

THE BAIS HAVAAD

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PAYING WITH FIRE:

Who Is Responsible for the California Wildfires?

Adapted from the writings of Rabbi Yosef Greenwald

The recent severe fires in northern California, with the ensuing tragic loss of life and of property, gives us all pause to reflect on the great *chasadim* of Hashem and to realize how much we depend on Him to protect us every moment of our lives.

That being said, we also can take some time to reflect on the halachic ramifications such a situation creates.

Is a firestarter liable?

The halachic questions raised by the California wildfires are many. To name a few: If someone lit a fire that caused a large conflagration, is he responsible to pay for everything the fire damages?

If the fire causes a loss of life, is the one who started it liable for the death penalty?

It appears that at least some of the California fires were caused by electrical malfunctions, and numerous lawsuits have been brought against the electric company to this effect. Does an electric fire have the same halachic status as a manmade fire?

THE MAZIK OF FIRE:

Aish, fire, is one of the four *nizkei mamon*, damages done by one's property, which are listed in the Mishnah in beginning of Bava Kama. This is referring to a fire that one lights on his property that spreads and causes damage to someone else's property.

The Gemara discusses whether damages caused by fire always fall under the category of "*Mamon Hamazik*", damage done by one's property, or sometimes fall under the category of "*Odom Hamazik*". There are a number of important halachic differences between the

two classifications, which will be very pertinent to the California wildfires.

The halachos of *aish* are discussed in Choshen Mishpat¹, however there is an opinion that not all of them are enforceable by a contemporary *bais din*.

In our times, we have lost the institution of *semicha*, and our *batei din* do not have the full authority that they had in past generations. One ramification is that our *batei din* do not rule on occurrences which are uncommon. The majority opinion is that *aish* is common enough that *batei din* today can rule on it².

It is important to bear in mind that the *mazik* of *aish* does not refer solely to fire. Anything which damages through a "*koach acheir*", an outside force; for instance, debris falling from a wind and causing damage or water flowing through the force of a gust of wind also fall under this category.

CHITZO OR MEMONO:

As an example of the damage that a fire can cause, for which the lighter would be liable, the *posuk* says a case where someone lights a blaze that goes into his friend's field and burns his pile of wheat. The Gemara tells us that this example is used because a pile of wheat is an entity that is out in the open and can be clearly seen. We learn from there that if a fire burns something which is covered (referred to by the Gemara as "*tamun b'aish*"), the lighter is not liable to pay.

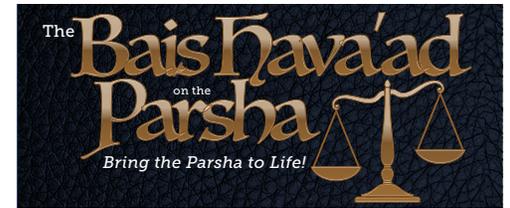
In a later Gemara³, it is stated that there is a fundamental dispute between Reish Lakish and Rav Yochanon regarding *aish*. Reish Lakish says that "*isho m'shum memono*", one's fire is one's property and he is liable to pay for any damages it causes, just as he is responsible for damage caused by anything he owns.

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² *Pischei Teshuva* *ibid*:1

³ *Bava Kama* 25B

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Adapted from a shiur by Rav Ari Stauber

WHY IS THIS NIGHT DIFFERENT FROM ALL OTHER NIGHTS?

Understanding the Difference Between the Mitzva of Sippur and Zechira

והגדת לבנך ביום ההוא לאמור בעבור זה עשה לי בצאתי ממצרים (שמות יג: ח)

According to Ben Zoma (*Berachos* 12b), the mitzvah of *Zechiras Yetzias Mitzrayim* applies daily, both by day and by night.

Why do we need a special mitzvah of *Sippur Yetzias Mitzrayim* the night of Pesach?

The *Minchas Chinuch* suggests three answers, accepting the third:

Zechira can be fulfilled through thinking, while *Sippur* must be verbal. But he rejects this because some *poskim* (e.g., *Shaagas Aryeh*) say that even for *Zechira*, one must speak.

