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Family, Business, & Jewish Life Through the Prism of Halacha



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THE RIGHT OF REFUSAL

*Medical coercion in Halacha
Mind Your Own Business!
And When Not to*

Rav Baruch Fried

Are You Your Brother's Keeper?

Your naïve, young nephew is about to enter into a business venture that your experienced business acumen tells you is doomed to failure...

Your elderly mother-in-law would do far better in a senior care facility, but she emotionally - and, in your opinion - foolishly refuses to be transferred...

All of your well-intentioned words fall on deaf ears and your constructive advice goes unheeded...

Can you take action? Must you take action?!

1 Note that in some situations there are legal considerations as well. This article does not intend to address them.

AN OBLIGATION TO INTRUDE:

Many people do not like to intrude in the lives of others, especially when the intrusion is unsolicited and unwelcome. But, at times, minding your own business is not a *Halachic* option.

At first glance, there are four obligations from the Torah to intervene into another Jew's affairs:

If someone is about to perform an action that is prohibited by the Torah, there is an obligation *L'Afrushe Me'Issura* - to forestall from sin.

If someone is about to do something that will lead to a loss of money, we must stop them as part of our obligation of *Hashavat Aveda*. [Although, literally, *Hashavat Aveda* means returning a lost object, the commandment

also applies to saving an individual from any type of financial loss.]

If someone is about to do something that will lead to a significant loss, physical, monetary or otherwise, we are commanded "*Lo Ta'amod Al Dam Re'echa*," do not stand by idly while your brother's blood is being spilled.

There is a general commandment of "*V'Ahavta L'Re'acha Kamocho*," to love your friend as yourself, meaning that you should not allow anything to happen to him that you would not wish upon yourself and you must save him from a situation that you would not want to be in yourself.

WHEN TO BACK OFF:

Nevertheless, a deeper look at these obligations reveals that intruding on the affairs of others is not always the proper thing to do.

Even when you witness someone about to transgress a prohibition, there are *Poskim* who say you do not have to stop him if he is aware that he is doing an *Avera* and chooses to do it anyway.

Regarding the obligation of *Hashavat Aveda*, the Rambam¹ states clearly that an *Aveda MiDa'at* - one who is consciously careless with his property - does not necessitate *Hashava*. [An exception to this would be where the owner is clearly not in his right mind².]

Regarding the prohibition of "*Lo Ta'amod Al Dam Re'echa*," the *Minhat Hinuch*³ surprisingly suggests that this prohibition does not apply for one who is committing suicide, based on the above rule of *Aveda MiDa'at*. Thus, if someone is willingly and knowingly

1 Gezeila 11:11. See also Ketzot HaHoshen 261:1 and Netivot HaMishpat *ibid*.

2 See Sanhedrin 48a, Yore De'a 349:3.

3 Kometz L'Minha 237:1.

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By Rav Yehoshua Grunwald

LABOR LAW

Who should desecrate the Shabbat at a birth?

ותלד רחל ותקש בלדתה.

And Rachel gave birth, and she had difficulty in her delivery. (Bereshit 35:16)

If there is a need on *Shabbat* for lifesaving medical care that entails *Hillul Shabbat*, should one seek a non-Jew or a minor to perform the *Melacha*?

The *Shulhan Aruch* (O.H. 328:12) rules that one should do it himself. The *Rama* argues and says that if it will cause no delay, one must use a non-Jew or do the *Melacha* with a *Shinui* (in an usual manner, thus turning it into a rabbinic prohibition).

The *Taz* (*ibid.*) objects to the *Rama's* approach, because onlookers will mistakenly conclude that saving a life doesn't override *Shabbos*, and next time they will search for a non-Jew while the patient dies.

Many *Poskim* follow the *Taz*, however, Rav

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spotlight

This week featured the first shiur in the Professional Halacha Shiurim Series of the Bais HaVaad Medical Halacha Center. Rabbi Eli Gewirtzman, shlit'a, one of the Senior Poskim in the Medical Halacha Center, presented the first shiur and was well received. These advanced shiurim are open to professionals in the medical community and explore contemporary medical halacha topics in depth.

