

THE BAIS HAVAAD

# HALACHA JOURNAL

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



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## THE RIGHT OF REFUSAL

*Mind your own business!  
And when not to*

Rabbi Baruch Fried

Are You Your Brother's Keeper?

Your naïve, young nephew is about to enter into a business venture that your experienced business acumen tells you is doomed to failure.

Your elderly mother-in-law would do far better in a senior care facility, but she emotionally - and, in your opinion - foolishly refuses to be transferred.

All of your well-intentioned words fall on deaf ears and your constructive advice goes unheeded.

Can you take action? Must you take action<sup>1</sup>?

1 Note that in some situations there are legal considerations as well. This article does not address them.

### AN OBLIGATION TO INTRUDE:

Many people do not like to intrude in the lives of others, especially when the intrusion is unsolicited and unwelcome. But, at times, minding your own business is not a halachic option.

At first glance, there are four obligations from the Torah to intervene into another Jew's affairs: If someone is about to perform an action that is prohibited by the Torah, there is an obligation *l'afrushai me'isura*, to forestall from sin.

If someone is about to do something that will lead to a loss of money, we must stop them as part of our obligation of *hashavas aveida*. [Although, literally, *hashavas aveidah* means returning a lost object, the commandment also applies to saving an individual from any type of financial loss.]

If someone is about to do something that will lead to a significant loss, monetarily or otherwise, we are commanded "*Lo saamod al dam*

*rei'acha*," do not stand by while your brother's blood is being spilled.

There is a general commandment of "*Ve'ahavta l'rei'acha kamocho*," to love your friend as yourself, meaning that you should not allow anything to happen to him that you would not wish upon yourself and you must save him from a situation that you would not want to be in yourself.

### WHEN TO BACK OFF:

Nevertheless, a deeper look at these obligations reveals that intruding on the affairs of others is not always the proper thing to do.

Even when you witness someone about to transgress a prohibition, there are Achronim who say you do not have to stop him if he is aware that he is doing an *aveirah* and chooses to do it anyway.

Regarding the obligation of *hashavas aveidah*, the Rambam<sup>1</sup> states clearly that an *aveidah mida'as*, the property of one who is consciously careless with his property, does not necessitate *hashava*. (An exception to this would be where the owner is clearly not in his right mind<sup>2</sup>.)

Regarding the prohibition of "*Lo saamod al dam rei'acha*," the Minchas Chinuch<sup>3</sup> surprisingly suggests that this prohibition does not apply for one who is committing suicide, based on the above rule of *aveidah mida'as*. In other words, if someone is willingly and knowingly throwing away his life, you have no responsibility to stand in his way.

While many Rishonim and Achronim disagree<sup>4</sup> with this ruling, they do not disagree with his reasoning. Rather, they list three rea-

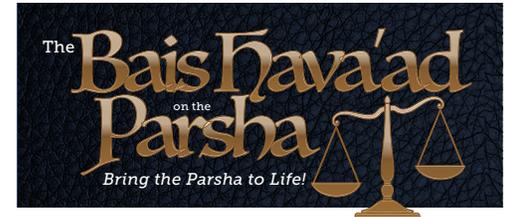
<sup>1</sup> Gezeilah 11:11. See also Ketzos Hachoshen 261:1 and Nesivos Hamishpat *ibid*.

<sup>2</sup> See Sanhedrin 48a, Yoreh Deah 349:3.

<sup>3</sup> Kometz L'mincha 237:1.

<sup>4</sup> See Igros Moshe, Yoreh Deah 2, Siman 174, and Kli Chemda Parshas Ki Seitzei.

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Highlights of a shiur by Rav Yehoshua Grunwald

### LABOR LAW: WHO SHOULD DO THE MELACHA AT A BIRTH?

*Should pikuach nefesh be delegated?*

ותלד רחל ותקש בלדתה.

And Rachel gave birth, and she had difficulty in her delivery. (Beraishis 35:16)

If there is a need on Shabbos for lifesaving medical care that entails *chillul Shabbos*, should one seek an *akum* or a *katan* to perform the *melacha*?

The Shulchan Aruch (O.C. 328:12) rules that he should do it himself. The Rama argues and says that if it will cause no delay, one must use an *akum* or do the *melacha* with a *shinui*.

The Taz (*ibid.*) objects to the Rama's approach, because onlookers will mistakenly conclude that *pikuach nefesh* doesn't override Shabbos, and next time they will search for an *akum* while the patient dies.

Many *poskim* follow the Taz.

But R' Shlomo Zalman Auerbach in *Minchas Shlomo* says (and

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### spotlight

This week featured the first shiur in the Professional Halacha Shiurim Series of the Bais HaVaad Medical Halacha Center. Rabbi Eli Gewirtzman, *shlit'a*, one of the Senior Poskim in the Medical Halacha Center, presented the first shiur and was well received. These advanced shiurim are open to professionals in the medical community and explore contemporary medical halacha topics in depth.

