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



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THE CALIFORNIA WILDFIRES:

Part 2: More on who is responsible to pay for wildfires and for what?

Rabbi Yosef Greenwald

ELECTRICAL FIRE:

In Part 1 of this series, we stated that if someone lights a fire in a way that it should technically have been stopped before reaching his friend's property – for example, a wall separated the two fields – all opinions would agree that the fire has the status of *Mamon HaMazik* (damaging via one's "property", as opposed to damaging in person) and, therefore, the exemption of *Tamun* (hidden objects) would apply. However, if there was nothing obstructing the path of the fire, Ribbi Yohanan, whose view we follow, holds that the fire has the status of *Adam HaMazik* (damaging in person), in which case the igniter is liable for all damages.

Regarding electrical fires, there are several variables to take into account.

If the electrical system was set up negligently, which caused a spark to shoot out of the faulty mechanism that led to a fire, this would seemingly fall under the category of a fire that should technically have been stopped. This is because the spark cannot cause damage on its own and only creates a fire if it lands on something flammable. Therefore, there is much room to say that everyone would agree that such a case would fall under the category of *Mamon HaMazik*, and would be subject to the exemption of *Tamun*.

However, if someone installed wiring that was so faulty that the entire mechanism went up in flames, which led to a large inferno, this could theoretically fall under the category of *Adam HaMazik* and be considered a direct result of his actions. However, this is

somewhat of a stretch, being that if the fire caused damage far away from the original place where it started there is almost certainly some obstructions in between, and it is unlikely that all the damage caused by the fire was done through a direct path.

Another factor that we need to keep in mind is that one is only liable for the damage caused by his fire if then fire was spread through a "*Ruah Metzuyah*" – lit. common wind – or, anticipatable force. If the fire only spread because it came into contact with a "*Ruah She'eina Metzuyah*", uncommon wind, the igniter would not be liable because there is no reason to think that such a wind will suddenly appear and he is therefore not considered negligent.

In California, wind gusts that are strong enough to cause large forest fires may not be everyday occurrences; however, they do occur sporadically and are certainly not unheard of. Does this satisfy the criteria of *Ruah Metzuyah*?

The *Hazon Ish*¹ understands this to be the subject of a disagreement between *Tosafot*² and *Rabbenu Peretz*³, who disagree whether a wind that is not the norm but is not completely out of the realm of normalcy is considered a *Ruah Metzuyah* or not. Since the *Halacha* is in doubt, a contemporary *Bet Din* cannot obligate someone to pay compensation for a fire that only spread because of such an uncommon – but not unheard of – gust of wind.

IS THE FIRESTARTER A MURDERER?

It is clear that according to all opinions – even according to *Resh Lakish*, that *Esh* (damage via fire) is usually *Mishum Mamono* (and not considered as a person's direct act) – that if

¹ *Bava Kama* 5:2

² *Bava Kama* 59

³ Cited in *Shita Mekubetzet*, *ibid*

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A Parashat Beshalah Audio Shiur Summary by Dayan Shlomo Cohen

The Hametz Index: Owning Shares of Companies Dealing in Hametz

We are not allowed to own any *Hametz* over *Pessah*. The custom in most communities today is to sell the *Hametz* in our possession to a non-Jew over *Pessah*. What happens if you own shares in companies that deal with *Hametz*?

Let us explain how corporations work. According to law, a corporation is considered to be a separate entity, apart from the shareholders. That's why it is also has limited liability, meaning that it is not liable for more than the value of its assets, while its shareholders are exempt. Is such a type of ownership a problem of owning *Hametz*?

There are two types of corporations: a private corporation, in which the shareholders have a say and power to influence the company's decisions. Such a company would be viewed by *Halacha* as a partnership and – although there would be a limited liability according to *Halacha* – there would still be a problem of owning its *Hametz*.

However, with regards to a public company with millions of shares, although they may have some "voting"

spotlight

Even Ha'Ezer Habura meets attorneys

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One of the challenges inherent in providing Even Ha'ezer services, is ensuring that all agreements are both Halachically and legally binding. To this end, the Even Ha'Ezer Habura recently hosted Mr. John Panzer Esq. and Mr. Jeff Epstein, Esq., for a presentation on the relevant legal issues.