GENERAL HALACHA

PENNIES ON THE DOLLAR

Can a debt settlement be reversed?

By Rav Baruch Meir Levin



We all take on too much. Often customers invest in their businesses with the hope that they will be able to advance only to find that the specific venture was not profitable and they are left with a pile of bills.

Let us take the example of a customer who had fallen on hard times and had outstanding bills to the tune of 25,000 dollars. One day, he came over to the vendor and said that although he didn't really have any money to pay, he would somehow scrape together 10,000 dollars to pay him if he agreed to accept it as full payment. Afraid that he would otherwise not get paid at all, he agreed to this settlement. He paid the 10,000 dollars and the vendor signed a letter stating that his bill had been settled in full.

A few years later, the customer's financial situ-

ation seems to have improved and the vendor would now like to collect the rest of the outstanding debt. Is there any way one can retract their past agreement to discharge his debt?

DISCHARGE UNDER DURESS

Ordinarily, when one agrees to relinquish his right to a monetary claim, he can no longer retract on the agreement. However the Halacha is that a relinquishment must be done voluntarily. If a relinquishment is done by force or under duress it is not valid. For example, if a debtor tells his lender: "if you don't discharge my debt I will kill you", and the lender acquiesces, the discharge is not valid and the debt remains in force. Moreover, even if the debtor only threatens to hurt his lender financially, it is considered an act of force. For example, if the debtor says, "if you don't discharge my debt I will persuade one of your vendors to cut ties with you", the discharge will be invalid.

In our case, since the debtor threatened to avoid paying you even the 10,000 dollars that he was capable of paying unless the lender agreed to a settlement, he in effect forced the lender to relinquish part of the debt. Consequently, the settlement is null and void and the lender may require him to pay the remaining balance of his bill.

A FAIR DEAL

Nevertheless, there is one very important limitation to this Halacha. A relinquishment is only considered as having been done by force if the debtor threatened to act in a way that was not within his Halachic rights. However, if he threatened to act within his Halachic rights, he is not considered as having forced the relinquishment. For example, a debtor who says to his lender, "you may not use my swimming pool unless you discharge my debt", is not considered to be forcing a discharge since it is fully

within his rights to not allow the debtor into his swimming pool. Rather, this is just viewed as a negotiation of a conventional two-way deal; the exchange of swimming pool usage for a debt discharge. Only when the debtor threatens to infringe on the lender's rights in a manner that is beyond his Halachic ability is it considered an act of force.

In this case too, if it was within your debtor's Halachic right to avoid paying the loan at the time of the settlement yet he did so anyway, then the discharge cannot be considered a forced one but rather part of a conventional two-way deal.

VALID EXCUSES

When does a debtor have a Halachic right to avoid paying the loan at a specific time? There can be a number of possibilities for this. Firstly, a debtor is often not required to borrow money in order to pay an existing creditor. Therefore, if the debtor indeed did not have the 10,000 dollars and was only able to obtain it through a loan – then he possibly has a right not to pay the lender. Moreover, even if he did have 10,000 dollars but needed it for certain basic imminent necessities, he would not have been required to give it to the lender.

Finally, even if the debtor had 10,000 dollars available to pay towards his debts, yet he had other creditors too, then he was not necessarily required to give it all to that particular lender at the expense of the other creditors. In any of these circumstances pertained to the debtor, then his original payment of 10,000 would be considered to be an act beyond the letter of the law, and thus the associated settlement is not considered a forced one and remains valid. Unfortunately, this would leave the lender with no recourse in collecting the balance of the loan.

