

S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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PAYING WITH FIRE:

Who Is Responsible for the California Wildfires?

Rabbi Yosef Greenwald

The recent severe fires in northern California, with the ensuing tragic loss of life and of property, gives us all pause to reflect on the great kindness of Hashem and to realize how much we depend on Him to protect us every moment of our lives.

That being said, we also can take some time to reflect on the *Halachic* ramifications such a situation creates.

Is a fire starter liable?

The *Halachic* questions raised by the California wildfires are many. To name a few: If someone lit a fire that caused a large conflagration, is he responsible to pay for everything the fire damages?

If the fire causes a loss of life, is the one who started it liable for the death penalty?

It appears that at least some of the California fires were caused by electrical malfunctions, and numerous lawsuits have been brought against the electric company to this effect. Does an electric fire have the same *Halachic* status as a manmade fire?

THE MAZIK OF FIRE:

Esh, fire, is one of the four *Avot Nezikin* – damage categories, which are listed in the *Mishna* in beginning of *Bava Kama*. A fire that one lights on his property and spreads and causes damage to someone else's property is considered *Mamon HaMazik* – damaging property.

The *Gemara* discusses whether damages caused by fire always fall under the category of "*Mamon HaMazik*", damage done by one's property, or sometimes fall under the category of "*Adam HaMazik*". There are a

number of important *Halachic* differences between the two classifications, which will be very pertinent to the California wildfires.

The *Halachot* of *Esh* are discussed in *Hoshen Mishpat*¹, however there is an opinion that not all of them are enforceable by a contemporary *Bet Din*.

In our times, we have lost the institution of *Semicha*, and our *Batei Din* do not have the full authority that they had in past generations. One ramification is that our *Batei Din* do not rule on uncommon cases. The majority opinion is that *Esh* is common enough that *Batei Din* today can rule on it.²

It is important to bear in mind that the *Mazik* of *Esh* does not refer solely to fire. Anything which damages through a "*Koah Aher*" – an outside force – for instance, debris falling from a wind and causing damage or water flowing through the force of a gust of wind also fall under this category.

HITZO OR MAMONO:

As an example of the damage that a fire can cause, for which the lighter would be liable, the *Pasuk* says a case where someone lights a blaze that goes into his friend's field and burns his pile of wheat. The *Gemara* tells us that this example is used because a pile of wheat is an entity that is out in the open and can be clearly seen. We learn from there that if a fire burns something which is covered (referred to by the *Gemara* as "*Tamun B'Esh*"), the lighter is not liable to pay.

In a later *Gemara*³, it is stated that there is a fundamental dispute between *Resh Lakish* and *Ribbi Yohanan* regarding *Esh*. *Resh Lakish* says that "*Isho Mishum Mamono*", one's fire is one's property and he is liable to pay for any damages it causes, just as he is respon-

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² *Pischei Teshuva* *ibid*:1

³ *Bava Kama* 25B

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Parasha & Halacha Shiur by Rabbi Chaim Naftali

CASTING LOTS:

Goral in Monetary Halacha

Partners that want to split up a partnership into equal parts, with all the property being of equal stature, the *Halacha* is that they cast lots – a raffle – to ensure a fair process.

The *Halacha* is that once one lot was picked (i.e. Reuven was assigned to Lot A, although the other lots weren't picked), the raffle is irrevocable. There is a dispute among the *Rishonim* whether this means that none of the participants can back out and the raffle system must be carried out for the rest of the lots or whether the one who received his portion must stick with it but the others can back out or remain partners on the remaining shares.

The *Gemara* discusses why a raffle works. At first, the *Gemara* compares it to the division of *Eretz Yisrael* by *Yehoshua Bin Nun*, although in that scenario there were also the *Urim V'Tumim*, which was a form of prophecy. Ultimately, the *Gemara* suggests that it is because there is a mutual benefit to the parties thus there is assumed agreement to the outcome.

