

## Skype Minyan

*Can one join a Minyan or fulfill the audible Mitzvot via skype, telephone or other voice-transmitting devices?*

*By Rav Yosef Fund / Posek for the Bet HaVa'ad, Lakewood*

Since the advent of voice-transmitting technology, towards the end of the nineteenth century, the *Poskim* have grappled with the prospect of fulfilling *Mitzvot* using such methods. Can one hear *Megilla*, join a *Minyan* or answer *Amen* over the phone? How about using a microphone or listening via radio, skype, facetime and the like?

### *The First Telephones*

The *Minhat Elazar*[1] (Rav Hayim Elazar Shapira זצ"ל of Muncacz, Hungary 1871-1937) was asked about someone who celebrated a *Simha*, and called his friend on the phone to share a virtual "*L'Hayim*". Can the listener answer *Amen* on the *Beracha* of *Bore Peri HaGefen* he hears over the phone?

In his answer, the *Minhat Elazar* points out that if we were to consider listening via telephone as if one is hearing the actual voice for the purpose of fulfilling a *Mitzva*, we might need to be concerned about the following statement of the *Shulhan Aruch*[2]: "*If ten men are in one place, and are reciting Kaddish and Kedusha, even one who is not with them may answer. However, there are those who say that there may not any uncleanness or idol between them*". Would we worry that there may be uncleanness in between the one listening and the one reciting the *Beracha*?

The *Minhat Elazar* asserts that this is not an issue, since the telephone signal is carried in the telephone wires, which, at the time of the *Minhat Elazar's* response, ran at a height greater than 10 *Tefachim* above ground. Such wires would be considered to be in a domain of their own. [This reasoning may not necessarily be applicable in the case of modern-day cell phone or internet communication which is often carried by waves through the air rather than through wires.]

Still, with regards to hearing *Shofar*, the *Minhat Elazar* writest that one cannot fulfill the *Mitzva* over the telephone [the discussion with regards to *Shofar* is largely a theoretic one, since the obligation to hear *Shofar* would always be on *Yom Tov*]. His reason is that one must hear the sound of a *Shofar*, not the sound of an echo. He describes the sound of a person over the telephone as a weak sound – not entirely similar to the sound of the one talking. So too, the sound of the *Shofar* would not be true to the original.

### *Live vs. Recording*

However, Rav Nattan N. Schlissel[3] זצ"ל, a student of the *Minhat Elazar*, differentiates

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between a phonograph or other recording devices and a telephone. He asserts that when hearing a voice over a telephone one is hearing the actual speaker's voice, immediately and without any *Hefsek*. This is not the case with a phonograph where the sound is stored and heard at a later time. He compares hearing over a telephone to hearing *Shofar* with the aid of an ear-trumpet, something which Rav Yaakov Hagiz, in *Halachot Ketanot* [4], allows.

Rav Shlissel writes that his teacher's response in *Minhat Elazar* was published in the year 5667(1906) and may have been actually written even earlier. In the ensuing forty years, telephones had improved, and while voice is not always transmitted clearly, *Shofar* and trumpet sounds are always heard clearly, a point which he reports he confirmed many time through experimentation.

### General Perception

Interestingly, he quotes a responsa found in only some editions of *Teshuvot Sha'are De'ah* (Levitan)[5] where it is written that in case of difficulty there is basis to consider the sound heard over a telephone as the sound of a *Shofar*, since "*it is generally accepted amongst those who have a telephone and make use of it that the sound heard over a telephone is the voice of the speaker without any change*".

It is not entirely clear what the *Sha'are De'ah* is attempting to prove by citing the popular perception. It is difficult to say that he is citing the popular perception to establish the facts[6]. It may just be that the *Sha'are De'ah* is relying on the perception of the public, in order to establish the *Halachic* perception of voice over the telephone. Since users perceive the voice they are hearing as

that of the speaker, therefore we ought to treat it *Halachically* as the same.

