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



VOLUME 5779 · ISSUE XXIII · PARASHAT PEKUDE · A PUBLICATION OF THE SEPHARDIC HALACHA CENTER

ואכלת ושבעת וברחת

Adapted from a Shiur by Dayan Dovid S. Englander

Eat and run

Paul Guadalupe Gonzales likes eating. Paying, less so.

Last May, Gonzales went on a date to a California restaurant. He ordered lavishly for himself and his date. When they finished eating, he said he needed to retrieve something from the car. He left and didn't return. The stunned and shamed woman paid the entire check.

This scene was reenacted repeatedly over the next two years in restaurants across Los Angeles County. Some of the stranded women paid the check in full to avoid a scene. Others paid only for their own food. Some threw themselves on the mercy of the restaurant, which was sometimes granted. In one case, the restaurant demanded the woman pay for a portion of what Gonzales had eaten, too.

Many of the jilted women filed complaints with police, especially after learning from news reports that they weren't the offender's sole victim. Gonzales was arrested last summer and charged with extortion and grand theft.

How would *Halacha* treat this case? Let's examine the issues.

MUST A MAN PAY FOR HIS DATE'S FOOD?

The *Rama* (H.M. 246:17) discusses the case of a man who invites someone to eat with him and, after the meal, demands payment. He writes that unless the circumstances indicated that the meal was a gift, the invitee must pay.

Because there is a tacit societal understanding that when a man asks a woman to dinner he will pay for her food, it is deemed a gift. She needn't reimburse him even if he demands

payment.

MUST THE WOMAN PAY THE RESTAURANT FOR THE FOOD SHE ATE?

Although she had a tacit agreement with her date, the restaurant isn't party to that contract. The owner can argue that he served food to her and she must pay for it. That a third party failed to honor his agreement with her is not the restaurant's concern.

SHEKEN NEHENE: PAYING FOR A BENEFIT

There is additional basis for the restaurant to claim payment: "*Sheken Nehene*". One who derives benefit from another must pay for its value (*Bava Kama* 20a).

An example of this, according to the *Ketzot Ha-Hoshen* (246:1,2), is the *Gemara* (*Bava Metzia* 101a) that says if a man, unbidden, makes material improvements to another's property, he may claim their value from the property owner.

There is a case of *Nehene* that concerns eating: that of orphans who are left with a borrowed cow (יתומים שהניח להם אביהן פרה שאולה וטבוחה) (*Shulhan Aruch* H.M. 341:4). In that case, a man borrowed his friend's cow and then died. His children, not knowing the cow was borrowed, innocently slaughtered and ate it. Later, the cow's owner came calling.

Adam HaMazik - one who damages property in person, is exempt in cases of *Oness Gamur*, an accident completely beyond his control (see *Tosafot*, *Bava Kama* 27b; also see *Ramban*, *Bava Metzia* 82b, for an alternative approach). This case certainly qualifies, because the children had every reason to believe the cow was theirs. But they did enjoy another man's beef—*Sheken Nehene*—and must pay for that benefit. However, they can legitimately claim that their benefit was less than the animal's value, because they would have purchased cheaper meat. They must pay *Deme Basar B'Zol*, the value of cheaper meat, at a one-third discount.

(continued on back)



A Parasha & Halacha Shiur by Rabbi Chaim Naftali

Buyout Offer

In order to split a partnership there must be a sizeable enough share left for each individual partner. For example, if they own a joint courtyard and want to split it, each of the partners must receive a share that can still be considered a courtyard.

If this is not the case, the *Halacha* is that one partner can offer to be bought by or buy his partner's share out - *Gud Oh Iggud*. L'*Halacha*, this offer must be made in a *Bet Din*. This offer is not subject to the rules of *Ona'ah* (as one of the *Aharonim* suggests) because that is the nature of the deal.

The *Rishonim* have a debate when one partner has a large share - which can withstand a division - and the other has a small share, if the one with the smaller share can initiate a buyout offer and to what extent (maybe just to increase his share to a sizeable share).

