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THE CALIFORNIA WILDFIRES:

Part 2: More on who is responsible to pay for wildfires and for what?

Adapted from the writings of 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*, and, therefore, the exemption of *tamun* would apply. However, if there was nothing obstructing the path of the fire, Rav Yochanon, whose view we follow, holds that the fire has the status of *odom hamazik*, and the lighter 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 *odom 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 the fire was spread through a "*ruach metzuyah*", common wind. If the fire only spread because it came into contact with a "*ruach she'aino metzuyah*", uncommonly strong wind, the lighter 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 *ruach metzuyah*?

The Chazon Ish[1] understands this to be the subject of a disagreement between Tosfos[2] and Rabenu Peretz[3], who disagree whether a wind that is not the norm but is not completely out of the realm of normalcy is considered a *ruach metzuyah* or not. Since the halacha is in doubt, a contemporary bais 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 Reish Lakish that *aish* is usually *m'shum mimono* – if 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 Rav Yochanon if some-

1 Bava Kama, Siman Hei, Se'if Bais

2 Bava Kama 59

3 Cited in Shitah Mekubetzes ibid

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The Bais Hava'ad on the Parsha
Bring the Parsha to Life!

Adapted from a shiur by Rav Yosef Jacobowitz on Parshas Beshalach

Practical Halachos of Techum Shabbos

אל יצא איש ממקומו ביום השביעי (שמות טז:כט)

Techum Shabbos dictates that one may not walk more than 2000 *amos* on Shabbos past his location (or his contiguous inhabited area) when Shabbos began.

Traveling less than 12 mil is *derabanan*.

More than 12 mil outside the *techum* is subject to *machlokes*:

Some hold it constitutes an *issur deoraisa* based on the *pasuk* above.

Others hold, that it is only *derabanan*.

One who traveled past the *Techum* may walk four *amos* around him (or anywhere within his *reshus hayachid*, e.g., house or Eruv).

One's animals and property also receive the *techum* of the owner. But *poskim* dispute the severity:

Maharlbach – It is *derabanan*, even if the halacha of *Techum* is *deoraisa* past 12 mil

Maharam Alshaker – If Techum is *deoraisa*, then this too is *deoraisa*.

spotlight

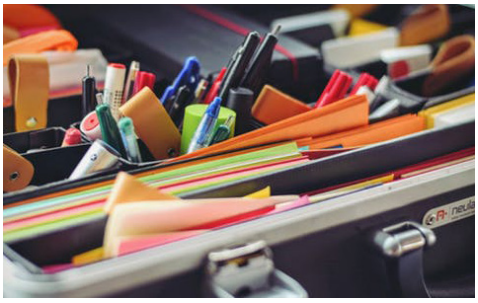
Even Haezer Chaburah meets attorneys

One of the challenges inherent in providing Even Haezer services, is ensuring that all agreements are both halachically and legally binding. To this end, , the Even Haezer Chaburah recently hosted Mr. John Panzer Esq. and Mr. Jeff Epstein, Esq., for a presentation on the relevant legal issues.

GENERAL HALACHA

TAKING WORK PERSONAL: Borrowing Office Supplies

By: Dayan Dovid Grossman, Shlita, Rosh Bais HaVaad



Can an employee take office supplies or borrow the company projector for personal use?

USING OFFICE SUPPLIES

In a busy office, supplies and paper items have a way of coming and going. Paper clips, pens and staplers are lost and found within the full routine of office life. While some items may go missing as a matter of course, there are certain office supplies which are sometimes taken with intent. An employee may want to use a notepad to write a grocery shopping list, or pocket a handful of paperclips for a home project.

Is it permitted for an employee to use office supplies for his personal use?

The situation depends on the following question: Does the employee know that the boss allows him to use the office supplies? Is he sure that the boss does not mind if he makes a few extra photocopies?

GIVING UP HOPE

The Gemara in *Bavah Metziah* (21b) covers the concept of *yi'ush sheloh mida'as*. This famous *sugya* is used by the *poskim* to develop the halacha with regards to these very relevant questions. The halacha of *yi'ush sheloh mida'as* pertains to a person who finds a lost item where it can be assumed that the owner gave up hope of finding it. This applies to an object which does not have a *siman* i.e. it has no identifying feature which would enable you to return it. It also applies to a situation where an object is found in a place which is mostly inhabited by *einom yehudim*, who are not sensitive to the Mitzvah of *hashovas avedah*.

In this case, one can assume that the owner of the lost object has given up all hope of ever recovering it. Once you can assume that the owner has lost hope, you may keep the object.

There could be a problem if you pick up the object before the owner has lost hope. Even if later on the owner would have lost hope of finding it, you would not be allowed to keep it, and would have to return it, if you can. If not, there would be a halacha of *yehei munach ad sheyovoi Eliyahu* and thus ownership of the object could not be ascertained until the coming of *Eliyahu*..