GENERAL HALACHA

TAKING WORK PERSONAL: Borrowing Office Supplies

By: Dayan Dovid Grossman, Shlita, Rosh Bet HaVaad



Can an employee take office supplies or borrow the company projector for personal use?

USING OFFICE SUPPLIES

In a busy office, supplies and paper items have a way of coming and going. Paper clips, pens and staplers are lost and found within the full routine of office life. While some items may go missing as a matter of course, there are certain office supplies which are sometimes taken with intent. An employee may want to use a notepad to write a grocery shopping list, or pocket a handful of paperclips for a home project.

Is it permitted for an employee to use office supplies for his personal use?

The situation depends on the following question: Does the employee know that the boss allows him to use the office supplies? Is he sure that the boss does not mind if he makes a few extra photocopies?

GIVING UP

The *Gemara* in *Bava Metziah* (21b) covers the concept of *Ye'ush SheLo MiDa'at*. This famous

Sugya is used by the *Poskim* to develop the *Halacha* with regards to these very relevant questions. The *Halacha* of *Ye'ush SheLo MiDa'at* pertains to a person who finds a lost item where it can be assumed that the owner gave up hope of finding it. This applies to an object which does not have a *Siman* i.e. it has no identifying feature which would enable you to return it. It also applies to a situation where an object is found in a place which is mostly inhabited by *Einam Yehudim*, who are not sensitive to the *Mitzvah* of *Hashavat Avedah*.

In this case, one can assume that the owner of the lost object has given up all hope of ever recovering it. Once you can assume that the owner has lost hope, you may keep the object.

There could be a problem if you pick up the object before the owner has lost hope. Even if later on the owner would have lost hope of finding it, you would not be allowed to keep it, and would have to return it, if you can. If not, there would be a *Halacha* of *Yehe Munnah 'Ad Sheyavo Eliyahu* – one must hold on to the item indefinitely, until its ownership will be ascertained with the coming of *Eliyahu HaNavi*.

This famous *Gemara* regarding *Ye'ush SheLo MiDa'at* is one of the first *Gemara* which are usually learned by children in elementary school. In a regular case where a person gives up and loses hope (*Ye'ush*) of ever finding the object again, anyone who finds it after that point is allowed to keep it.

The question is what happens if the owner has not yet given up hope because he does not yet know that the object is lost? If the owner would know the object is lost, he would definitely lose hope. At that point, can you pick it up and keep it, or do you have to return it?

There is a disagreement between *Rava* and *Abaye*, and the *Halacha* follows *Abaye* that *Ye'ush SheLo MiDa'at* – not knowing about the loss, but being expected to give up on it upon finding out, is not considered to be *Ye'ush*. This means that until the owner actually loses hope, even though he definitely would have lost hope had he known all the facts, that is not sufficient.

DOES HE CARE IF YOU TAKE IT?

The *Poskim* use this *Gemara* as an example for the case of taking objects without permission. Even if you know that the owner does not care, and would allow you to take the object, you cannot take it until you have permission. You may not take the object until the owner allows you to take it - even if you are sure that he would be okay with you just helping yourself.

If an employee is going to use office supplies such as paper or pens, and he will not be returning them, he must make sure that his employer allows this.

However, the *Halacha* is more lenient in the case of borrowing something without permission. If the borrower clearly knows that the owner allows you to borrow it, and you will be returning the item, then it is permissible to use it. As long as you know that the owner would permit it, you can borrow the item and then return it.

Asking permission from the owner at least once can help to alleviate this problem. If a person asked the owner previously, "May I have some paper clips?" and the owner gave permission, then the *Poskim* rule that as long as he is certain that the boss is not *Makpid* he does not need to ask each time. If the owner is a relative and this situation had come up in the past, you can rely on the previous instance and help yourself to the item without permission as long as you are sure they still

MATTERS OF INTEREST

Avissar Family Ribbit Awareness Initiative



AREV: GUARANTEEING A LOAN (COSIGNERS)

In certain instances, where a home buyer does not meet underwriting criteria, the bank may require a cosigner to guarantee the loan. The current practice of banks is to stipulate that they can collect from either the borrower or guarantor at their own discretion. Such a guarantor is referred to in *Halacha* as an "*Arev Kablan*" (equally responsible guarantor). *Marran* (*Shulhan Aruch*, Y.D. 170:1) prohibits a Jew from being such a guarantor for an interest loan on behalf of another Jew. This prohibition

would apply any time one uses a Jewish guarantor on an interest loan, such as for a credit card, car loan, or mortgage. If one does borrow with interest and uses a cosigner, a *Heter Iska* must be used.

