

S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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GRAVE SIN:

The Hatching of a Cemetery Plot

As heard from Rav David Shlomo Englander

THE TOMB OF THE UNKNOWN

Four men have been arraigned in Yerushalayim's Magistrates' Court on charges of desecration of graves and fraud. The defendants stand accused of robbing decades-old graves in order to resell the plots to foreigners at prices up to \$25,000.

The shocking allegations present us with an important Halachic question: If the purchaser of a stolen grave has already been buried in it, should his body be disinterred?

Generally, it is strictly forbidden to exhume a *Met*. In certain cases it may be permitted, depending on circumstances. These include:

If the burial location does not conform to the expressed wishes of the deceased.

If the burial site is threatened by flooding, grave robbers, or desecration.

If the grave is among non-Jews.

To move a *Met* to his ancestral plot.

To bring a body from *Hutz La'Aretz* to *Eretz Yisrael*.

If the original burial was performed on this condition.

If the *Niftar* was placed in a plot that didn't belong to him.

Examples of the final category arise even without grave robbery. Sometimes a person is buried in a grave belonging to someone else by mistake. The *Poskim* have addressed such questions throughout the generations.

The *Gemara* (*Sanhedrin* 47b) says that a *Ke'ver HaNimtza*, a newfound grave on private property—where it was placed without the owner's permission—may be removed.

This doesn't apply in the case of a *Met Mitzva*: If someone died and had no one to bury him, it is incumbent upon whoever finds him to do the burial, even a *Kohen Gadol* or a *Nazir*, who may not subject themselves to *Tum'a* even to bury a close relative (*Nazir* 47a). The *Halacha* is that *Met Mitzva Kone Mekomo*—a *Mer Mitzva* acquires his location. He may be buried wherever he is found, even on private property (*Bava Kama* 81a).

R' Yechiel Michel Tukachinsky (*Gesher HaHayim* 2:4:3 s.v. *v'achshav nedaber*; see also 1:27:1:12) rules that once a grave has been emptied, the heirs of the original occupant have the right to sell or give it to the family of the new occupant.

Rav Tukachinsky writes that the cemetery has the right of refusal, too. They approved only the purchaser as a candidate for burial on their grounds, and should the purchaser not need the site—for example, if he dies while overseas and is buried there—his heirs are entitled only to a refund of monies paid, not the opportunity to name a replacement that the cemetery doesn't approve.

In Yerushalayim, Rav Tukachinsky writes, the *Hevra Kadisha* has the *Minhag* to stipulate explicitly in each burial plot sales contract that the tomb is nontransferable and the purchase nonrefundable.

So according to the *Gesher HaHayim*, the new resident may stay only if both the original seller and the original buyer say so.

Although the dead cannot own property, and occupied tombs are owned by the occupants' heirs, Rav Tukachinsky adduces support for a novel idea: that the decedent himself maintains a right to the grave in which he is buried that his heirs cannot undermine by sale or gift.

Would this mean that the original tenant must be brought back, and his heirs have no power to waive his rights? No, says Rav Tukachinsky;

(continued on back)



An Overview of a Shiur by Rav Yosef Greenwald for Parashat Tazria/HaHodesh

On the Edge: The International Date Line in Halacha

החודש הזה לכם ראש חדשים (שמות יב:א)

Where is the Date Line located according to halacha? Three basic approaches are offered.

Hazon Ish:

6 hours (90 degrees) ahead of Yerushalayim, which runs through Siberia, part of China, and part of Australia (though continuous land masses are not divided in his opinion).

This is based on the *Baal HaMa'or* (on *Masechet Rosh Hashana*) concerning *Kiddush HaHodesh*.

Accordingly, *Shabbat* in Japan would be observed on Sunday.

Rav Tukachinsky:

12 hours (180 degrees) ahead of Yerushalayim, which runs through part of Alaska and the Pacific Ocean to the left of Hawaii.

This is based on the idea that Yerushalayim is the center of the world

Accordingly, *Shabbat* in Hawaii would be observed on Friday.

Rav Ovadia Yosef/Rav Tzvi Pesach Frank:

We follow the regular International Date Line. Since the *Gemara* doesn't address directly, we should follow the local custom.

Practical Halacha Today:

Most *Poskim* do not take a definitive stand on the issue.

GENERAL HALACHA

RAMIFICATIONS OF A BROKEN KINYAN:

Reneging on an Agreement Part II

By: Rabbi Yosef Greenwald



DID A BROKEN KINYAN (TRANSACTIONAL ACT) WORK IN THE FIRST PLACE?

As we discussed last week, breaking a *Kinyan Kesef* – a transactional act where money was paid or a down payment was made on an item or moveable object – carries with it the *Mi ShePara* curse. Once a person reneges on a completed *Kinyan*, there is a discussion among the *Poskim* if it was considered a viable *Kinyan* in the first place. In addition to the claim against the person, there is a disagreement of who the money belongs to.