This famous Gemara of *yi'ush sheloh mida'as* is one of the first gemaras which is usually learned by children in elementary school. In a regular case where a person is *miya'esh* and loses hope of ever finding the object again, anyone who finds it after that point is allowed to keep it.

The question is what happens if the owner has not yet been *miya'esh* because he does not yet know that the object is lost? If the owner would know the object is lost, he would definitely lose hope. At that point, can you pick it up and keep it, or do you have to return it?

There is a *machlokes*, a disagreement between *Rava* and *Abaya*, and the halacha is like Abaya that *yi'ush sheloh mida'as loi haveh yi'ush*. This means that until the owner actually loses hope, even though he definitely would have lost hope had he known all the facts, that is not sufficient.

DOES HE CARE IF YOU TAKE IT?

The *Poskim* use this Gemara as an example for the case of taking objects without permission. Even if you know that the owner does not care, and would allow you to take the object, you cannot take it until you have permission. You may not take the object until the owner allows you to take it - even if you are sure that he would be okay with you just helping yourself.

If an employee is going to use office supplies such as paper or pens, and he will not be returning them, he must make sure that his employer allows this.

However, the halacha is more lenient in the case of borrowing something without permission. If the borrower clearly knows that the owner allows you to borrow it, and you will be retuning the item, then it is permissible to use it. As long as you know that the owner would permit it, you can borrow the item and then return it.

Asking permission from the owner at least once can help to alleviate this problem. If a person asked the owner previously, "May I have some paper clips?" and the owner gave permission, then the poskim rule that as long as he is certain that the boss is not *makpid* he does not need ask each time. If the owner is a relative and this situation had come up in the past, you can rely on the previous instance and help yourself to the item without permission as long as you are sure they still allow.

MATTERS OF INTEREST

Avissar Family Ribbis Awareness Initiative:

The Different Types Of Areivim [Guarantors]

AREV: GUARANTEEING A LOAN (CO-SIGNERS)

In certain instances where a home buyer does not meet underwriting criteria, the bank may require a cosigner to guarantee the loan. The current practice of banks is to stipulate that they can collect from either the borrower or guarantor at their own discretion. Such a guarantor is referred to in halachah as an *areiv kablan*. The *Shulchan Aruch* (170:1) prohibits a Jew from being such a guarantor for an interest loan on behalf of another Jew. This prohibition would apply any time one uses a Jewish guarantor on an interest loan, such as for a credit card, car loan, or mortgage. If one does borrow with interest and uses a cosigner, a *heter iska* must be used.

There are many instances in which the bank will require a cosigner, but in reality refer to the cosigner as a co-borrower. The definition of "co-borrower" is that each party is actually

borrowing half the money from the bank. The co-borrower then lends his half of the loan to the buyer to use to purchase his home. As the buyer repays the loan, he is in effect repaying the co-borrower of the loan. Since interest is being paid to the bank on the co-borrower's behalf, such an agreement would require a *heter iska* as well.

There are three types of guarantors discussed in halachah in regard to ribbis:

Arev: A standard co-signer, where the lender must first demand payment from the borrower. The guarantor may only be approached after first claiming it from the lender in *bais din*.

Arev kablan: Where the lender has the right to demand payment either from the guarantor or from the borrower equally.

Arev shluf dutz: Where the lender's only claim is to the guarantor. The guarantor accepts sole responsibility for the loan.

OU DAILY LIVING

Weekly Questions

Laws related to Birchas HaTorah

I just finished reciting birchos ha'shachar (the blessings recited upon waking in the morning), but I do not remember if I recited birchas ha'Torah. What should I do?

In a previous *halacha*, we noted the ruling of the Mishnah Berurah (47:1) that *birchas ha'Torah* is a Biblical obligation, and in cases of doubt one must recite the *bracha*. However, this is only an option of last resort. Since many *Rishonim* maintain that *birchas ha'Torah* is only rabbinic and may not be recited in cases of doubt, if possible, one should find someone who has not yet recited the *bracha*, and fulfill the obligation by listening to the second person's recitation.

If one realized their predicament before having recited the *bracha* of *Ahavah Rabba* (the blessing recited before *Shema*), one should have in mind when reciting this *bracha* that they are fulfilling the *mitzvah* of *birchas ha'Torah*. In case of need, this *bracha* can substitute for *birchas ha'Torah*, since it also mentions Torah study. Immediately after *Shmoneh Esrei*, one must study some portion of Torah, so that there will not be a disruption between the *bracha* and the study of Torah. Rav Schachter said that on a day when *Tachanun* is said, one should not interrupt between *Shmoneh Esrei* and *Tachanun*. One should wait to study Torah until after *Tachanun*. The Mishnah Berurah cites the Pri Megadim that in this case, even if one did not study immediately after *Shmoneh Esrei*, one may also be lenient not to repeat *birchas ha'Torah*, since immediately after the *bracha* one recited "*Shema*." Although Shulchan Aruch writes that it is questionable whether "*Shema*" can be counted as Torah study, in this case there is a double doubt, since it is also possible that a *bracha* was said. Because of the double doubt, one does not repeat *birchas ha'Torah*. In truth, there are very few cases when one would ever be required to repeat *birchas ha'Torah*

What is the reason we recite birchas ha'Torah?