### Rav Auerbach's Position

However, Rav Shlomo Zalman Auerbach[7] זצ"ל takes the position that all sound heard over a telephone, or even a microphone, is not considered the sound of the *Shofar* or the original speaker, but rather the sound of the loudspeaker. Rav Auerbach explains that it is like when one inserts a record into a gramophone where the needle rubbing against the record is causing the sound coming from the speaker. It is not the sound of the voice which was recorded, but rather the sound of the needle's interaction with the record. Similarly, when a person talks or blows a *Shofar* into a microphone, the sound heard from the speaker is not the original sound, but a new sound.

Therefore, according to Rav Auerbach, one cannot fulfill *Mitzvot* or *Berachot* through hearing sound over a microphone.

In a footnote, Rav Auerbach adds that, after the original article was published, he had occasion to talk with the *Hazon Ish*. The *Hazon Ish* stated that in his opinion "*it may be that since the sound heard is created through speech, and is heard immediately as is normal speech, possibly this is considered as hearing from a speaker*" [it may be that this argument is what Sharei Deah intended by referring to popular perception]. Rav Auerbach added, that he did not understand the position of the *Hazon Ish*.

It is worth noting that Rav Henkin[8] זצ"ל writes that one who can, even with difficulty, hear without a hearing aid should not use it [on *Shabbat* and/or for the performance of other *Mitzvot*] since there are those who consider sound heard through it as sound heard through an echo.



## Skype Minyan

What about participating in a minyan from afar, and hearing the prayers using modern distance communication methods?

As mentioned earlier, the *Shulhan Aruch*[9] rules that if ten are in one place and reciting *Kaddish* and *Kedusa*, even one who is not with them may answer, and there are those who say that there may not be in between uncleanness or an idol. The *Mishna Berura* comments that the *Shulhan Aruch* means to include even one who is found in a different house quite far away. When a quorum of ten are in one place – the *Shechina* dwells amongst them. Therefore, even an iron curtain would not block any who wish to join them from connecting with *HaKadosh Baruch Hu* on this higher level. Certainly, one cannot be counted towards a *Minyan* if he is not in the same location as the other. However, can he listen to a minyan using Skype and answer *Amen*?

Rav Aurbach[10] writes that perhaps only one who is standing near a synagogue and hears the prayers over a loudspeaker may answer *Amen*, but someone who is standing at a distance and only hears a blessing from loudspeakers should not answer *Amen*. His reasoning seems to be that to answer *Amen* there must be a connection between the one who recites the *Beracha* and the one who answers. Similarly, the *Avne Yashefe*[11] quotes Rav Elyashiv[12] as saying that one who answers *Amen* to a *Beracha* heard over the radio is comparable to one who answers *Amen* upon receipt of a telegraph that somewhere in the world someone recited a blessing.

EDITOR'S NOTE: *An expanded version of this article, relating especially to hearing the Megilla via microphone and hearing aids will be published B"H in our upcoming Adar Edition of the Sephardic Halacha Journal. Stay posted!*

### Sources:

[1] 2:72 [2] OH 55:20 [3] Printed in *Yerushat HaPeleta* 5766, Siman 10 pg. 28 [4] 2:45. [5] 1:2. He mentions that some editions have a completely different response printed in the same *Siman*. See also *Sha'are De'ah*, 1:194. [6] See *Me'ore Esh* ed. 5770 (Vol. 2 *Sha'ar* 4 pg. 564) who writes that he feels the need to dispel the notion that the actual voice of the speaker is transmitted over telephone wires or radio waves. [7] *Me'ore Esh*, ibid. pg. 561 [8] *Edut L'Yisrael* pg. 122 [9] OH 55:20 [10] Ibid. pg. 563 [11] Vol. 1 OH 9 [12] *Avne Yashefe* does not identify Rav Elyashiv by name; *Otzar Teshuvot L'She'elot HaMetzuyot*, Siman 40, attributes the quote to Rav Elyashiv.

## Fishing for Customers

*Is one allowed to lure his competition's customers away?*

*By Dayan Shlomo Cohen, Badatz Ahavat Shalom, Yerushalayim*

not given up on his song, and remains the Halachic owner as explained above.

The case of the fisherman discussed in the previous article in this series presents a tremendous challenge to the Jewish businessman as far as competition is concerned.