Zechira is mentioning briefly, while *Sippur* requires elaboration. But he cites the *Pri Chadash* that even reciting Kiddush fulfills the mitzvah of *Sippur*.

Sippur requires telling it to another. But if no one else is present, the mitzvah is equivalent to *Zechira*.

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spotlight

Dayan Daniel Dombroff, shlita, is beginning a new Sunday morning Choshen Mishpat Chabura to explore the halachos of hiring and engaging employees-hilchos sechiras poalim. As a Dayan on our Bais Din, and a popular speaker, Rav Dombroff brings a wealth of practical experience to share with the members of this new morning Kollel.

GENERAL HALACHA

BRINKS CASH FLOW: Windfall or Highway Robbery?

By Rabbi Yehoshua Wolfe



An armored Brink's truck accidentally scattered money across a northern New Jersey highway on a recent Thursday morning, and as drivers got out of their cars to grab cash there were crashes. A windfall or highway robbery?

I'm driving on the freeway and the armored truck in front of me dropped its cash. Can I pocket the money?

A question few stop to ask.

Especially while the green-backs are still plastered to their windshield.

This article attempts to examine several aspects of this puzzling episode. In such a situation, are the drivers, in fact, permitted to keep the money?

Hashavas aveidah is one of the first *mitzvos* we are taught as children. Finders are *not* keepers - and lost property must be returned to its rightful owner. The following paragraphs, however, focus on when you may keep lost property. The times that finders *are* keepers.

YE'USH

Shulchan Aruch (C.M. 262:5) states that after a person has expressed that he has given up all hope of recovering lost property, the finder is entitled to keep it. This principle, called *ye'ush*, applies even when the finder knows the identity of the person who has lost the object. *Ye'ush*, however, cannot be applied when the object has entered the possession of the finder *before* the owner is *meya'aish*.

The Chazon Ish (*Bava Kama* 18:1) expands the scope of *ye'ush* to include situations where a thought of *ye'ush* occurs in the mind of the owner. He writes that no verbal declaration of *ye'ush* is necessary.

IMPLICIT YE'USH

We've all been there. You're hustling down the street, and a \$20 on the ground stops you dead in your busy tracks. We now know that you must ask yourself, "Was the owner already *mia'aish*"?

When somebody discovers he has lost property with no identifying characteristics, like money, he is presumed to be *meya'aish*. He gives up hope because he has no way of claiming his property. But the finder can only keep the money if the owner was already *mia'aish*. How do we determine whether he has even discovered his loss?

Sometimes, depending on the nature of the property, we can presume the owner has discovered his loss and was *meya'aish*. Some examples are heavy objects, or valuable items like money.

So next time you come across cash randomly lying in the street, you know you can keep it. The owner certainly has discovered his loss, and was *meya'aish*.

From this halacha, the *poskim* derive that when it is not known for certain that the owner was *meya'aish*, but there is strong reason

to believe so, the finder may assume *ye'ush* and keep the object. The question in the case of the armored truck, then, is whether the security guard standing idly by, can be construed as indicating *ye'ush* on his part.

Rabbi Mordechai Gross (*Mishpat H'aveidah* 159:17) quotes Rabbi Moshe Feinstein zt"l and Rabbi Yosef Shalom Elyashiv zt"l as saying that a person's failure to pursue his lost property is not considered *ye'ush*. However, one can argue that perhaps our case is different.

It is clear from a gemara in *Bava Metzia* (22 a) that when the lack of effort from the owner to pursue his property results in permanent loss, such an instance would certainly be considered *ye'ush*.

Getting back to our case of the armored truck, imagine the scene of all of the drivers frantically chasing after the fleeting bills. Indeed, it's safe to assume that they had no intention of returning the money to the owner. So, at first glance it would seem that the guard's lack of effort to recover the money should be considered *ye'ush*.

YE'USH BY AN AGENT

Upon careful examination, however, it's not that simple. There's a discussion among the *poskim* whether *ye'ush* of a *shomer* (or, guard) is sufficient, or only the *ye'ush* of the object's owner allows the finder to keep it.¹

In conclusion, the case of the armored truck is complex. Additional principles may apply to this scenario. So, next time you receive a windfall from an armored truck, be sure to ask a Shayla.