# GENERAL HALACHA

## WHEN DEBT SETTLEMENTS ARE UNSETTLING

*Can a debt settlement be reversed?*

### *Legitimate Action, or Involuntary Relinquishment?*

By Rav Baruch Meir Levin



**Q.** A customer of mine, who had fallen on hard times, owed me approximately 25,000 dollars. One day, he came over to me and said that although he didn't really have any money to pay me, he would somehow scrape together 10,000 dollars to pay me if I agreed to accept it as full payment. Afraid that I would otherwise not get paid at all, I agreed to this settlement. He paid me the 10,000 dollars and I signed a letter stating that his bill had been settled in full.

This took place a couple of years ago. Recently, his financial situation seems to have improved and I believe he is now capable of

paying me the portion of his bill that I wrote off. Is there any way I can retract my past agreement to discharge his debt?

**A.** Ordinarily, when one agrees to relinquish his right to a monetary claim, he can no longer retract on the agreement. However the halacha is that a relinquishment must be done voluntarily. If a relinquishment is done by force or under duress it is not valid. For example, if a debtor tells his lender "if you don't discharge my debt I will kill you" and the lender acquiesces, the discharge is not valid and the debt remains in force. Moreover, even if the debtor only threatens to hurt his lender financially, it is considered an act of force. For example if the debtor says, "if you don't discharge my debt I will persuade one of your vendors to cut ties with you", the discharge will be invalid.

In your case, since your debtor threatened to avoid paying you even the 10,000 dollars that he was capable of paying unless you agreed to a settlement, he in effect forced you to relinquish (part of) the debt. Consequently the settlement is null and void and you can require him to pay the remaining balance of his bill.

However, there is one very important limitation to this halacha; a relinquishment is only considered as having been done by force if the debtor threatened to perform an act that was not within his halachic rights. If, however, he threatened to perform an act within his halachic rights, he is not considered as having forced the relinquishment. For example a debtor who says to his lender "you may not use my swimming pool unless you discharge

my debt" is not considered as forcing a discharge since it is fully within his rights to not allow the debtor into his swimming pool. Rather, he is just negotiating a conventional two-way deal; the exchange of swimming pool usage for a debt discharge. Only when the debtor threatens to infringe on the lender's rights in a manner that is beyond his halachic ability is it considered an act of force.

In your case too, if it was within your debtor's halachic right to avoid paying you at the time of the settlement, yet he did so anyway, your discharge cannot be considered a forced one but rather part of a conventional two-way deal.

How can it be that your debtor had a halachic right to avoid paying you at that time? There can be a number of possibilities for this. Firstly, a debtor is often not required to borrow money in order to pay an existing creditor. Therefore, if your debtor indeed did not have the 10,000 dollars and was only able to obtain it through a loan then he possibly had a right not to pay you. Moreover, even if he did have 10,000 dollars but needed it for certain basic imminent necessities he would not have been required to give it to you. And finally, even if he did have 10,000 dollars available to pay towards his debts yet had other creditors as well, he was not necessarily required to give it all to you at the expense of the other creditors. If any of these circumstances pertained to your debtor, his payment to you was an act beyond the letter of the law, and thus the associated settlement is not considered a forced one and remains valid. Unfortunately, this would leave you with no recourse in collecting the balance of the loan.

# MATTERS OF INTEREST

## *Avissar Family Ribbis Awareness Initiative: Ribbis from an Akum II*

This that we mentioned in the previous issue regarding *ribbis* from a non-Jew, is all from a Biblical standpoint; however, subsequently it was forbidden by Chazal to lend an *akum* with *ribbis*, provided that it is *ribbis deOraisa*. The reason for this decree is in order that we keep our distance and not learn from their way of life.

There are however two exceptions to this rule. The first one is regarding one who needs to do so in order to earn a living, and is not merely trying to amass wealth. The second is a *talmid*

*chacham* whom Chazal trusted would not be influenced by an *akum*, who may lend to them with *ribbis*. Tosfos adds that in our times when we are subject to the pressures of taxes, and our business dealings inevitably involve *nochrin*, it is permitted to charge them *ribbis*. These interactions will not cause us to leave our protected communities, as we are already dwelling among them.

The Chochmas Adam writes that it is a *middas chassidus* to refrain from using this leniency. Some add that those living in *Eretz Yisrael* would still be subject to this decree. (See also Radak, *Tehillim* 15:5).

Some include a *mumar lehachis* (one who wantonly rejected the Torah without personal gain), and a *moser* (an informer) in the above *heter*. There is some discussion whether the *ribbis* can be collected when the borrower

became a *mumar* between the loan and its collection. (See *Shulchan Aruch, Yoreh Deah*. 159.)