To briefly recap, the *Gemara*[1] tells us that a fisherman must keep away from another fisherman who has attracted fish around his bait, and is just about to catch them. If he does catch the fish that the other fisherman was about to catch, he is considered as an actual thief and not just as one who has acted immorally.

We explained that opening a new shop next to an existing one is permitted, and cannot be compared to the scenario of the fisherman, even though customers of the existing shop may be taken by the new one, as it is not inevitable that they will buy from the existing shop, as they have free will, and will choose for themselves from whom they wish to buy.

There are however situations that can arise in every day business where a direct comparison to the case of the fisherman can be made. The *Hattam Sofer*[2] discusses the case of a customer who is already inside the shop of a competitor, standing in line to pay for his purchase, when another shop owner approaches him and suggests that he return the goods to the shelf and come to his store where he can buy the same merchandise cheaper.

This case would be comparable to the case of the fisherman, and according to the *Hattam Sofer*, be considered as actual theft. The reason is because in this case, the customer is already 'inside the net' of the shop, and it is inevitable that he will complete the purchase[3].

Let's consider the following scenario, in the light of the above:

*Roni's house and car is insured by the ABC Insurance Company, and he has been a customer of theirs for twenty years. The DFG Insurance Company approached Roni, inquiring how much he pays each year, and what is included in his policy with the ABC Company. They then offered him another package, and tried to persuade him to leave the ABC Company and transfer his business to them.*

Is this the same as taking fish out of the net of another fisherman, while his net is still in the water? While the fisherman has made no actual act of acquisition he almost inevitably will. So too, the ABC Insurance Company have not yet attained next year's business from Roni, but it is almost inevitable that they will. Roni is already in the boundaries of their "net", and it may be considered as actual theft to aggressively persuade him to leave ABC. This would be tantamount to taking a fish out of the

boundaries of the other fisherman's net while the net is still in the water.

Does this mean that a businessman can never make a pitch for the customer of another?

No, it does not!

All businessmen can certainly advertise their business, as long as the final decision is left to the customer, and the competitor does not 'sit on him' until he agrees to move his business from a competitor.

So, very aggressive marketing methods towards the customers of a competitor may be *Halachically* questionable, and only a more passive marketing campaign, pointing out your good points and leaving the final choice to the customer, would be permitted.

The dividing line is not to be drawn easily and will depend on whether the marketing methods used are similar to removing the fish from the first fisherman's net while still in the water, and taking a large fish which the first fisherman has tracked down to his hole, and the bait is just waiting for him at the entrance.

Another scenario that should be considered is an everyday occurrence in Jerusalem. The bus company built a central bus station at their own expense. Buses to all over the country leave from there every few minutes.

The bus station attracts travelers from all over the city, who enter the building and wait at the relevant terminal for their bus.

They are now in the 'net' of the bus company and it is just a matter of time before they will be 'caught' (upon boarding the bus). Were a taxi driver to approach these 'fish' (customers) while they are waiting in line, telling them that he has a taxi waiting





outside, and will drive them to their destination for the same price as the bus company charges, he may be guilty of actual theft, and not just immoral behavior according to the *Hattam Sofer*.

The number of scenarios are endless, and much care must be taken in comparing cases to each other.

It is not my intention in these articles to issue *Halachic* rulings, but simply to raise questions and encourage the reader to examine similar situations which may arise in his business dealings, and discuss the morality of them with his rabbi.

*May I conclude by wishing you all 'good fishing'!*

**Sources:**

[1] Bava Batra 21b [2] HM 79 [3] This can be compared to the way that Rashi explains the case of the fisherman; that the first fisherman has tracked a large fish to his hole, and has placed bait at the entrance, and is just waiting for the fish to emerge and take his bait. So too, the customer is just about to give his custom to the store owner, and taking it away will be actual theft. It also fits in with the explanation of the "Ri Megash" mentioned in the first article of this series, that the first fisherman has the fish within the boundaries of his net, but the net is still in the water. All that is required is to lift up the net, and the fish are his, so too, in the case of a customer standing in line to pay, he is almost caught already, and to take his custom away would be theft.

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