

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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

VOLUME 5779 · ISSUE XXXIII · PARSHAT HUKKAT · A PUBLICATION OF THE SEPHARDIC HALACHA CENTER



## SPIRITED AWAY: THE CASE OF THE LOST LIQUOR

Adapted from a shiur by Rav Yosef Greenwald

### THE LEAVEN THAT LEFT

A man we'll call David was traveling two months ago with whiskey in his luggage. The airline lost the bag.

Weeks went by. Pessah came and went. Last week the suitcase, invigorated from having traveled the world, was delivered to his home. May he drink the whiskey?

*Hachamim* (Pessahim 29) forbade deriving benefit from *Hametz She'Avar Alav HaPessah*: If one possessed Hametz on Pessah in violation of the Torah prohibitions of *bal yerd'eh uval yimatze*, he is penalized by *Hachamim* in that the Hametz becomes *asur behana'a* – forbidden to derive benefit from. Is the long-lost whiskey subject to this *issur*?

David, like everybody else, sold his Hametz to a non-Jew through his Rav. As a result of that sale, the whiskey spent Pessah safely ensconced in the hands of a non-Jew, so it would seem that no *issur* would obtain.

But wait. The Gemara says (Bava Kama 69) that a stolen object cannot be dedicated to *hekdesh*, neither by the thief nor by the owner. The thief, because the item isn't his; the owner, because it isn't in his *reshut* - possession. Although it remains his property, the fact

that the stolen item is not under the owner's dominion weakens his *ba'alut* (ownership) to the point that he can't be consecrate the object to *hekdesh*. According to all the Rishonim, save the Rashba, he cannot sell it either. So it would appear that David was in no position to sell the liquor while it did laps on a luggage carousel in Helsinki.

But perhaps our case is different. The airline is liable for baggage entrusted to its care, rendering the airline a *shomer* (custodian). The Ramban (Bava Metzia 21, 26; see Netivot Hamishpat 259) says that while in the custody of a *shomer*, an object remains in the *reshut* (possession) of its owner, because *yad shomer k'yad ba'alim*—the custodian is an extension of the owner. So perhaps David had the power to sell it after all. (If the bag was taken in error by another passenger, he did not.) However, some *Poskim* question whether lost Hametz—think cookies in the back of the glove compartment—is included in a sale, which would be a problem in our case.

We might invoke here, to supplement the case for leniency, the fact that there is extensive debate among the *Poskim* regarding the Hametz status of whiskey derived from grain, based on the Gemara in Hullin 120-121. (See Sha'are Teshuva O.C. 448, Teshuvot Pene Yehoshua, and Sha'agat Aryeh.) Most *Poskim* conclude that whiskey is *Hametz Gamur*.

Should the whiskey be discarded even if was included in the sale? It is recorded in Ma'aseh Rav that the Vilna Gaon after Pessah would avoid deriving benefit even from Hametz that had been sold to a non-Jew, out of concern that the sale might not have been sincere. However, some suggest that today, when selling Hametz before Pessah is widespread and standardized, perhaps the Gaon would not have maintained this practice. R' Moshe Fein-

stein insists that one should not avoid buying Hametz after Pessah from an observant shopkeeper that had sold it, because that would cast aspersions on the merchant inappropriately.

The Hazon Ish, who scrupulously followed the Gaon's views, is quoted as having similarly objected to acting stringently in this arena today, but for a different reason: Because we rule that *Hametz she'avar 'alav haPessah* is only forbidden *mideRabbanan* as a penalty for having trifled with the Torah prohibitions of Hametz, there would be no basis to penalize a store owner who diligently followed the Halacha and made the Rav a *shaliach* to sell his Hametz, even if in fact the sale wasn't effective. Maharam Schick and Sede Hemed are quoted expressing a similar view.

May we merit to avoid forbidden Hametz after Pessah as we avoided it during Pessah.

המרכז לרפואה ע"פ הלכה שעי"י בית הוועד  
M·E·D·I·C·A·L  
HALACHA CENTER

HAVE A QUESTION?