There are many instances in which the bank will require a cosigner, but in reality refer to the cosigner as a co-borrower. The definition of "co-borrower" is that each party is actually borrowing half the money from the bank. The co-borrower then lends his half of the loan to the buyer to use to purchase his home. As the buyer repays the loan, he is in

effect repaying the co-borrower of the loan. Since interest is being paid to the bank on the co-borrower's behalf, such an agreement would require a *Heter Iska* as well.

There are three types of guarantors discussed in *Halacha* in regard to *Ribbit*:

Arev: A standard co-signer, where the lender must first demand payment from the borrower. The guarantor may only be approached after first claiming it from the lender in *Bet Din*.

Arev Kablan: Where the lender has the right

to demand payment either from the guarantor or from the borrower equally.

Arev Sehlof Dotz: Where the lender's only claim is to the guarantor. The guarantor accepts sole responsibility for the loan.

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis

Laws related to Birkot HaTorah



What is the reason we recite Birkot HaTorah?

There is a disagreement among the *Rishonim* as to whether *Birkot HaTorah* is a Torah obligation or a Rabbinic obligation. *Sefer Pene Moshe* 1:1 (*Benvenisti*) writes that the *Ramban*, *Rashba* and *Sefer HaHinuch* maintain that there is a Biblical obligation to recite *Birkot HaTorah* daily. This is derived from the verse (*Devarim* 32:3) "When I call out the name of Hashem, ascribe greatness to our G-d." This is understood to mean that before

I read the Torah, I must recite a blessing. The *Rif*, *Rambam* and *Rosh* are of the opinion that *Birkot HaTorah* is a rabbinic institution. Either way, the *Gemara* (*Bava Metzia* 85b) ascribes extreme importance to this *Beracha*. There it relates that the *Bet HaMikdash* was destroyed because people did not recite *Birkot HaTorah*, which reflected a lack of appreciation for the value of Torah (*Rashi*).

The above disagreement among *Rishonim* leads to the following practical difference. When there is an uncertainty as to whether one recited *Birkot HaTorah*, must one repeat the *Beracha*? If *Birkot HaTorah* is a Torah obligation then one must repeat the blessing. The *Mishnah Berurah* (47:1) rules in accordance with the *Sha'agat Aryeh* that one must indeed be concerned that *Birkot HaTorah* is a Biblical obligation, and in case of doubt one should recite the *Beracha* of "Asher Bahar Banu," since one blessing is enough to discharge the Torah obligation. However, *Hacham Ovadia Yosef* maintains that *Birkot HaTorah* are treated as a rabbinic obligation and shouldn't be repeated in case of doubt.

I just finished reciting Birkot HaShahar (the Berachot recited upon waking in the morning), but I do not remember if I recited Birkot HaTorah. What should I do?

In a previous *Halacha*, we mentioned that the *Poskim* argue whether *Birkot HaTorah* are a Torah or rabbinic obligation, with regards to repeating them when in doubt. Everyone would agree, however, that if possible, one should find someone who has not yet recited the *Beracha*, and fulfill the obligation by listening to the second person's recitation.

Additionally, if one realized their predicament before having recited the *Beracha* of *Ahavat Olam* (the blessing recited before *Shema*), one should have in mind when reciting this *Beracha* that they are fulfilling the *Mitzvah* of *Birkot HaTorah*. In case of need, this *Beracha* can substitute for *Birkot HaTorah*, since it also mentions Torah study. Immediately after *Shmoneh Esrei*, one must study some portion of Torah, so that there will not be a disruption between the *Beracha* and the study of Torah. *Rav Schachter* said that on a day when *Tahanun* is said, one should not interrupt between *Shmoneh Esre* and *Tahanun*. One should wait to study Torah until after *Tahanun*. The *Mishnah Berurah* cites the *P'ri Megadim* that in this case, even if one did not study immediately after *Shmoneh Esre*, one may also be lenient not to repeat *Birkot HaTorah*, since immediately after the *Beracha* one recited "Shema."

