

The Camel, the Candle & the Convenience Store

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One of the most famous disputes regarding Chanukah lights is the dispute between Beit Shammai and Beit Hillel as to whether one should decrease the number of candles throughout Chanukah or increase them. This dispute involves two schools of Tannaim, sages of the Mishna, and is recorded in the Gemara, *Shabbat* 21b. This dispute does not appear in the Mishna, but rather in a *beraita* (a *beraita* is defined as an oral ruling from the Mishnaic period that was not included in the Mishna). The holiday of Chanukah does not have a dedicated tractate or even a chapter in the Mishna to discuss its laws. In fact, throughout the six orders of the Mishna, there is only one reference to the Chanukah lights and it is somewhat tangential.¹ The Mishna states:

If a camel was carrying flax and passed through the public thoroughfare and his flax extended into a store and caught fire from the candle of the storeowner and subsequently burned the building, the owner of the camel is responsible for the damage. If the storeowner left the candle outside, the storeowner is responsible. R. Yehuda says: If it was a Chanukah light [that was left outside], he is exempt.

Bava Kama 62b

גמל שהיה טעון פשתן ועבר
ברשות הרבים ונכנס פשתנו
לתוך החנות ודלקו בנרו של
חנוני והדליק את הבירה בעל
גמל חייב הניח חנוני נרו מבחוץ
החנוני חייב רבי יהודה אומר
בנר חנוכה פטור.
בבא קמא סב:

The ruling of R. Yehuda doesn't seem very relevant to the holiday of Chanukah or the laws of lighting. It addresses the reality that Chanukah lights are lit outside, but is focused on how that reality relates to the laws of torts. Yet, as we analyze the opinion of R. Yehuda and those who dissent, we will see how this Mishna teaches us some laws relating to lighting Chanukah candles, as well as messages that can be gleaned from the discussion.

¹ There are a number of suggestions as to why the actual laws of lighting Chanukah lights do not appear in the Mishna. See R. Moshe Tzvi Neriya, "Why Aren't the Laws of Chanukah Taught in the Mishna?" (Hebrew), *Shanah B'Shanah* 5748 pp. 159-168, who quotes three different suggestions. First, the laws of Chanukah are listed in *Megillat Ta'anit*, which predates the Mishna. Therefore, there was no need to include them in the Mishna. Second, Chanukah was considered by the Romans to be a symbol of rebellion and therefore, for political reasons, a specific tractate dedicated to the laws of Chanukah was not included in the Mishna. Third, the Mishna does not include other common laws such as *tzitzit* or *tefillin* because they were well-known and there was no need to record them. The laws of Chanukah were also well known when the Mishna was compiled and therefore they were omitted from the Mishna. Much of R. Neriya's article deals with a suggestion attributed to R. Moshe Sofer (Chatam Sofer) that R. Yehuda HaNasi, the editor of the Mishna, was a descendant of King David and he omitted the laws of Chanukah because the Chasmonaim inappropriately usurped the Kingdom of Israel from the descendants of King David. R. Neriya contends that R. Sofer would have never made such a comment and shows why this suggestion has many flaws.

The Tosefta presents the view of the Chachamim who disagree with R. Yehuda:

R. Yehuda also says that regarding a Chanukah light, the storeowner is exempt because he placed it with permission. The rabbis (Chachamim) say that in all situations the storeowner is responsible, similar to those who place a sukkah on Sukkot in public at the door of their store. Even though they have permission to place it there, if someone trips on it, they are responsible.

Tosefta, Bava Kama 6:13

וכן היה ר' יהודה אומר בנר חנוכה פטור מפני שהניח ברשות וחכמים אומרים בין זה ובין זה חייב כגון אילו מסככין על פתחי חנויותיהן ברשות הרבים בחג אע"פ שיש להן רשות ובא אחר והוזק בהן הרי זה חייב.
תוספתא, בבא קמא ו:יג

This Tosefta, which is recorded in the Talmud Yerushalmi, *Bava Kama* 6:8, provides a fuller picture of the debate between R. Yehuda and the Chachamim. According to R. Yehuda, the storeowner is not liable because he lit the candle “with permission.”² For the Chachamim, having permission to light the candle in public doesn’t exempt one from liability. They support this idea from another example: someone who puts up a sukkah that extends into the public thoroughfare. The Chachamim take it as a given that the owner of the sukkah is liable if someone trips on the sukkah and gets hurt. Why should the case of the Chanukah light be any different?