## SEAH BESEAH — MEASURE FOR MEASURE

Chazal prohibited borrowing a certain measure of fruit, or other commodity, with the agreement to pay the exact amount of the same item. The reason for this prohibition is because the asset may increase in value before satisfying the obligation, and the borrower is actually returning assets of greater value than he borrowed.

There are two notable exceptions to this prohibition: a) if the borrower has a similar item in stock, or b) there is a fixed market value to the item.

The aforementioned prohibition can apply to

foreign currencies as well. A foreign currency is considered a commodity, and therefore would be subject to the prohibition of *seah beseah* when borrowing and repaying in that currency. For example, if one borrows Canadian or Israeli

currency in the United States to be paid back in the same currency that was borrowed, he transgresses this prohibition. If the borrower owns a minimal amount of that currency, it would be permissible.

When borrowing the local currency on the other hand, one may return the exact amount, even if it had appreciated in value. Even if inflation caused the value to drop sharply, one nevertheless repays only the amount borrowed.

# HALACHOS OF DAILY LIVING

## Weekly Questions

Laws regarding bread



### Can one use any type of bread product for *lechem mishneh*?

Matzos, bagels, pitas, or any other type of bread, may be used for *lechem mishneh*.

It is preferable to eat only *pas Yisrael* on *Shabbos*. One who does so, may use bread that is not *pas Yisrael* for the second loaf. Pri Migadim explains that if one only has loaves that are *pas akum*, they may be eaten on *Shabbos*, even though one is normally stringent. (Pri Megadim M.Z. 274:2).

One may borrow a *challah* (or any other bread) from a neighbor to use as *lechem mishneh*, even though it must be returned and cannot be eaten (Shemiras Shabbos K'hilchasa 55:13).

Rivevos Efraim (1:202) writes that one may even use dairy bread (which was made according to *halacha*, either made in a small batch or with a unique shape) as the second loaf for a meat meal, even though it may not be eaten at the meat meal.

If one does not have a second loaf, *hamotzi* should be recited on a single *challah*.

### Can I use a frozen challah for *lechem mishneh*?

There is a disagreement among *poskim* as to

whether a frozen challah that cannot be eaten at the moment may be used as the second loaf for *lechem mishneh*. The Shevet HaLevi (6:31) writes that this should be avoided if possible, since it is questionable if bread that is currently inedible can be used for *lechem mishneh*. Rav Shlomo Zalman Auerbach, *zt"l* (Shemiras Shabbos K'hilchasa 55:39) held that if one anticipates eating the bread when it defrosts later in the meal, it may be used. However, many *poskim* including Minchas Yitzchak (9:42), Rav Ovadya Yosef (Orach Chaim 8:32), and Tzitz Eliezer (14:28) held that a frozen challah may be used in any event. Minchas Yitzchak explained that since the bread is fully baked, and the thawing is something that happens on its own, the bread is viewed as being completely edible even while it is in a frozen state.

### A small piece of my challah broke off. Can it still be used for *lechem mishneh*?

Ideally, one should use challahs that are completely intact. If a challah is missing a small piece, less than one part out of forty eight, there is a disagreement as to whether it is still considered whole (see Shaarei Teshuva 274:1). Many *poskim* are lenient (Minchas Yaakov, *Machatzis Hashekel*). The Aruch HaShulchan (274:5) writes that if one has no other bread, they should still use two loaves, even if they are both missing more than a forty-eighth.

If one can attach two halves of a loaf with a toothpick so that it appears that it is one complete loaf, then this may be used for (one loaf of) *lechem mishneh* as well (see Magen Avrohom 168:4).

### May I use very sweet cinnamon challahs for *lechem mishneh* (the two *Shabbos* loaves), even though they are more like cake than bread, and their *bracha* would be *borei minei mezonos*?

Rav Moshe Feinstein (Igros Moshe, Orach Chaim 1:155) was asked a similar question: May one use egg matzos for *lechem mishneh*? Although there are opinions that hold that certain types of egg matzah are *hamotzi*, Rav Moshe writes that the dominant opinion is that egg matzah is considered *pas haba'ah b'kisnin*, and is therefore *mezonos*. If so, one

would assume that egg matzos cannot be used for *lechem mishneh*. Nonetheless, Rav Moshe ruled that egg matzos can be used for the following reason: *Pas haba'ah bekinsnin* has a status of *mezonos* because it is a dessert item. However, when egg matzah is used for *lechem mishneh*, it is considered to be the staple item of the meal. In *halachic* terms, we refer to this as *kevias seuda*, and the *bracha* is elevated to *hamotzi*. Therefore, one may use egg matzos for *lechem mishneh*. From this ruling of Rav Moshe we can extrapolate that cinnamon rolls, or any other cake roll, can be used for *lechem mishneh*, and the *bracha* of *hamotzi* would be recited.