The *Tur* in *Hoshen Mishpat* (198) cites two opinions: The *Ramban* holds that if a potential buyer and a seller have completed a *Kinyan* and the buyer goes back on the agreement, the money belongs to the seller (to which the *Tur* also agrees). The *Rif* and the *Rambam* disagree.

For example, Reuven and his wife went out shopping for a piece of jewelry for their anniversary. At the jewelry store, they picked out the perfect watch. The owner said, "This watch in the display case is faulty. I have another one downstairs in the storage room that is perfect. I can't get it right now, because I have no one

else to watch the store." The owner asked for a down payment, and told Reuven to come back tomorrow to pick up the watch and pay for it in full. Reuven gave the jeweler a 25% down payment for the watch and the couple went home.

In the meantime, Reuven found out about a sale at a different jewelry store. At the second store, Reuven and his wife found the identical watch which they picked out earlier, on sale for a cheaper price. They call up the first jewelry store owner and say that they apologize, but they have changed their mind about the watch.

The *Kinyan* was already complete, because they gave money for the down payment. But according to *Halacha*, they do have the right to renege. They can tell the first jewelry store owner, "We are very sorry but we found the watch for a cheaper price and we are cancelling the sale." Reuven hasn't actually done a *Kinyan Meshicha* (transactional act of physically taking item into one's possession, usually the ultimate *Kinyan* of moveable property) because the watch he was going to buy was still in the storage room. He decided to go back the next day to pick up the down payment.

WHO OWNS THE DOWN PAYMENT?

Later that night, the first jewelry store had a robbery, and all the money in the register was stolen. Reuven's 25% down payment for the watch was also stolen.

The next day, when Reuven and his wife came to pick up their down payment, the seller said, "The watch is not yours because you cancelled the sale. The money I was holding for you is gone, because it was stolen with the rest of my money!"

Reuven argued that the fact they didn't want the watch meant they would cancel the sale once they got the money back. But until that point, the money was given to the seller. Had Reuven not cancelled the sale, the money would have belonged to the seller. The jewelry store owner lost his money and the 25% payment, but Reuven and his wife can still get the watch by only paying the remaining 75%.

The *Tur* explains that such a case is the subject of debate between the *Ramban* and the *Rif* and the *Rambam*. According to the *Ramban* and the *Tur*, the money was given to the seller and is considered his. The *Mahane Efraim* (Ribbi Efraim Navon) writes that this means the *seller* has the right to use the money, even after the customer had called up to cancel the sale.

However, the *Tur* and the *Ramban* hold that until the buyer gets back the money, the money belongs to the seller, and is considered a loan. The *seller* "acquired" the money from the *buyer*. The next day, the *seller* will return the money in exchange for the broken contract. But until then, the money belongs to the *seller*. The *seller* can take the money, put it in his cash register and use it as change with the next customer. Even after the *buyer* called up to cancel the sale, the money still belongs to the *seller*. It was given to him, and it rightfully became his. On the following day, the *buyer* is in the right. The *seller* had his cash register cleaned out and he may not be very happy about it, but he'll have to give other money to the *buyer*.

However, the *Rif* and the *Rambam* do not hold this way. The *Rif* and the *Rambam* rule that the money belongs to the *buyer*. So when Reuven and his wife called up the owner of the first jewelry store to cancel the sale of the watch, the money now reverts back to the original owner. The money sitting in the cash register belongs to Reuven and his wife. He can choose to pick it up right away, or wait until the next day.

The *seller* has no more responsibility for the money in the register that as a *Shomer Hinam* – unpaid guardian – who is only liable in a case of negligence. The money was stolen from Reuven's possession, not from the owner of the store's possession. Therefore, the loss would be incurred by the customer, and the *seller* would be exempt from giving back anything to the *buyer*. This is the way we rule in *Shulhan Aruch, Hoshen Mishpat* 199, and this is the *Halacha* *L'Ma'ase*.



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1 Concise Shiur Per Parasha

Contemporary Halachic Issues Related to Every Parasha



MATTERS OF INTEREST

Asking the borrower to cash a check

A person asks his friend for a loan. His friend agrees to lend him money, but since he only has a check, he tells him to cash the check, borrow the amount he needs, and return the rest...

A fellow asks his friend for a loan. The would-be lender claims he has no money, but gives the borrower some merchandise to sell with the right to borrow the requested amount from the sale...

The lender asks the borrower to mail his payment every month. This requires the borrower paying the additional cost of a stamp...

Do any of these cases involve a prohibition of Ribbit?