HALACHIC  
GUIDANCE  
*in all*  
MEDICAL  
MATTERS

Consultation Line  
732.276.2183

Email  
info@themedhc.org

# GENERAL HALACHA

## TESHUVA FOR SHOPLIFTING

By Rabbi Yitzchok Basser

**Q:** In his teenage years, someone shoplifted from a store owned by a family friend. He wants to make amends. Is it sufficient to anonymously return the value of the item stolen, or must he take the difficult step of identifying himself and asking *mehila*.

**A:** It is preferable to ask *mehila*, but he is not required to do so. In a case of difficulty one may be lenient and not ask.

There is an apparent contradiction regarding this issue. The Rambam in the Laws governing Personal Injury (Hilchot Hovel U'mazik 5:9) states that there is a distinction between causing another person bodily harm, and damaging monetary possessions. The latter needs only to pay for the damages incurred, whereas the former must also ask *mehila*, forgiveness, from the victim. This would imply that stealing, which only involves monetary harm, would not obligate requesting *mehila*.

However, in the Laws of Teshuva, the Rambam (2:9) states that Teshuva only helps for transgressions *Bein Adam LaMakom*, between man and his Creator. However regarding transgressions against another person, such as causing him bodily harm, or cursing him, or stealing from him, one will never attain atonement until he returns what he has taken, and appeased his friend.

The *mefarshim* point out this seeming contradiction. The *mefarshim* take two approaches in answering this question. The Lehem Mishne (Hilchos Hovel) answers by noting



that the Rambam in Hilchot Teshuva refers to stealing as "Gezela", which connotes a form of thievery whereby the thief takes the object by force from the owner, and proceeds to derive personal benefit from the object. Such an act causes emotional distress, and therefore warrants asking for *mehila*. However, the Rambam in Hilchot Hovel is referring to damaging another person's possessions, which lacks the element of causing significant emotional distress, and would therefore not require asking *mehila*.

The Sefer Hakovetz (see also Darke David B"K 91b) takes a completely different approach. He understands the Rambam in Hilchot Hovel to be discussing the minimum obligation to attain any level of atonement. Only one who causes bodily harm would be included in such an obligation. However, in Hilchot Teshuva, the Rambam discusses the proper approach that a penitent person should have, and that is to request *mehila* even for transgressions that are not as severe as causing

bodily harm.

Getting back to our question, whether a shoplifter is obligated to ask *mehila*, it would depend on these two approaches. According to the Lehem Mishne, since the stealing took place in a manner that did not cause emotional distress, he would not be obligated to ask *mehila*.

However, according to the approach of the Sefer Hakovetz it would be proper to ask *mehila*.

In our case, since asking *mehila* involves emotional difficulty, and according to the Lehem Mishne there is no obligation at all to ask *mehila*, and even according to the Sefer Hakovetz doing so would not be a strict obligation, one may be lenient and not disclose his identity for the purpose of asking *mehila*.

It would be proper to send an anonymous letter apologizing for his indiscretion and asking for forgiveness.

JOIN THE CHAFETZ CHAIM  
NIGHTLY TELECONFERENCE

GIVEN BY GEDOLEI RABBANIM AND POSKIM

718.424.8880



# MATTERS OF INTEREST

## BEFRIENDING WITH INTENTION

A rich man moves into the neighborhood with his family and obviously makes many friends. May one befriend him with the intention of borrowing from him in the future?

May a neighbor give the man a housewarming present so that he will agree to lend him money tomorrow?

If he did give presents, but learned that there is a Ribbit issue, does he need to take the presents back?

Speaking nicely to someone with the eventual intention to borrow from them, is not a problem of Ribbit according to most *poskim*



(who hold that there is no issue of *Ribbit mukdemet* – pre-loan interest – through words) though there might be a *Hanupa* (flattery) issue.

According to many *poskim* giving small presents is also permitted, unless one states clearly that they are giving it as an incentive to receive a loan, or if they would not have done so otherwise. Even then, it is only forbidden when the intention is to borrow in the near

future.