MATTERS OF INTEREST

Avissar Family Ribbit Awareness Initiative: Ribbit to Akum, Se'ah B'Se'ah



RIBBIT FROM A NON-JEW, PART 2

In our previous issue we spoke about *Ribbit* from a non-Jew from a Biblical standpoint. Nevertheless, *Hachamim* forbade lending to a non-Jew with *Ribbit*, if that *Ribbit* would've been classified as *Ribbit D'Oraita*. The reason for this decree is in order that we keep our distance and not learn from their way of life.

There are however two exceptions to this rule. The first one is if one is lending in order to earn a living, and not merely to amass wealth. The second is that a *Talmid Hacham* whom *Hachamim* trusted would not be influenced by the *Akum*, may lend to them with *Ribbit*. *Tosafot* add that in our times when we are subject to the pressures of taxes, and our business dealings inevitably involve *Nochrim*, it is permitted to charge them *Ribbit*. These

interactions will not cause us to leave our protected communities, as we are already dwelling among them.

The *Hochmat Adam* writes that it is still a *Midat Hassidut* – a pious measure – to refrain from relying on this leniency. Some add that those living in *Eretz Yisrael* would still be subject to this decree (see also *Radak, Tehillim 15:5*).

Some include a *Mumar L'Hach'is* (one who wantonly rejected the Torah without personal gain), and a *Moser* (an informant) in the above *Heter*. There is some discussion whether the *Ribbit* can be collected when the borrower became a *Mumar* between the origination of the loan and its collection (see *Shulhan Aruch, Yore De'a 159*).

SE'AH B'SE'AH: MEASURE FOR MEASURE

Hachamim prohibited borrowing a certain measure of fruit, or other commodities, with the agreement to pay the exact amount of the same item. The reason for this prohibition is because the asset may increase in value before satisfying the obligation, and the borrower is actually returning assets of greater value than he borrowed.

HALACHOS OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis



Double-Loaf The Mitzvah of Lehem Mishne at the Shabbat Meal

What is the Mitzvah of Lehem Mishne (having two loaves of bread at the Shabbat meals)?

The *Gemara* (*Shabbat* 117b) teaches that on *Shabbat* one is obligated to recite *HaMotzi* on two loaves of bread. This serves as a remembrance to the double portion of *Man* (manna) that fell every Friday during the forty years that the Children of Israel traveled through the desert. Although the *Bi'ur Halachah* (263:2) maintains that this is only a rabbinic requirement, the *Aruch HaShulhan* (274:1) writes that having two loaves of bread at the *Shabbat* meal is derived from a Biblical reference.

Women are obligated as well, since they too were included in the miracle of the *Man*. Therefore, everyone should be given a piece of challah from one of the two loaves (*Mishna Berura* 167:83). If an individual at the meal has a dietary restriction and can only eat certain special types of bread (e.g., gluten free, spelt), that individual should place the special loaf (even if it is not whole) together with the loaves of the one reciting *HaMotzi*, so

There are two notable exceptions to this prohibition: a) if the borrower has a similar item in stock, or b) there is a fixed market value to the item.

The aforementioned prohibition can apply to foreign currencies as well. A foreign currency is considered a commodity, and therefore would be subject to the prohibition of lending *Se'ah B'Se'ah* when borrowing and repaying in that currency. For example, if one borrows Canadi-

an or Israeli currency in the United States to be paid back in the same currency that was borrowed, he transgresses this prohibition. If the borrower owns a minimal amount of that currency, it would be permissible.

When borrowing the local currency on the other hand, one may return the exact amount, even if it had appreciated in value. Even if inflation caused the value to drop sharply, one nevertheless repays only the amount borrowed.

that this bread too will be included in the *Lehem Mishne*.

What bread products are acceptable for Lehem Mishne?

Bagels, pitas, or any other type of bread, may be used for *Lehem Mishne*.

It is preferable to eat only *Pat Yisrael* on *Shabbat*. One who does so, may use bread that is not *Pat Yisrael* for the second loaf. The *Pri Megadim* explains that if one only has loaves that are *Pat Akum*, they may be eaten on *Shabbat*, even though one is normally stringent. (*Pri Megadim*, M.Z. 274:2).

