

# 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*<sup>1</sup>, 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.<sup>2</sup>

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*<sup>3</sup>, 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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on back)

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.

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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*<sup>4</sup> 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.

4 418:3

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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 Keneset 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

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- 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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