Giving large presents with the intention of receiving a loan in the near future is considered *Ribbit mukdemet* – pre-loan interest. This may apply even to someone who usually gives presents, since in our case he is doing so with specific intent to borrow.

In the event that one already gave the gift, they do not need to take it back.

# HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis

## NETILAT YADAYIM WITH A PLASTIC CUP



I'm going on a trip and I don't have a proper Netilat Yadayim cup. Can I use a disposable cup?

The *halacha* requires that one use a *keli* (vessel) for *Netilat Yadayim*. The *Poskim* differ as to whether a disposable cup (such as a paper cup, or plastic bottle) is acceptable. Igrot Moshe (OC 4:39) ruled that one should not use a disposable cup for *kiddush* because *kiddush* requires that the cup have *hashivut*, or stature. Some draw the conclusion from this *teshuvah* that a disposable cup is called a *keli*; although it is not acceptable for *kid-*

*dush* it would be acceptable for *Netilat Yadayim*, which does not require *Hashivut*. *Minhat Yitzhak* (10:23) rules that one should avoid using a disposable cup.

Rav Schachter *shlita* ruled that since even a disposable cup is often used multiple times in the course of a meal, it clearly qualifies as a *keli*. Many of the lenient *Poskim*, however, agree that if one can avoid the question by thinking ahead and packing a proper (that is, durable) cup, one should do so. (see *Piske Teshuvot* 159:7).

The Daf  in Halacha  
Bring the Daf to Life!

מסכת ערכין

RAV BINYOMIN HOLLANDER

דף כ"ו Till Death Do Us Part

דף כ"ז Take My Word for It

דף כ"ח Don't Overspend

דף כ"ט Acquiring Issurei Hana'ah

דף ל' Subleasing in Halacha

דף ל"א At the Eleventh Hour

דף ל"ב A Mezuzah at Sea

# EVENTS & HAPPENINGS

AT THE BAIS HAVAAD

The Bet HaVaad recently launched a new weekly series in Hilchot Ribbit. Presented by Hagaon Rav Pinchas Vind, shlit"za, a world renowned expert in Hilchot Ribbit, participants will become familiar with advanced concepts in the application of Ribbit nowadays. The Bet HaVaad is the premier forum for advanced halachic discussion, so it was only natural that this distinguished series should take place at the Bet HaVaad.

PARTICIPATE IN OUR MILLION DOLLAR MATCHING CAMPAIGN

# RAISING THE BAR GOING LIVE

[WWW.MATCH4HALACHA.COM](http://WWW.MATCH4HALACHA.COM)



Business Halacha  
Services



Bet Din  
& Dispute  
Resolution



Zichron  
Gershon Kollel  
for Dayanut



Medical Halacha  
Center



Kehilla & Bet  
Din Primacy  
Initiative



Halachic  
Awareness &  
Education



## S·E·P·H·A·R·D·I·C HALACHA CENTER

105 River Ave, #301, Lakewood, NJ 08701  
732.9300.SHC (742)  
[www.theshc.org](http://www.theshc.org)  
[info@theshc.org](mailto:info@theshc.org)

### MIDWEST DIVISION RABBI DOVID ARON GROSS

A 3718 SHANNON ROAD  
CLEVELAND, OH 44118

P 216.302.8194

E [MIDWEST@BAISHAVAAD.ORG](mailto:MIDWEST@BAISHAVAAD.ORG)

### BROOKLYN DIVISION RABBI DOVID HOUSMAN

A 2238 85TH STREET  
BROOKLYN, NY 11214

P 718.285.9535

E [RDHOUSMAN@BAISHAVAAD.ORG](mailto:RDHOUSMAN@BAISHAVAAD.ORG)

### SOUTH FLORIDA DIVISION RABBI YOSEF GALIMIDI, MENAHEL RABBI MEIR BENGUIGUI, SAFRA D'DAYNA

A SAFRA SYNAGOGUE

19275 MYSTIC POINTE DR  
AVENTURA, FL 33180

E [BD@BAISHAVAAD.ORG](mailto:BD@BAISHAVAAD.ORG)