

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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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*<sup>1</sup> understands this to be the subject of a disagreement between *Tosafot*<sup>2</sup> and *Rabbenu Peretz*<sup>3</sup>, 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

<sup>1</sup> *Bava Kama* 5:2

<sup>2</sup> *Bava Kama* 59

<sup>3</sup> 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.

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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*<sup>4</sup>, 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 money<sup>5</sup>.

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

# The Daf in Halacha

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### This Week's Topics

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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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