Rashba, based on the explanation of the Tosefta (which he quotes from the Talmud Yerushalmi) provides an analysis of the dispute between R. Yehuda and the Chachamim:

R. Yehuda says that if it was a Chanukah light, he is exempt because it was with permission. This means that he was authorized to place it there because he was performing a mitzvah ... However, not everyone who places something in public under the authority of performance of a mitzvah is exempt, for if he built a sukkah on the outside of his home [in public] and someone tripped on it, he would be responsible as it states in the Talmud Yerushalmi “similar to those who place a sukkah on Sukkot [in public] at the door of their store. Even though they have permission to place it there, if someone trips on it, they are responsible.” Rather, R. Yehuda only [exempts] someone who lights Chanukah lights [in public] because there is a mitzvah to leave the candle on the outside of one’s door in order to publicize the miracle.

Rashba, Bava Kama 62b

ר' יהודה אומר בנר חנוכה פטור מפני שהוא ברשות. כלומר ברשות דמצוה ... ומיהו לא כל מוציא ברשות מצוה פטור, שאלו עשה סוכה דמצוה על פתח ביתו מבחוץ והוזק בו חייב כדאיתא בירושלמי כגון אלו שעושין סוכות בפתח חנויותיהם בחג מפני שהוא רשות ובא אחר והוזק בו חייב, אלא כי קאמר ר"י בנר חנוכה שהוא מצוה להניחה על פתח ביתו משום פרסומי ניסא.
רשב"א, בבא קמא סב:

² The implication of the Mishna is that when the storeowner is exempt, nobody else is considered liable, including the owner of the camel. This in fact is the opinion of R. Yehoshua Falk, *P'nei Yehoshua*, *Bava Kama* 22b. R. Falk explains that the owner of the camel is not negligent in any way in allowing his camel to roam freely through the public thoroughfare. R. Yehuda Aryeh Leib Alter, *Sefat Emet*, *Shabbat* 21b, suggests that the Mishna does not mention the liability of the camel owner because it is not likely that a candle placed on the outside would cause a fire to a building. The only liability discussed at the end of the Mishna is regarding damage caused to the load on the camel. If the storeowner is exempt, then it is the camel owner’s loss regardless of whether he was responsible. However, if the fire damages someone else’s property, the camel owner would be responsible (according to R. Yehuda) because on Chanukah, when people light their candles in public, animal owners must take extra precautions.

According to Rashba, R. Yehuda's exemption is limited specifically to Chanukah lights which (in Talmudic times) must specifically be placed right outside one's doorway. The storeowner had no other choice but to place his candles in the public thoroughfare and as such, he was "authorized" to place them there. However, even R. Yehuda agrees that if someone places a sukkah in the public thoroughfare, he would be liable for any damage that ensues because there are many places where one can construct a sukkah. The Chachamim who disagree are seemingly of the opinion that even when one has no other choice, one is still liable for the damages.

R. Menachem Meiri has a different approach to understanding the Tosefta:

According to the Chachamim [one is liable] even when placing an item on the authority of fulfilling a mitzvah and Jewish law follows their opinion. This is what is stated in the Talmud Yerushalmi that those who place their sukkah at the door of their store in the public thoroughfare and someone trips on it, they are liable.

Beit HaBechira, Bava Kama 62b

ולדעת חכמים אף ברשות מצוה
אומרים כן והלכה כדבריהם וזהו
שאמרו בתלמוד המערב אלו
שעושים סוכתם בפתחי
חנויותיהם מבחוץ הוזק בה אדם
חייבים.
בית הבחירה, בבא קמא סב:

According to Meiri, R. Yehuda and the Chachamim disagree both about the Chanukah lights and the sukkah. R. Yehuda is of the opinion that one is exempt from liability any time one is engaged in a mitzvah. There doesn't seem to be any difference between a case where one had a choice to place the item elsewhere or not. The Chachamim disagree and hold one responsible, even when engaged in a mitzvah.³

Is There a Requirement to Light Close to the Ground?

In light of the Rashba's and Meiri's differing approaches to the dispute, we must now analyze a passage of the Gemara that relates to the proper placement of the Chanukah lights. The Gemara is bothered by the following question: Why does R. Yehuda exempt the storeowner? Why not require him to light his candle high enough so that the camel's load (or other cargo that passes through) doesn't catch fire?