EVENTS AT THE BET HAVAAD

Rabbi Ariel Ovadia releases newest edition of *Avkat Rochel* series

The Bet HaVaad is privileged to count among its members *Poskim* with specialties spanning myriad topics in Halacha. Rabbi Ariel Ovadia is the director of the Bet HaVaad's Sephardic Halacha Center and the publisher of the *Avkat Rochel* series—a Halachic analysis compendium related to contemporary topics. He now has released the fourth volume to critical acclaim. We wish him much *Hatzlacha!*



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someone would actually kill someone else by throwing a firebomb at him, he would be labeled a murderer and would be Biblically liable for the death penalty. We may ask, however, what the *Halacha* would be according to Ribbi Yohanan if someone would light a fire that spread through a direct path and ultimately killed somebody. Would this be categorized an act of murder?

This would seem to be a disagreement between *Tosafot* and the *Ran*⁴, who argue whether one can be liable to capital punishment for death caused through such an act of *Adam HaMazik*.

We find a similar discussion regarding the *Hilchot Shabbat*. The *Nimuke Yosef* famously asks how it is permitted to put food up to cook on a fire before the onset of *Shabbat*. If lighting a fire burning is akin to a direct action done by the lighter (*Isho Mishum Hitzo*), then when the fire cooks food on *Shabbat*, it should be considered as if the lighter is cooking directly on *Shabbat*. How is this permitted?

He answers that, indeed, it is considered as if he cooked on *Shabbat*; however, it is only forbidden to do an act of *Melacha* on *Shabbat* itself, whereas this individual did no action on *Shab-*

bat.

We see from the *Nimuke Yosef* that on a conceptual level, the burning of the fire that one lit is considered a direct action done by him, which seemingly would make him liable if the fire kills someone. This is the view of *Tosafot*. The *Ran*, though, disagrees.

Bet Din today does not mete out capital punishment. What is applicable is the rule of "*Kim Leh Bid'Rabbah Mineh*", which means that in a case where someone causes a loss of life – be it intentional or accidental – the Torah tells us that he is not liable for monetary damages that occurred as a result of the same action. For instance, if someone causes a car accident that kills another driver and also damages his car, *Bet Din* cannot hold the driver accountable for the monetary damage. Thus, if someone firebombs someone else's house, thereby causing a loss of life, *Bet Din* cannot pursue the financial damages done to the house.

However, if the victim has some recourse, for example he is a business partner with the fire starter and is able to be "*Tofes*", hold onto, funds that belong to the perpetrator, he would be allowed to keep that money⁵.

4 *Sanhedrin* 77

5 *Hoshen Mishpat, Siman* 4

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rights, they cannot exert any influence as to the running of the

company. Rav Moshe Feinstein points to this fact and permits one to own shares in such companies, even though they own *Hametz* (he understands that owning a share is merely buying a portion of the profits of the company). If one owns a significant percentage of the

shares this may be a problem.

This logic would also permit one to own stocks in companies that are: dealing in non-Kosher items; open on *Shabbat* or lending with interest. The *Minhat Yitzhak* argues on Rav Moshe and forbids owning even minimal amounts of stock. Thus, the Sale of *Hametz* contract in many places includes selling one's stocks (which would raise an issue with regards to dividends given on *Pessah*). According to the *Minhat Yitzhak* it would seem that one shouldn't

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מסכת חולין

This Week's Topics

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RAV ELIEZER COHEN
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דף נ"ב KITNIYOS: CONCEPTS & HALACHOS

דף נ"ג QUESTIONABLE TREIFOS

דף נ"ד PLEASE RISE: STANDING UP FOR A CHOSSON AND KALLA

דף נ"ה RABBINICAL MEASURES: TO BE STRICT OR LENIENT?

דף נ"ו TREIFOS: HAVE TIMES CHANGED?

דף נ"ז SEEING IS BELIEVING?

דף נ"ח INSPECTING FOR INSECTS

own any stocks, due to the other transgressions involved.

Pension funds also invest in stocks, and would be included in this issue according to the *Minhat Yitzhak*. Some say that the *Minhat Yitzhak* would agree in such a case.



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