custom, as is written in Aruch Hashulchan.

4) We will clarify this *din* in short: It is forbidden to say, "eat with me what you gave me to eat," and even if he says it is a present, it is prohibited, since it looks like *ribis*. But the *din* regarding *shushvinin* (friends) is that if he ate at his home, he may return a meal, and even if he returns a bigger meal it isn't *ribis*. The Rashbam explains the *heter* of *shushvinin*, that it isn't *ribis* because they don't care if he gives more or less, and all they care about is that they eat together, and the only reason he gives him more is due to their friendship. The Raavad gives another explanation: The reason *shushvinin* isn't *ribis*, is because he only returns a bigger meal for his own honor, and not because of the loan.

Regarding *mishloach manos*, it is the same as *shushvinin* and therefore there is no *ribis*, since he only returns a bigger *mishloach manos* because of friendship and not because of the loan, as is the reasoning of the Rashbam. And also according to the reasoning of the Raavad, with *mishloach manos* it is permitted because he gives a bigger *mishloach manos* to honor himself.

But according to the Shoel Umeshiv who rules that *mishloach manos* is forbidden because of *ribis*, he must be differentiating between *shushvinin*, which is permitted, and *mishloach manos* which is prohibited.

## loan, if he doesn't say that it is for giving him the loan?

This could be permitted, since now the lender and borrower are friendly, and that is why he is sending the *mishloach manos*. And especially because *mishloach manos* is generally taken as a token of gratitude and not as payment, and

according to the Machane Efraim (*ribis* 10) a token of gratitude isn't included in the *issur* of *ribis*.

But the Hagahos Ashri holds that even belated *ribis* after repaying the debt is prohibited if he sends the present because he was so kind-hearted to loan him the money.<sup>5</sup>

## Is it geneivas da'as if he gives a present from maaser gelt?

The Maharam Shik writes in a *teshuvah* (*Yoreh Deah* 230) that there is no *geneivas da'as* in giving a present from *maaser gelt*, because even if he gave *maaser* itself the recipient must show gratitude.

5) And so holds the Beur Hagra (*Yoreh Deah* 161), that even a present after repaying the debt is *assur* because it is a belated *ribis*.

# - On the Agenda -

## Is Giving a Gift a Problem of Ribis?

Many ask, is it permissible for a borrower to give a gift to the lender, such as a wedding present or bar mitzvah present? Similarly, is it permissible to send him *mishloach manos*, if he wouldn't have sent him a *mishloach manos* had he not lent him the money?

First of all, it must be clarified that *ribis* is prohibited even if it is given to the borrower in the form of a gift and not as *ribis*, as explained in Shulchan Aruch (*Yoreh Deah* 160:5), and Shulchan Aruch adds (17) that only *talmidei chachamim* are permitted to lend food to each other, since it is certain that they only meant to give gifts to each other. But others who aren't *talmidei chachamim* are not permitted to do so, and the Shach explains the reason, because we attest that the gift was given because of the loan, and is therefore prohibited.

Therefore, if the borrower has not yet returned the entire debt to the lender, the gift is part of the payment and it is therefore *ribis*, since the borrower returned to the lender

more than he lent to him, and he can't claim that it is a mere gift.

This can be proved from the *halachah* of *mishloach manos*, where the *poskim* rule it is prohibited for the borrower to send a *mishloach manos* to the lender. Even though he is not giving the *mishloach manos* because of the loan but to fulfill the mitzvah of Purim, nevertheless it is prohibited due to the *issur* of *ribis*, and even though it is considered a friendly gift and not because of repayment of the debt, it is included in the prohibition of *ribis*. Even if he doesn't say that he is giving the gift because of the loan, it is prohibited.

That is regarding a loan that has not yet been repaid.

But there is another type of prohibited *ribis*, where the borrower gives the *ribis* to the lender after the loan is repaid. This is called *ribis me'ucheres* (belated *ribis*), and it is *ribis de'rabanan*. Because any additional money, or money equivalent, that the borrower gives to the lender because of the loan, even if he gives it to him after the loan is repaid, is prohibited, because he is giving it as a result of the loan.

The Rosh rules that the *Chachamim* only prohibited *ribis me'ucheres* if the borrower explicitly states that he is giving the gift because of the loan. But if he doesn't say so, even if he gave the gift because of the loan, it is permitted, since he gave the additional money or gift after the loan was already repaid. But the Rambam disagrees and prohibit even without stating that he is giving the gift because of the loan.

Therefore, in the case of *ribis me'ucheres* we can be lenient to give a gift if one doesn't state that it is because of the loan, since the Rema (160:6) rules according to the Rosh that it is only prohibited if the borrower explicitly states that his intention in this gift is for the loan. The Shach writes that every case must be judged individually.

Back to our case of wedding gifts or bar mitzvah presents, since he is giving the present at the *simchah* it is as if he explicitly states that the gift is because of the *simchah*, and it is therefore permitted. And although their friendship is only because of the loan, this doesn't seem to be a problem in *ribis me'ucheres*.

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ידידינו המוסר נפשו למען הכורת אברכים לפנה"צ הגה"צ הרב נפתלי בראנסדארפער שליט"א רב ביהמ"ד קנה בושם זכות הזקנת התורה יגן עליו בכל מילי דמיטב ולהמשיך בהנהגת הביהמ"ד ברוב עוז