Ravina said in the name of Rava: We see from R. Yehuda's [opinion] that one must place the Chanukah lights within ten tefachim (approximately 36 inches) because if we were to assume that above ten is permissible, why did R. Yehuda exempt [the storeowner]? We should tell him that he should have placed the candle above the height of the camel and its rider. Rather, we see that one must place it within ten. They said: No. In reality

אמר רבינא משמיה דרבא ש"מ
מדברי יהודה נר חנוכה מצוה להניחה
בתוך עשרה דאי סלקא דעתך למעלה
מעשרה אמאי אמר ר' יהודה נר
חנוכה פטור לימא ליה הוה ליה
לאנוחה למעלה מגמל ורוכבו אלא
לאו ש"מ מצוה להניחה בתוך עשרה
אמרי לא לעולם אימא לך אפי'

³ The Mishna, *Bava Kama* 32a, states that if one person is running and another is walking and they collide, the runner is responsible for the damage. The Gemara, ad loc., states that if the runner is running on Friday afternoon to greet Shabbat, he is exempt because he is running "with permission" of the mitzvah to greet Shabbat. This exemption seems to apply even according to the opinion of the Chachamim. Why is this case different than the case of the Chanukah lights? Meiri, ad loc., suggests that the exemption is specific to someone who is running. Ordinarily, the runner is responsible because he is behaving differently than the rest of the pedestrians and is therefore the one who caused the accident. However, on Friday afternoon, the rabbis established that it is normal to run and therefore, someone who is running is not considered the person responsible for causing the accident.

above ten is also valid. That which you said that he should have placed it higher than the camel and its rider, [we will respond that] since he is involved in a mitzvah, the rabbis didn't want to overburden him.

Bava Kama 62b

למעלה מעשרה מאי אמרת אבעי לך
לאנוחה למעלה מגמל ורוכבו כיון
דבמצוה קא עסיק כולי האי לא
אטרחווה רבנן.
בבא קמא סב:

Rava's inference seems to support Rashba's approach. R. Yehuda only exempts the storeowner in a situation where he had no other choice but to place the item in that location. As such, one can conclude from the fact that the storeowner is exempt that he had no other choice but to place the candle low to the ground. If it was acceptable to light the Chanukah lights in a higher location, the storeowner would be liable for not doing so. The Gemara then counters Rava's argument by claiming that in fact the storeowner could have lit in a higher location but the rabbis didn't require him to do so. An almost identical passage in the Gemara, *Shabbat 21b*, formulates this counter argument as follows: If we would require him to light in a higher location, perhaps he will refrain from lighting altogether. The counter argument seems to support Meiri's position. Even when there is a possibility of placing the item in a location that won't cause damage, R. Yehuda exempts someone who places an item in public for the purpose of fulfilling a mitzvah.

How do Rashba and Meiri explain the position in the Gemara that does not seem to support their respective arguments? Rashba, *Shabbat 21b*, writes that as a matter of halacha, one should light the Chanukah lights within ten tefachim of the ground.⁴ He notes that while the Gemara does provide a counter argument to Rava's inference, the Gemara never meant to reject Rava's argument outright, but rather to provide another theoretical possibility to understanding R. Yehuda's opinion. Rava's inference remains the true interpretation of R. Yehuda's opinion.⁵

Meiri, op. cit., is of the opinion that as a matter of halacha, there is no requirement to light the Chanukah lights within ten tefachim. Rava's inference is ultimately rejected. As such, one can explain that while Rava's premise was that R. Yehuda only exempts one who places a mitzvah item in public because there is no other option, the ultimate conclusion is that even if there are other options, R. Yehuda exempts the storeowner. This exemption is motivated by a desire to encourage the storeowner to perform a mitzvah without overburdening him.⁶

⁴ *Shulchan Aruch, Orach Chaim 671:6*, follows the opinion that one should place the lights within ten tefachim of the ground. *Mishna Berurah 671:27*, notes that some authorities rule that this does not apply when one is lighting indoors. He further notes that if one has a choice of lighting opposite a window that is seen from the street or lighting within ten tefachim of the ground, one should light opposite the window.