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GENERAL HALACHA

THE CROWN JEWELS

Part I: Who is responsible for stolen collateral?

By Dayan Yosef Greenwald



I was recently walking in Midtown Manhattan and I passed by a famous bank. Outside of the bank was a glass display case with a beautiful collection of jewelry, including necklaces, watches and earrings that were obviously worth millions of dollars. I discovered that the jewelry was actually the crown jewels of a European royal family. The country was suffering from financial difficulties and they had given their crown jewels to the bank as collateral against a loan. The bank was promoting this prestigious transaction by showcasing the crown jewels.

While it may not be as common nowadays, in previous generations when people were very poor, they would go to the pawn shop to obtain money. It was common practice to give the pawn shop a valuable object as collateral, a *Mashkon*, in exchange for a loan. The customer then had a set time to pay back that loan and get back the object.

WHO HAS OWNERSHIP OF THE COLLATERAL?

What is the *Halachic* status of a *Mashkon* that is stolen? If there is a blackout and the collateral is taken, must it be paid back?

The pawnbroker may be considered a *Shomer Sachar*, a paid guard of the item. If he is a paid *Shomer*, then he would be obligated for *Geneva* or *Aveda* – if the item was stolen or lost.

But this extreme case of a blackout is considered an *ones*, beyond the regular confines of *Geneva* and *Aveda*. There is nothing you can do to prevent a blackout. In the case of an *Oness*, an accident, the pawnbroker is not liable, and he can collect payment for the debt. The loss of the collateral item is incurred by the original owner, and not the one who was holding on to

the *Mashkon*.

The *Gemara* (*Shevuot* 44) states: א"ר יצחק, מנין לבעל חוב שקונה משכון, שנאמר ולך תהיה צדקה

Ribbi Yitzhak says that a person who returns collateral in a timely fashion, is considered as if he has given him the gift of *Tzedaka*.

The *Gemara* raises the question, as to what is the halachic status of the collateral, to whom does it belong? If it is not the property of the *Malveh* - lender, why is it considered as giving *Tzedaka*, when he returns it to the *loveh* - borrower? Apparently, concludes the *Gemara*, the lender has some rights to the object, that he should not have to return it and thus it is considered an act of charity when he does return it. It is important to understand the parameters of *Kinyan Mashkon* - the lender's ownership of a collateral. What right does the lender have over a collateral object? The *Gemara* discusses a *Mashkon*, a collateral object, in terms of a *Shomer Sachar* - a paid watchman - and in comparison to the *Shomer Aveda* - a watchman of a lost and found object.

TIMING IT RIGHT

The timing of giving the *Mashkon* can make an essential difference in the areas of responsibility.

A *Mashkon* at the time of the loan is not being taken as a form of payment. The collateral is meant to ensure that the borrower has an incentive to pay back the money in time. When the borrower gives up an important object, he'll make sure to pay back his debt. And if he does not pay back the loan, at least the lender will have something to show for the money which he loaned out.

A *Mashkon* which is not given at the time of the loan, *Shelo BiSh'at Halvaah*, has a different status. In this case, the debt has existed for a while and the lender sees that he's not getting his money back. So he asks the debtor for an object of value. It may not be worth as much as the debt, but at least it's something the lender can have in hand. Then, when the debt is repaid, the lender will return the *Mashkon*.

Halacha L'maaseh, there is a *Mahloket* between the *Rambam* and the *Ra'avad*.

THE RAMBAM'S DESIGNATION AS A SHOMER SACHAR

The *Rambam* (*Sechirut, Perek 10*) follows the *Rif* and says that the status of a lender as having possession of the collateral is accepted *L'Halacha*, but nevertheless, the collateral is considered owned by the debtor. According to the *Rambam*, the collateral is owned by the debtor in both cases: whether the object was

given during the time of the lending or not.