Most *Rishonim*:

Rashbam,
Ram -

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spotlight
Dayan Daniel Dombroff, shlita, is beginning a new Sunday morning Hoshen Mishpat Habura to explore the Halachot of hiring and engaging employees: *Hilehot Sechirut Po'alim*. As a Dayan on our *Bet Din*, and a popular speaker, Rav Dombroff brings a wealth of practical experience to share with the members of this new morning Kollel.

GENERAL HALACHA

BRINKS CASH FLOW: Windfall or Highway Robbery?

By Rabbi Yehoshua Wolfe



An armored Brinks truck accidentally scattered money across a northern New Jersey highway on a recent Thursday morning, and as drivers got out of their cars to grab cash there were crashes. A windfall or highway robbery?

I'm driving on the freeway and the armored truck in front of me dropped its cash. Can I pocket the money?

A question few stop to ask.

Especially while the green-backs are still plastered to their windshield.

This article attempts to examine several aspects of this puzzling episode. In such a situation, are the drivers, in fact, permitted to keep the money?

Hashavat Aveda is one of the first *Mitzvot* we are taught as children. Finders are *not* keepers - and lost property must be returned to its rightful owner. The following paragraphs, however, focus on when you may keep lost property. The times that finders *are* keepers.

YE'USH

Maran in *Shulhan Aruch* (H.M. 262:5) states that after a person has expressed he has given up all hope of recovering lost property, the finder is entitled to keep it. This principle, called *Ye'ush* - despair, applies even when the finder knows the identity of the person who has lost the object. *Ye'ush*, however, cannot be applied when the object has entered the possession of the finder *before* the owner has had *Ye'ush*.

The *Hazon Ish* (*Bava Kama* 18:1) expands the scope of *Ye'ush* to include situations where a thought of *Ye'ush* occurs in the mind of the owner. He writes that no verbal declaration of *Ye'ush* is necessary.

IMPLICIT YE'USH

We've all been there. You're hustling down the street, and a \$20 on the ground stops you dead in your busy tracks. We now know that you must ask yourself, "Was the owner already *meya'eish*?"

When somebody discovers he has lost property with no identifying characteristics, like money, he is presumed to have *Ye'ush*. He gives up hope because he has no way of claiming his property. But the finder can only keep the money if the owner already had *Ye'ush*. How do we determine whether he has even discovered his loss?

Sometimes, depending on the nature of the property, we can presume the owner has discovered his loss and had *Ye'ush*. Some examples are heavy objects, or valuable items like money.

So next time you come across cash randomly lying in the street, you know you can keep it. The owner certainly has discovered his loss, and had *Ye'ush*.

From this *Halacha*, the *Poskim* derive that when it is not known for certain that the

owner has given up hope, but there is strong reason to believe so, the finder may assume *Ye'ush* and keep the object. The question in the case of the armored truck, then, is whether the security guard standing idly by, can be construed as indicating *Ye'ush* on his part.

Rabbi Mordechai Gross (*Mishpat Ha'Aveda* 159:17) quotes Rabbi Moshe Feinstein zt"l and Rabbi Yosef Shalom Elyashiv zt"l as saying that a person's failure to pursue his lost property is not considered *Ye'ush*. However, one can argue that perhaps our case is different.

It is clear from a *gemara* in *Bava Metzia* (22 a) that when the lack of effort from the owner to pursue his property results in permanent loss, such an instance would certainly be considered *Ye'ush*.

Getting back to our case of the armored truck, imagine the scene of all of the drivers frantically chasing after the fleeting bills. Indeed, it's safe to assume that they had no intention of returning the money to the owner. So, at first glance, it would seem that the guard's lack of effort to recover the money should be considered *Ye'ush*.

YE'USH BY AN AGENT

Upon careful examination, however, it's not that simple. There's a discussion among the *Poskim* whether *Ye'ush* of a *Shomer* - guardian - constitutes *Ye'ush*, or whether only the *Ye'ush* of the object's owner allows the finder to keep it.¹

In conclusion, the case of the armored truck is complex. Additional principles may apply to this scenario. So, next time you receive a windfall from an armored truck, be sure to ask a *Posek*.