One may borrow a *challah* (or any other bread) from a neighbor to use as *Lehem Mishne*, even though it must be returned and cannot be eaten (*Shemirat Shabbat K'Hilchata* 55:13).

The *Rivevot Efraim* (1:202) writes that one may even use dairy bread (which was made according to *Halacha*, either made in a small batch or with a unique shape) as the second loaf for a meat meal, even though it may not be eaten at the meat meal.

If one does not have a second loaf, *HaMotzi* should be recited on a single *challah*.

Can I use a frozen challah for Lehem Mishne?

There is a disagreement among *Poskim* as to whether a frozen challah that cannot be eaten at the moment may be used as the second loaf for *Lehem Mishne*. The *Shevet Halevi* (6:31) writes that this should be avoided if possible, since it is questionable if bread that is currently inedible can be used for *Lehem Mishne*. Rav Shlomo Zalman Auerbach, *zt"l* (*Shemirat Shabbat K'Hilchata* 55:39) held that if one anticipates eating the bread when it defrosts later in the meal, it may be used. However, many *Poskim* including *Minhat Yitzhak* (9:42), *Hacham Ovadia Yosef* (*Orah Haim* 8:32), and *Tzitz Eliezer* (14:28) held that a frozen challah may be used in any event. The *Minhat Yitzhak* explained that since the bread is fully baked, and the thawing is something that happens on its own, the bread is viewed as being completely edible even while it is in a frozen state.

A small piece of my challah broke off. Can it still be used for Lehem Mishne?

Ideally, one should use *challahs* that are completely intact. If a *challah* is missing a small piece, less than 1/48, there is a disagreement as to whether it is still considered whole (see *Sha'arei Teshuva* 274:1). Many *poskim* are lenient (*Minhat Yaakov*, *Mahatzit HaShekel*). The *Aruch HaShulhan* (274:5) writes that if one has no other bread, they should still use two loaves, even if they are both missing more than a 1/48.

If one can attach two halves of a loaf with a toothpick so that it appears that it is one complete loaf, then this may be used for (one loaf of) *Lehem Mishne* as well (see *Magen Avraham* 168:4).

May I use very sweet cinnamon *challahs* for Lehem Mishne (the two Shabbos loaves), even though they are more like cake than bread, and their Beracha would be Bore Mine Mezonot?

Rav Moshe Feinstein (*Igrot Moshe*, *Orah Haim* 1:155) was asked a similar question: May one use egg matzos for *Lehem Mishne*? The dominant opinion is that egg matzah is considered *Pat HaBa'a B'Kisnin*, and is therefore *Mezonot*. If so, one would assume that egg matzah cannot be used for *Lehem Mishne*. Nonetheless, Rav Moshe ruled that egg matzos can be used for the following reason: *Pat HaBa'a B'Kisnin* has a status of *Mezonot* because it is a dessert item. However, when egg matzoh is used for *Lehem Mishne*, it is considered to be the staple item of the meal. In *Halachic* terms, we refer to this as *Kevi'ut Se'uda*, and the *Beracha* is elevated to *HaMotzi*. Therefore, one may use egg matzos for *Lehem Mishne*. From this ruling of Rav Moshe we can extrapolate that cinnamon rolls, or any other cake roll, can be used for *Lehem Mishne*, and the *Beracha* of *HaMotzi* would be recited.

The *Mahatzit HaShekel* (274:1) writes that if one will be reciting *HaMotzi* on a regular loaf of bread, they may not use *Pat HaBa'a B'Kisnin* as the second loaf. In this situation, there is no *Kevi'ut Se'uda* on the cake since they are reciting *HaMotzi* on the bread and not the *Pat HaBa'a B'Kisnin*. The cake roll remains *Mezonot* and cannot be used for *Lehem Mishne*.