Both of these types of *Mashkon* have the *Halacha* of a lender who acquires a *Mashkon* to be a *Shomer Sachar* - as a paid watchman. Therefore, the *Rambam* rules that if the collateral is taken away b'*Oness*, in a situation where he has no control, the loss is absorbed by the borrower, the actual owner of the collateral. The lender is no more than a *Shomer Sachar*. If the item were stolen, the lender would bear some responsibility. But in the case of an *Oness*, the responsibility lies solely with the debtor.

THE RA'AVAD DISTINGUISHES BASED ON TIMING

The *Ra'avad* disagrees. He differentiates between the two types of collateral, depending on when they were given.

According to the *Ra'avad*, only a collateral given at the time of the loan, is compared to a *Shomer Sachar*. But if the debtor gives collateral later on, the *Ra'avad* views this as partial payment. The lender sees that the debt is not being paid, so he takes an object. He is seizing payment for the debt. It may not be the whole amount that he is owed, it could be partial payment. Of course, the lender would prefer cash, but for now he takes what he can get.

Taking the *Mashkon* after the debt is due is really a form of collection, which will be a partial or full payment depending on the worth of the *Mashkon*. The borrower has the ability to redeem the object with money or property. But for now, it is considered that the lender has collected his debt.

Once the lender has collected his debt, then the *Mashkon* belongs to him. The collateral is considered a *Kinyan* - acquired to the lender - and he would be responsible even in a case that the object is lost b'*Oness*.

STOLEN JEWELS

Let us revisit the example of a bank holding the crown jewels as collateral. If those jewels are stolen, is the bank responsible if the jewels were taken during an *Ones*, a circumstance beyond their control (i.e. armed robbery)?

According to the *Rambam*, regardless of what type of *Mashkon* it was, the bank is not responsible to bear the loss. The bank is considered a *Shomer Sachar*, and the loss is incurred by the royal family.

However, according to the *Ra'avad*, the *Halacha* depends on what type of *Mashkon* it was. If the crown jewels were taken after the loan was made, then they are considered like a form of payment. In this case, the loss is incurred by the bank.

MATTERS OF INTEREST

AVISSAR FAMILY RIBBIT AWARENESS INITIATIVE

GIVING THE LENDER AN ALIYAH

David, the Gabbai in shul in charge of giving out the Aliyot, happens to owe money to Moshe, another member of the shul. May he offer Moshe an Aliyah? May he offer him She-lishi or Maftir?

If an acquaintance of the Gabbai, to whom he owes money for a loan, happens to be praying in the shul one day, may the Gabbai show gratitude by offering him an Aliyah?

David may only offer an *Aliyah* to Moshe if done as part of the regular *Aliyah* cycle. However, he is prohibited to offer Moshe any unique *Aliyah* (if not part of the normal cycle).

Even where the lender and borrower are friends and the borrower would have done so



anyway, it is nonetheless prohibited since it is being done publicly.

If they are *close* friends, some *Poskim* permit the borrower to offer the lender a public favor – *provided he had already done so previously*.

In case #2, if he is doing it out of gratitude for the loan, it definitely would pose a problem. Even if the *Gabbai* is sure he is *not* doing it out of gratitude, nevertheless there would be a problem offering him any *Aliyah*, as this would be considered offering a public favor. Hence, this would be prohibited unless he usually does this very favor for the lender, and everyone is aware of that. (In a small-knit com-

munity, this might very well be the case and is therefore permitted.)

Obviously, this whole discussion only applies where the *Gabbai* has the discretion as to who receives an *Aliyah*, but if the *Gabbai* is only following the instructions of the *Rav*, there would be no issue at all.



HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis

Laws related to Berachot

These are some *Berachot* which fall in the middle between the two categories mentioned last week- that is - they aren't clearly obligatory or not obligatory, and it is questionable if they can count as part of the 100 *Berachot* or not:

Amen in response to the blessing on an *Aliya* to the Torah, or on the *Berachot* of

the *Haftarah*: On the one hand, the listener is not personally obligated to recite these *Berachot*, since he is not performing the *Mitzvah*. On the other hand, the Torah reading and *Haftarah* are communal obligations. Some *Rishonim* count these *Berachot*, and *Mishna Berura* (46:14) rules that if one has no other choice, these may be included in the one hundred *Berachot*.