⁵ R. Meir Eisenstadt, *Panim Meiros* 1:47, questions those Rishonim who accept the opinion of the Chachamim that the storeowner is liable and also accept the opinion that one must light the Chanukah lights within ten tefachim. If one follows the opinion of the Chachamim, how can one conclude that one must light within ten tefachim? Perhaps the very reason why the Chachamim hold the storeowner liable is because he could have lit the candles higher up, but if he had no other choice, they too would exempt him. R. Yosef Shaul Nathanson, *Shoel UMeishiv* Vol. I 1:126, answers that if one follows Rashba's understanding, this question doesn't have any basis. The Chachamim never exempt someone on the basis of performance of a mitzvah. Therefore, the discussion in the Gemara is specifically within the opinion of R. Yehuda with the assumption that the Chachamim do not disagree about the laws of Chanukah, only the laws of torts.

⁶ This would explain why according to Meiri, R. Yehuda exempts someone who builds a sukkah in the public thoroughfare. There may be other places to build the sukkah, but requiring someone to find a new location because of potential tort liability may discourage him from fulfilling the mitzvah.

Rambam's Opinion

Rambam's position requires further clarification. Rambam does not codify the requirement to light within ten tefachim of the ground. This ostensibly means that according to R. Yehuda, the reason why one is not required to light the Chanukah lights higher up is that we don't want to overburden the storeowner. The Chachamim who disagree do require the storeowner to light higher up. Yet Rambam, in codifying the opinion of the Chachamim, provides a different reason for their opinion:

If the storeowner placed his candle on the outside, he is responsible, even for the damage to the flax because he placed the candle outside and even if it was a Chanukah light, he should have sat and guarded it.

Rambam, Hilchot Nizkei Mamon 14:13

הניח החנוני נרו מבחוץ החנוני חייב
אף בדמי פשתן מפני שהניח נרו
מבחוץ ואפילו נר חנוכה היה לו לישב
לשמור.
רמב"ם, הל' נזקי ממון יד:יג

Rambam seems to introduce a new concept to the discussion: that the storeowner should have sat and guarded the candle. Why doesn't Rambam provide the reason of the Gemara—that he should have lit higher up—and why does he provide his own reason?

R. Yisrael Lipschitz, *Tiferet Yisrael, Bava Kama 6:52*, suggests that according to Rambam, the Chachamim agree that one would be exempt from liability for creating a hazard while performing a mitzvah if there is no other option. However, such a situation is extremely rare because there is always the option of preventing the item from causing damage by sitting next to it and guarding it.⁷

According to Rambam, the logic of the Chachamim seems very compelling. How can we explain the opinion of R. Yehuda? Why doesn't he require the storeowner to sit next to the candle and guard it? Perhaps the answer is that R. Yehuda didn't want to overburden the storeowner and discourage him from performing the mitzvah altogether. If this was R. Yehuda's concern in not requiring the storeowner to raise his candle, we can certainly say that such a concern would apply to requiring him to sit and guard his candle. Raising the candle only requires the storeowner to erect or purchase a platform at the beginning of Chanukah, whereas sitting and guarding the candle each night for (at least) a half hour is a great expenditure of time.

It is possible that even Rava considered the level of effort required in explaining R. Yehuda's opinion. Rava may have assumed that R. Yehuda did not require the storeowner to sit and guard his candle the entire time. However, he did consider raising the candle to be a reasonable request of the storeowner, one that would not discourage the storeowner from fulfilling the mitzvah. To this, the Gemara argues that even the effort of raising the candle may discourage the storeowner from fulfilling the mitzvah.

Based on this analysis, we can explain why Rambam provides a different reason for the Chachamim than the reason provided by the Gemara. Sitting and guarding is a simpler, more

⁷ See note 3. R. Lipschitz suggests that according to Rambam, the reason why someone who runs on Friday afternoon is exempt is that he has no other means of protecting himself from causing damage to others. This is one of the rare situations where even the Chachamim exempt one for causing damage through performance of a mitzvah.

basic solution than raising the candle. It not only protects from damage caused by a passing camel, it accounts for other potential accidents as well. The reason why the Gemara didn't discuss this solution is that R. Yehuda never required someone to take such great efforts to avoid a hazard in order to fulfill a mitzvah. Therefore, the Gemara, which is focused on R. Yehuda's opinion, only discusses a solution that involves less effort.