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throwing away his life, you have no responsibility to stand in his way.

While many *Rishonim* and *Aharonim* disagree⁴ with this ruling, they do not disagree with his reasoning. Rather, they list three reasons why the reasoning of *Aveda MiDa'at* does not apply:

The victim is also transgressing a prohibition of *Lo Tirtzah*, murder, and one must step in to save someone from being murdered.

The victim does not "own" his life and has no right to terminate it. Therefore, his conscious decision to kill himself is not valid.

We must assume that the victim is not in his right mind and did not make this decision rationally.

Consequently, in other instances where these three arguments do not apply, even if the repercussions may be significant, it is likely that all opinions would agree that one does not have to prevent someone from suffering a severe loss if he made a knowing decision to that effect.

Concerning the *Mitzvah* of "*V'Ahavta L'Re'acha Kamocha*", there are various factors that have to be considered. The rule is that before we jump to the conclusion that we would certainly want to be "saved" if we were in our friend's situation, we must introspect and ask ourselves if this really true.

Would we really want some well-meaning friend or relative intervene against our will just because they are convinced that they know what is good for us better than ourselves?

Based on the above, it would seem that this very *Mitzvah* of loving our friend as ourselves should *prevent* us from intervening. We certainly would want others to make every effort to explain to us why they feel we are mistaken, but ultimately, we would like to choose our own destiny and not be pushed to act against our will.

On the flip side, if the individual cannot execute his 'poor' decision alone, you certainly may not help him. That would be a flagrant violation of the prohibition of "*Lifne Iver Lo Titen Michshol*" – placing a "stumbling block" before a blind man.

REFUSING TREATMENT:

There is a fascinating ruling from Rav Moshe Feinstein *zt"l*⁵.

Rav Moshe was asked about a patient who refused to undergo a treatment that his doctors felt would be beneficial to his health. Rav Moshe ruled that if the patient refuses to go through with it because of the momentary pain or has simply given up on life, then his refusal is considered infantile and irrational and may be coerced. If the patient is of the opinion that the doctors are incorrect, then they must attempt to find someone that will convince him otherwise.

If, however, there is any danger involved in the procedure, even if medically it appears the lesser of two evils, the patient has the right to opt out and may not be coerced.

As always, a competent *Posek* should be contacted in each particular case.

⁴ See Igrot Moshe, Yore De'a 2, Siman 174, and Kli Hemda, Parashat Ki Tetze.

⁵ *Hoshen Mishpat* 2, Siman 73.

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Shlomo Zalman Auerbach in *Minhat Shelomo* says (and so it is reported in the name of Rav Moshe Feinstein) that this is limited to actual medical treatment, but an-

cillary processes (e.g., turning on lights) should optimally be done in a way that lessens the violation.

Strangely, although a woman in labor is considered a *Hole Sh'Yesh Bo Sakana*, a sick person with a life-threatening condition, even *Maran* agrees (*ibid.* 330:1) that a *Shinui* should be

The **Daf** in **Halacha**
Bring the Daf to Life!

מסכת מנחות, חולין

This Week's Topics

**RAV SHMUEL YESHAYA YOFFE,
ROSH CHABURA BAIS MEDRASH
GOVOHA**

- דף ק"ה Monetary Mitzvos: To Pay or Not to Pay?
- דף ק"ו When is a Bittul Not a Bittul?
- דף ק"ז Was There a Shabbos Crew at the Bais HaMikdash?
- דף ק"ח Chopped & Diced: Issurei Hana'a and Tum'as Oehlin
- דף ק"ט Condemned to Fire
- דף ק"י Dedicating Korbanos Today
- דף כ' Measuring Liquids vs. Solids

employed where possible. Why the difference? The *Mishna Berura* (*ibid.*) answers that childbirth is less of a worry because it is a natural process and very rarely dangerous. Nevertheless, where using a *Shinui* or finding a non-Jew would cause a delay, a Jew must act himself.



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