1 עיין אגרות משה (חושן משפט חלק א סימן פב בסוף דבריו) ועיין בשו"ת מהר"ל דיסקין (בפסקים קפט) והביא נמי שהגרע"א ה' מסתפק בזה. ועיין באולם המשפט (סימן רטב).

MATTERS OF INTEREST

Avissar Family Ribbit Awareness Initiative



JEWISH MORTGAGE COMPANIES

When a person obtains a mortgage from a Jewish lender, a *Heter Iska* is necessary. However, many Jewish mortgage companies are merely brokers for non-Jewish banks and not the actual lenders. One may obtain a loan through the services of a brokerage company without an *Iska* agreement, provided that the bank that is providing the funds for the loan is not owned by Jews. However, in cases where the mortgage company is also the actual banker, a *Heter Iska* must be drafted.

It is important to note that even with a *Heter Iska* one may not give any extra payment at the time the money is advanced. Since all payments are only the profits the monies generated, one cannot give money prior to having the ability to invest the funds. Many mortgage agreements call for such payments (points, commitment fees, etc.), which are prohibited even under an *Iska* agreement. The *Iska* is therefore set up where these payments are deducted from the principle stated on the loan documents

and the presumed profit amount is slightly higher.

In an *Iska* agreement with a bank, one should review the *Iska* agreement at the time of closing. This way he is aware of the actual amount invested, as well as the exact amount of the presumed profit.

When borrowing from a Jewish owned bank with a *Heter Iska*, a consumer should be aware that the standard practice is that many banks

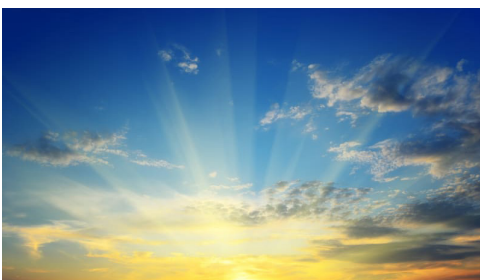
sell their loans to other banks after closing. If the loan would be sold to a non-Jewish bank, they would not honor the *Iska* agreement. Therefore, the Jewish bank's *Heter Iska* is written in a way that the bank does not have to remain in a long-term *Iska* partnership. Should they so choose, the bank will find another lending institution to loan the investor the money needed to return the *Iska* money to the original bank. At that time the original bank will broker a loan between the manag-

ing partner (the borrower) and the new bank. The money from this loan is used to repay the *Iska* funds to the original bank. In the event that there is extra money from the loan (due to the amount that was deducted off the *Iska* at closing, as mentioned earlier), it will be given to the original bank as a brokers fee for brokering the loan. From that point and on, this deal is considered a regular loan with interest payments to a non-Jewish bank.

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kasher Halacha Yomis

Laws related to Birkot HaTorah



I was up all night. Do I recite Birkot HaTorah in the morning?

This is a common question on *Shavu'ot*. The *Mishnah Berurah* (47:28) writes that there is a difference of opinion among *Poskim* as to whether one who was awake all night recites *Birkot HaTorah* in the morning. The *Gr"a* (47:12) and *P'ri Hadash* (47:12) write that one does not recite a *Beracha*; however, the *Magen Avraham* (47:12) and *Elya Rabba* (47:9) write that a *Beracha* is recited every day even if one did not sleep. To avoid this uncertainty, one can listen to the *Beracha* of one who slept and answer Amen. However, the *Hida* writes in the name of the *Arizal* and other *Mekubbalim* that one should recite *Birkot HaTorah* every day because of its importance in *Shamayim*. Therefore, the *Yalkut Yosef* cites Hacham Ovadia Yosef that the Sephardic *Minhag* is to recite *Birkot HaTorah* at *Alot HaShahar* (dawn).

Should Birkot HaTorah be said standing?