Amen in response to *Hazarat HaShatz* (the *Hazan's* repetition of *Amidah*): There are two ways to view these *Berachot*; the listener has already recited *Shemone Esre* on his own, but nonetheless, *Hazarat HaShatz* is a communal obligation. For these reasons, the status is uncertain and the *Mishna Berura* (46:14) writes that it is questionable if answering *amen* to *Hazarat HaShatz* counts towards the one hundred *Berachot* obligation.

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- דף ק"ו The Halachos of Netilas Yadayim
- דף ק"ז Meat (and Cheese) Packing

(continued from front page.)

In our case, the woman must pay the establishment for the *benefit she received*, although she is entitled to seek reimbursement from her date. But is her benefit valued at the full restaurant menu price?

An instructive case about determining the value of *Hana'a* – benefit – appears in the *Shulhan Aruch* (H.M. 363:10): Reuven fraudulently rented Shimon's vacant house to Levi, pretending it was his. The market rent was \$1000 a month, but Reuven only asked for \$800. Shimon shows up and is shocked to find Levi living in his house. He demands \$1000 for the month as payment for the *hana'a* Levi received. Levi responds that the benefit was only worth \$800 to him, because he never would have rented a place for \$1000. The *Shulhan Aruch* rules that nevertheless he must pay the full \$1000.

The *Ketzot HaHoshen* (ibid. 7) challenges this from the case of the cow, where the "I would have paid less" claim is accepted.

Perhaps we can resolve the contradiction. Levi chose this home because it was a bargain: \$1000 worth of house for only \$800. He could

have gone with an actual \$800 place, but he didn't. This shows that he did indeed appreciate and desire the advantages the pricier home offered, so the benefit he derived was the full \$1000 worth. In the case of the cow, however, there is no indication that the children selected this particular cow for its high-quality meat; they simply ate what they believed to be their own cow.

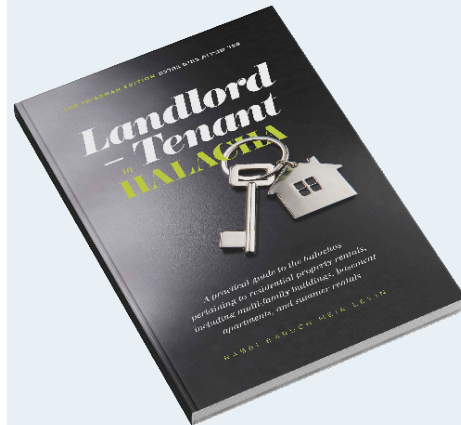
Is the date case comparable to the house or to the cow? Can the woman argue that she just wanted a prepared meal and didn't care about the quality of the restaurant, so her *hana'a* was minimal? It would seem that if a man takes a date to an upmarket restaurant, it isn't out of sympathy for a hungry woman. Rather, it is because he thinks that she will appreciate the restaurant experience and assess him more highly as a result. In this case, then, there would appear to be value for the woman in the additional quality.

* * *

Paul Rodriguez was sentenced to 120 days in the L.A. County lockup, during which time he will be served 360 meals. He will not go out to his car, but taxpayers will pick up all the checks.

EVENTS & HAPPENINGS

AT THE BAIS HAVAAD



NEW SEFER:

LANDLORD & TENANT IN HALACHA

The Bet HaVaad is pleased to announce the recent publication of *Landlord & Tenant in Halacha*, an authoritative work on contemporary leasing and renting compiled by Dayan Baruch Meir Levin, a veteran Dayan of the Bet HaVaad.

Rav Baruch Meir is a renowned authority in the field of leasing and renting and is often called upon to resolve and arbitrate complex situations involving landlords and tenants. Given his experience, his sefer is destined to become a must have in the Hoshen Mishpat arena, and we wish him continued Hatzlaha l'hagdil Torah ul'ha'adira.



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