Lessons We Can Learn from this Discussion

Almost all Rishonim⁸ follow the opinion of the Chachamim and *Shulchan Aruch, Choshen Mishpat* 418:12, does as well. There are a number of lessons we can learn from the opinion of the Chachamim, even if we don't plan on lighting our Chanukah lights in the path of load-bearing camels.

- **Don't Compromise Safety and Security for Convenience:** We are often faced with the challenge of deciding whether to choose between safety/security and convenience. People sometimes forgo wearing a bicycle helmet because it is too tight or too hot. People will take the chance of eating a sandwich that is potentially spoiled because it is more convenient than having to make a new one or going out to buy lunch. People will choose "123456" as their password on a website containing sensitive information because it is much more convenient than remembering "cQ!#u8." The Chachamim teach us that when it comes to the security of the property of others, we cannot choose convenience. They were fully aware of the inconvenience of sitting next to a candle every night, and the potential for it to discourage someone from lighting, but they chose security over convenience. If the Chachamim prioritize security over convenience when it comes to damage of property, we should certainly prioritize safety over convenience when it comes to our own lives and the lives of others. We live in a time when we aren't accustomed to using candles on a regular basis and therefore, the potential for accidents as a result of Chanukah lights is greater. When we are asked to choose between remaining home to supervise the candles and leaving to get to a Chanukah party on time, we should consider the opinion of the Chachamim that safety comes before convenience.⁹

⁸ A comment appears in Rabbeinu Yitzchak Alfasi's (Rif) discussion of the laws of Chanukah, *Shabbat* 9b, that halacha follows the opinion of R. Yehuda. R. Yehoshua Boaz ben Shimon Baruch, *Shiltei HaGiborim*, ad loc., doubts that this comment was written by Rif and claims that it was a mistake that was added into later editions. *Shach* 418:5, concurs with *Shiltei HaGiborim*. R. Moshe Sofer, *Shabbat* 21b, claims that Rif's ruling is authentic by explaining that both the Chachamim and R. Yehuda agree that if one damages property while performing a mitzvah, he is exempt. They only disagree when performing part of a mitzvah that isn't required but serves to enhance the mitzvah. According to R. Sofer, the storeowner is not required to light outside because people regularly go into the store and therefore, lighting inside the store would be sufficient. This storeowner wants to enhance the mitzvah by lighting outside and therefore, the Chachamim do not exempt him. R. Yehuda nevertheless, exempts him even when his actions were only performed to enhance the mitzvah. Incidentally, R. Tzvi Elimelech Shapira, *Chiddushei Mahartza* no. 5, suggests that the Mishna singles out the storeowner specifically because it is the only situation where one must light in the public thoroughfare. Ordinarily, one lights at the entrance of one's home, which in Talmudic times was in the courtyard. However, the storeowner's doorway opens directly to the public thoroughfare and he therefore has no choice but to light in the public thoroughfare.

⁹ *Shulchan Aruch, Orach Chaim* 672:2, rules that one may extinguish the candles a half hour after the proper time to light. Extinguishing the candles is a safer solution than leaving the candles lit and unattended.

- **Make Sure to Consider Others When Performing a Mitzvah:** Lighting Chanukah lights is a great mitzvah. It publicizes the miracles of Chanukah and in that sense, it constitutes a *kiddush HaShem* (sanctification of God's name). Yet if we asked the next door neighbor of the storeowner—who may not celebrate Chanukah with as much fervor or at all and whose house was just burned down because a load-bearing camel brushed by the candle—if that candle brought him closer to God, he would probably say no. The Chachamim teach us that when we perform mitzvot, we must consider how the mitzvah will affect others. We must take the proper precautions to make sure that our mitzvot are a positive experience (or at least neutral) for others and not a negative one.
- **Observance of Mitzvot Should be a Pleasant Experience:** R. Yehuda was more lenient on the storeowner in order to encourage him to perform the mitzvah. While the Chachamim disagree in the face of preventing damage, they ostensibly agree that when safety does not conflict, we should try to make every effort to make sure that performance of mitzvot is a positive experience and not a burden. When a newcomer comes to shul and is greeted warmly and made to feel welcome, it is more likely that he or she will come back again. However, if this person is ignored and feels out of place, we are discouraging him or her from coming back. If we give the impression to our children that Judaism is a series of burdensome acts, then we are discouraging them from performing mitzvot when they are older. If we make observance of mitzvot pleasant, there is a much greater chance that they will embrace it.



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