The Machatzis Hashekel (274:1) writes that if one will be reciting *hamotzi* on a regular loaf of bread, they may not use *pas haba'ah b'kinsnin* as the second loaf. In this situation, there is no *kevias seuda* on the cake since they are reciting *hamotzion* the bread and not the *pas haba'ah b'kinsnin*. The cake roll remains *mezonos* and cannot be used for *lechem mishneh*.

### What is the mitzvah of *lechem mishneh* (having two loaves of bread at the *Shabbos* meals)?

The Gemara (*Shabbos* 117b) teaches that on *Shabbos* one is obligated to recite *Hamotzi* on two loaves of bread. This serves as a remembrance to the double portion of *man* (manna) that fell every Friday during the forty years that the Children of Israel traveled through the desert. Although the Biur Halachah (263:2) maintains that this is only a rabbinic requirement, the Aruch HaShulchan (274:1) writes that having two loaves of bread at the *Shabbos* meal is derived from a Biblical reference. Women are obligated as well, since they too were included in the miracle of the *man*. Therefore, everyone should be given a piece of challah from one of the two loaves (*Mishneh Berurah* 167:83). If an individual at the meal has a dietary restriction and can only eat certain special types of bread (e.g., gluten free, spelt), that individual should place the special loaf (even if it is not whole) together with the loaves of the one reciting *hamotzi*, so that this bread too will be included in the *lechem mishneh*.

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sons why the reasoning of *aveidah mida'as* does not apply: 1. The victim is also transgressing a prohibition of *Lo Sirtzach*, murder, and one must step in to save someone from being murdered. 2. The victim does not "own" his life and has no right to terminate it. Therefore, his conscious decision to kill himself is not valid. 3. We must assume that the victim is not in his right mind and did not make this decision rationally.

Consequently, in other instances where these three arguments do not apply, even if the repercussions may be significant, it is likely that all opinions would agree that one does not have to prevent someone from suffering a severe loss if he made a knowing decision to that effect.

Concerning the mitzva of "*Ve'ahavta l'rei'acha kamocho*", there are various factors that have to be considered. The rule is that before we jump to the conclusion that we would certainly want to be "saved" if we were in our friend's situation, we must introspect and ask ourselves if this really true.

Would we really want some well-meaning friend or relative intervene against our will just because they are convinced that they know what is good for us better than ourselves?

Based on the above, it would seem that this very mitzvah of loving our friend as ourselves should *prevent* us from intervening. We certainly would want others to make every effort

to explain to us why they feel we are mistaken, but ultimately, we would like to choose our own destiny and not be pushed to act against our will.

On the flip side, if the individual cannot execute his 'poor' decision alone, you certainly may not help him. That would be a flagrant violation of the prohibition of "*Lifnei ivair lo sitain michshol*".

### REFUSING TREATMENT:

There is a fascinating ruling from Rav Moshe Feinstein *zt"l*.

Rav Moshe was asked about a patient who refused to undergo a treatment that his doctors felt would be beneficial to his health. Rav Moshe ruled that if the patient refuses to go through with it because of the momentary pain or has simply given up on life, then his refusal is considered infantile and irrational and may be coerced. If the patient is of the opinion that the doctors are incorrect, then they must attempt to find someone that will convince him otherwise.

If, however, there is any danger involved in the procedure, even if medically it appears the lesser of two evils, the patient has the right to opt out and may not be coerced.

As always, a competent Rov should be contacted in each particular case.

5 Choshen Mishpat 2 Siman 73.

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it is reported in the name of R' Moshe Feinstein that this is limited to actual medical treatment, but ancillary processes (e.g., turning on lights) should optimally be done in a way that lessens the violation.

Strangely, although a woman in labor is considered a *chola sheyeish ba sakana*, even the

*Mechaber* agrees (ibid. 330:1) that a *shinui* should be employed where possible. Why the difference?

The Mishna Berura (ibid.) answers that childbirth is less of a worry because it is a natural process and very rarely dangerous. Nevertheless, where using a *shinui* or finding an *akum* would cause a delay, a Jew must act.

# The Daf in Halacha

Bring the Daf to Life!

## מסכת מנחות, חולין

### This Week's Topics

RAV SHMUEL YESHAYA YOFFE, ROSH CHABURA BAIS MEDRASH GOVOHA

- דף ק"ה Monetary Mitzvos: To Pay or Not to Pay?
- דף ק"ו When is a Bittul Not a Bittul?
- דף ק"ז Was There a Shabbos Crew at the Bais HaMikdash?
- דף ק"ח Chopped & Diced: Issurei Hana'a and Tum'as Oehlin
- דף ק"ט Condemned to Fire
- דף ק"י Dedicating Korbanos Today
- דף ב' Measuring Liquids vs. Solids



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