Maran in *Bet Yosef* (O.H. Siman 8) quotes a *Yerushalmi* which states that all *Berachot* should be recited standing. This

Yerushalmi is understood by the *Poskim* to be referring to *Birkot HaMitzvot* and would seemingly include *Birkot HaTorah* as well. However, The *P'nei Yehoshua* (*Megilla* 21a) writes that this rule of the *Yerushalmi* refers only to *Mitzvot* that are performed standing, such as *Shofar*, *Tzitzit* or *Hallel*, and not to *Mitzvot* that can be performed while sitting, such as reading the *Megilla*. The *Gemara* (*Megilla* 21a) relates that until the generation of *Rabban Gamliel*, Torah was studied standing, but after *Rabban Gamliel* passed away, weakness descended upon the world and from then on Torah was studied sitting. Therefore, Hacham Ovadia Yosef *zt"l* (*Yehave Da'at* 5:4) writes that one may recite *Birkot HaTorah* sitting, as is the opinion of the *Rama MiFano* (102:7) and others.

Is it forbidden to teach Torah to one who has not said Birkot HaTorah?

With regards to *Birkot HaNehenin* (*Berachot* recited on food) it may not be permitted to give someone food if the recipient will not recite a *Beracha*. Offering food to one who will not recite a *Beracha* is a violation of "*Lifnei Iver Lo Titen Michshol*" – enabling one to stumble (see *Shulhan Aruch*, OH 169:2). However, Rav Shlomo Zalman Auerbach *zt"l* (*Minhat Shelomo* 1:91) writes that this does not apply to teaching Torah to one who did not recite *Birkot HaTorah*, since it is a *Birkot HaMitzvot* – *Beracha* over a *Mitzvah*. Although *Birkot HaMitzvot* are obligatory, we do not find that *Hachamim* forbade the performance of a *Mitzvah* if

a *Beracha* is not recited. He notes that not studying Torah (*Bittul Torah*) is a more serious offense than omitting the *Beracha*. If possible, one should instruct those who have come to learn Torah how to recite the *Beracha*, but if this is not practical, one should teach them Torah in any event.

Are Birkot HaTorah considered two or three Berachot?

There is a difference of opinion among *Rishonim* as to whether the *Berachot* recited for *Birkot HaTorah* are counted as two *Berachot* or three. The *Rambam* (*Hilchot Tefilla* 7:11) writes that *Birkot HaTorah* consists of three *Berachot*. According to the *Rambam*, "*V'Ha'arev Na*" begins a second, separate *Beracha*. However, *Tosafot* (*Berachot* 46a s.v. Kol) writes that "*V'Ha'arev Na*" is a continuation of the first *Beracha*. The practical difference between these two opinions is whether a listener should answer Amen prior to "*V'Ha'arev Na*". Because this is a matter of dispute, *Maran* in *Shulhan Aruch* (OH 47:6) recommends being strict. Therefore, if someone is reciting *Birkot HaTorah* on your behalf, you should not answer Amen after the first *Beracha*. It is interesting to note that regarding the daily requirement to recite one hundred *Berachot*, the *Poskim* are lenient to count *Birkot HaTorah* as three *Berachot*.

HAVE A QUESTION?

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sible for damage caused by anything he owns. However, he always has the exemption of *Tamun B'Esh*. R' Yohanan disagrees and says that sometimes "*Isho Mishum Hitzo*", fire is akin to an arrow that someone shoots – meaning he is directly responsible for the damage, just as he would be responsible if he shot an arrow at someone's property.

The Gemara concludes that R' Yohanan would agree that "*Isho Mishum Mamono*" if the fire was lit in a way that it should have stopped before reaching someone else's field. For example, if there is a wall in between the two fields that should have stopped the fire, but the wall fell down and the fire spread past the wall. In such a case, R' Yohanan would agree that the lighter is exempt from payment on things that were *Tamun*. However, if nothing stood in the way of the fire and it naturally spread to someone else's field, R' Yohanan says the fire is *Mishum Hitzo*, a direct result of the lighter's action, and he is liable to pay even on *Tamun*.

The *Poskim* rule that the practical *Halacha* is like R' Yohanan.