In case #1 the borrower is allowed to cash the check if no great effort is involved. However, if the check requires that he go to the bank, such as a check for a small amount which most check-cashing stations will not accept, the lender would be transgressing *Ribbit Mukdemet* – pre-loan interest – since he is forcing the borrower to go to the bank on his behalf.

Case #2 would definitely be considered *Ribbit Mukdemet* due to the effort that is required on the part of the borrower and is therefore

prohibited, unless the lender pays the borrower for the effort of selling the merchandise on his behalf. Alternatively, if the lender accepted full responsibility for the merchandise if damaged or lost, it would be permitted even without reimbursement for the effort.

Case #3 is permitted, as is any effort the borrower has to go through to pay back the loan. Borrowing money requires that one assure the money is repaid, even if it involves the cost of traveling to the lender's house to repay him, or for the postage on the payment envelope.

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis

Laws related to Berachot



The *Hayye Adam* (61:4) writes that the *Beracha* on cloves is "*Bore Mine Besamim*". He explains that although cloves are the fruit of a tree and rightfully the *Beracha* should be "*Ha-Noten Reah Tov BaPerot*", nonetheless since cloves are completely inedible, it is inappropriate to refer to them as a fruit. Since cloves do not fit into any of the other categories its *Beracha* is "*Bore Mine Besamim*". The *Mishna Berura* (216:16) cites many *Poskim* who support this view. However, the *Kitzur Shulhan*

Aruch (58:7) writes that on cloves one should recite the *Beracha* of "*Bore Atze Besamim*", as is the opinion of Hacham Ovadia Yosef. Hacham Ben Tziyon and others argue that regardless, in our day, cloves are "*Bore Mine Besamim*" as they are not grown for the purpose of scent but for the purpose of cooking. Generally, when there is uncertainty as to what *Beracha* one should recite on a spice, one recites the *Beracha* of "*Bore Mine Besamim*" (*Shulhan Aruch*, OH 216:2).

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דף ק"כט *Burying Amputated Limbs*

דף ק"ל *Unholy Gifts*

דף ק"לא *Banking in Halacha*

דף ק"לב *Matanos Distribution*

דף ק"לג *Who's Produce is That*

דף ק"לד *When in Doubt, Give It Out*

דף ק"לה *Ownership and Residence*

(continued from front pg.)

the *Niftar's* right is retained only so long as he occupies the grave. Once he has been removed, it is relinquished.

There goes the neighborhood

The public has been rightfully scandalized by the news of this scheme. Suppose the affected parties allow the unintentional interlopers to remain in their graves, but the families of the new occupants don't want to be associated with the outrage, and they want to transfer their relatives to a different location. May they unearth the bodies on that basis alone? For that matter, what if the families of others buried in the impacted section, whose graves were not disturbed, likewise fear being tainted, and seek to transfer those remains as well? May everyone just get up and leave?

R' Eliezer Deitsch, Rav of Bonyhad, Hungary a century ago, addresses in a *Teshuva* (Duda'e HaSadeh 2) the case of a wealthy man whose family paid the full price for a burial plot, only to find that the *Hevra Kadisha* had entombed him among children. Thinking that this was

beneath his stature, the family sought to re-bury him elsewhere. One way they suggested this could be allowed was by canceling the sale as a *Mekah Ta'ut* (an erroneous purchase). Because the sale wasn't legitimate, the argument went, the *Niftar* may be disinterred, because the grave didn't belong to him.

Rav Deitsch disagreed. Only the wronged party may claim *Mekah Ta'ut*, not the one that did the wronging. If this man was cheated by the *Hevra Kadisha*, in no way can he be considered to have stolen the grave.

The family presented another argument: The man is in a dishonorable site and must be transferred to an honorable one. Rav Deitsch answered simply that there is no source in *Halacha* for disinterment of a *Met* toward that end.

Similarly, in our own case, disassociating oneself from scandal is not Halachic grounds for disinterment, so those affected by the situation will have to live with it. May we merit to see the *Tehiyat HaMetim* speedily in our day, Amen.

(continued from front pg.)



Therefore, many *Poskim* suggest for *Shabbat* to keep *Shabbat* on the local Saturday and be *Mahmir* for a *Melacha D'Oraita* on the other day.

EVENTS & HAPPENINGS AT THE BAIS HAVAAD



PESSAH & MEDICINE MEDICAL SEMINAR

Last Sunday, the Bet HaVaad Medical Halacha Center presented a groundbreaking seminar for physicians & healthcare professionals on medical topics related to Pessah. The seminar featured an initial presentation by Rabbi Daniel B. Roth, MD, a member of the Medical Halacha Center, and author of "Refuas Yisrael". This was followed by a spirited round table discussion by the participants concerning the practical applications of the various 'approved medicine lists' published for Pessah. A follow up seminar is planned for the following Sunday. Stay tuned for a report!

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