There is a disagreement among *Rishonim* as to whether *birchas ha'Torah* is a Torah obligation or a Rabbinic obligation. Sefer Pnei Moshe 1:1 (*Benvenisti*) writes that the Ramban, Rashba and Sefer Hachinuch maintain that there is a Biblical obligation to recite *birchas ha'Torah* daily. This is derived from the verse (Devarim 32:3) "When I call out the name of Hashem, ascribe greatness to our God." This is understood to mean that before I read the Torah, I must recite a blessing. The Rif, Rambam and Rosh are of the opinion that *birchas ha'Torah* was instituted by the rabbis. Either way, the Gemara (Bava Metzia 85b) ascribes extreme importance to this *bracha*. There it relates that the Bais Hamikdash was destroyed because people did not recite *birchas ha'Torah*, which reflected a lack of appreciation for the value of Torah (Rashi).

The above disagreement among *Rishonim* leads to the following practical difference. When there is an uncertainty as to whether one recited *birchas ha'Torah*, must one repeat the *bracha*? If *birchas ha'Torah* is a Torah obligation then one must repeat the blessing. The Mishnah Berurah (47:1) rules in accordance with the Shaagas Aryeh that one must indeed be concerned that *birchas ha'Torah* is a Biblical obligation; however in a case of doubt one only recites the *bracha* of "*asher bachar banu*," since one blessing is enough to discharge the Torah obligation.

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one 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 Tosfos and the Ran[4], who argue whether one can be liable to capital punishment for death caused through such an act of *odom hamazik*.

We find a similar discussion regarding the halachos of Shabbos. The Nimukei Yosef famously asks how it is permitted to put food up to cook on a fire before the onset of Shabbos. If *aish* is *m'shum chitzo*, the fire burning is akin to a direct action done by the lighter. If so, when the fire cooks food on Shabbos, it should be considered as if the lighter is cooking on Shabbos. How is this permitted?

He answers that, indeed, it is considered as if he cooked on Shabbos; however, it is only forbidden to do an act of melacha on Shabbos itself, whereas this individual did no action on Shabbos.

We see from the Nimukei 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 Tosfos. The Ran, though, disagrees.

Bais din today does not mete out capital punishment. What is applicable is the rule of "*kom lei bid'rabbah minei*", 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, bais din cannot hold the driver accountable for the monetary damage. Thus, if someone firebombs someone else's house, thereby causing a loss of life, bais 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[5].

4 Sanderin 77

5 Choshen Mishpat Siman Daled

(continued from front pg.)

The Bais Hava'ad on the Parsha
Bring the Parsha to Life!

Practical examples:

If a Lakewood resident travels to New York for Shabbos, a guest needing a raincoat may not borrow his raincoat and wear it outside of the Eruv, since the *Techum* follows the owner in New York. However, Rav Dovid Feinstein ruled that if the guest is staying in the house with permission to use it, it is permitted.

If someone from Lakewood went to the hospital (out of the *Techum*) on Shabbos, Rav Dovid Feinstein ruled that the kids at home may wear or carry items outside of the Eruv (on Yom Tov) that are associated with them. However, they may not take items used only by the parents outside the Eruv. This is because ownership here follows the general use of the object, not the rules of *Choshen Mishpat*.

The Daf in Halacha
Bring the Daf to Life!

מסכת חולין

This Week's Topics

RAV YEHOSHUA GRUNWALD
DAYAN, BAIS HAVAAD LAKEWOOD
RAV YOSEF GREENWALD
DAYAN, BAIS HAVAAD YERUSHALAYIM
RAV ELIEZER COHEN
ROV OF BAIS MEDRASH TIFERES ELIEZER

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

Rav Shlomo Zalman Auerbach allows someone traveling to the hospital on Shabbos to bring as many items as he wants, as his property follows his changed status concerning *Techum*, and he receives a new *Techum*.

EVENTS AT THE BAIS HAVAAD

Rabbi Ariel Ovadia Releases Newest Edition of Avkat Roychel Series

The Bais HaVaad is privileged to count among its members Poskim with specialties spanning myriad topics in halacha and hashkafa. Rabbi Ariel Ovadia is a mainstay of the Bais HaVaad Sephardic Halacha Center and the author of the Avkat Rochel series-a halachic analysis compendium related to contemporary topics. He now has released the fourth volume to critical acclaim. We wish him much hatzlacha!

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