The *Shach*⁴ adds that if someone actually en-

ters his friend's field and lights a fire there, according to the view of R' Yohanan he is directly responsible for the damage caused by the fire, even if a wall stood between the fire and the objects that were burned, and he would be liable to pay even for things which were covered.

WATER DAMAGE:

As mentioned earlier, the *Mazik* of *Esh* can include damage caused by water. Thus, if someone forgets to turn off his faucet and the sink overflows and damages his downstairs neighbor's ceiling, he would be liable for the damages. According to R' Yohanan, he would even be liable for damages done to covered items, as the damage was caused directly by the water he let out of the sink. However, if one's pipes flood in a way that is not a direct result of his actions, the damaging water definitely falls under the category of *Mishum Mamono*, and one would not be liable to pay for anything that is covered.

In Part 2 of this series, we will continue our discussion by moving on to the status of electrical fires and the liability one would have if a fire he started actually kills somebody.

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bam and many more maintain that the second understanding in the Gemara is the

conclusion. Thus, once a lot is cast it is binding as a full-fledged *Kinyan* (act of acquisition) and the parties own their shares irrevocably. However, the *Rosh*, cited by the *Tur*, maintains

that a *Kinyan* must still be enacted. The *Bach* write that the *Rosh* must have had a different version of the *Gemara*.

Maran follows the *Rambam* whereas the *Rama* follows the *Rosh* (there is a discussion as to the *Raavad's* opinion, according to the *Kenesset HaGedola* and *Hacham Ovadia Yosef* he doesn't agree with the *Rosh*, whereas according to the *Lehem Mishne*, he holds like the *Rosh*).

The Daf in Halacha

Bring the Daf to Life!

מסכת חולין

This Week's Topics

RAV YOSEF FUND

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RAV YEHOASHUA GRUNWALD

DAYAN, BAIS HAVAAD LAKEWOOD

RAV YOSEF GREENWALD

DAYAN, BAIS HAVAAD YERUSHALAYIM

- דף מ"ה TALKING "TEIKU"
- דף מ"ו WHEEZING LUNGS
- דף מ"ז TREIFOS BASICS : PART 2
- דף מ"ח CESAREAN COWS
- דף מ"ט BIRKAS KOHANIM: LAWS & CONCEPTS
- דף נ' UNDER THE KNIFE: IS A COW THAT HAD SURGERY KOSHER?
- דף נ"א DEFECTIVE MERCHANDISE: WHEN DID THE DEFECT HAPPEN?

EVENTS AT THE BET HAVAAD

As we begin the period known as *Shovavim* [an acronym of the *Parashiyot* [שמות וארא בא בשלח יתרו משפטים]], the *Bet HaVaad* is once again presenting an annual shiur series on *Hilehot Niddah*, presented by *Rav Chaim Weg, shlit"a*, *Rosh Kolllel* of *Zichron Gershon*, the *Bet HaVaad Kolllel* for *Dayanut*. *Rabbi Weg, shlit"a*, is a sought after advisor in family matters and his shiurim garner wide-spread interest. The shiurim take place at the *Bet HaVaad* and are open to the public. Come join!



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105 River Ave, #301, Lakewood, NJ 08701
732.9300.SHC (742)
www.theshc.org
info@theshc.org

MIDWEST DIVISION RABBI DOVID ARON GROSS

A 3718 SHANNON ROAD
CLEVELAND, OH 44118

P 216.302.8194

E MIDWEST@BAISHAVAAD.ORG

BROOKLYN DIVISION RABBI DOVID HOUSMAN

A 2238 85TH STREET
BROOKLYN, NY 11214

P 718.285.9535

E RDHOUSMAN@BAISHAVAAD.ORG

SOUTH FLORIDA DIVISION RABBI YOSEF GALIMIDI, MENAHEL RABBI MEIR BENGUIGUI, SAFRA D'DAYNA

A SAFRA SYNAGOGUE
19275 MYSTIC POINTE DR
AVENTURA, FL 33180

E BD@BAISHAVAAD.ORG