1 עיין אגרות משה (חושן משפט חלק א סימן פב בסוף דבריו) ועיין בשו"ת מהרי"ל דיסקין (בפסקים קפט) והביא נמי שהגרע"א ה' מסתפק בזה. ועיין באולם המשפט (סימן רסב).

MATTERS OF INTEREST

Avissar Family Ribbis Awareness Initiative: Jewish mortgage companies

JEWISH MORTGAGE COMPANIES

When a person obtains a mortgage from a Jewish lender, a *heter iska* is necessary. However, many Jewish mortgage companies are merely brokers for non-Jewish banks and not the actual lenders. One may obtain a loan through the services of a brokerage company without an *iska* agreement, provided that the bank that is providing the funds for the loan is not owned by Jews. However, in cases where the mortgage company is also the actual banker, a *heter iska* must be drafted.

It is important to note that even with a *heter iska* one may not give any extra payment

at the time the money is advanced. Since all payments are only the profits the monies generated, one can not give money prior to having the ability to invest the funds. Many mortgage agreements call for such payments (points, commitment fees, etc.), which are prohibited even under an *iska* agreement. The *iska* is therefore set up where these payments are deducted from the principle stated on the loan documents and the presumed profit amount is slightly higher.

In an *iska* agreement with a bank, one should review the *iska* agreement at the time of closing. This way he is aware of the actual amount



invested, as well as the exact amount of the presumed profit.

When borrowing from a Jewish owned bank with a *heter iska*, a consumer should be aware that the standard practice is that many banks sell their loans to other banks after closing. If the loan would be sold to a non-Jewish bank, they would not honor the *iska* agreement. Therefore the Jewish bank's

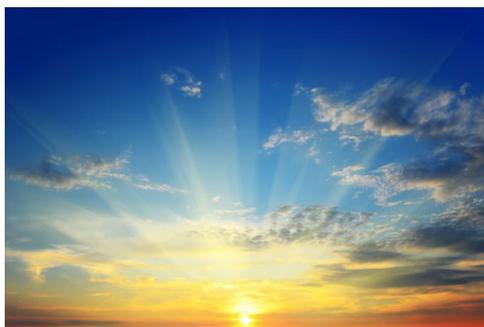
heter iska is written in a way that the bank does not have to remain in a long-term *iska* partnership. Should they so choose, the bank will find another lending institution to loan the investor the money needed to return the *iska* money to the original bank. At that time the original bank will broker a loan between the managing partner (the borrower) and the new bank. The money from this loan is used to re-

pay the *iska* funds to the original bank. In the event that there is extra money from the loan (due to the amount that was deducted off the *iska* at closing, as mentioned earlier), it will be given to the original bank as a brokers fee for brokering the loan. From that point and on, this deal is considered a regular loan with interest payments to a non-Jewish bank.

OU DAILY LIVING

Weekly Questions

Laws related to Birchas HaTorah



I was up all night. Do I recite Birchas HaTorah in the morning?

This is a common question on Shavuos. The Mishnah Berurah (47:28) writes that there is a difference of opinion among *poskim* as to whether one who was awake all night recites *birchas ha'Torah* in the morning. The Beir HaGra (47:12) and Pri Chadash (47:12) write that one does not recite a *bracha*; however, the Magen Avrohom (47:12) and Elya Rabba (47:9) write that a *bracha* is recited every day even if one did not sleep. To avoid this uncertainty, one should listen to the *bracha* of one who slept and answer Amen. If this is not possible, he should have in mind to fulfill the *mitzvah* of *birchas ha'Torah* when reciting the *bracha* of 'Ahavah Rabba', and study Torah immediately after *Shmoneh Esrei*. If one had taken a nap during the previous day, Rabbi Akiva Eiger (OC 47:12) writes that one may recite *birchas ha'Torah* in the morning even though they were up all night. But what if one had not napped the previous day and will not be *davening* now, but wants to continue studying Torah? The Aruch Hashulchan (47:23) as well as other *poskim* write that the common custom is like the Magen Avrohom, that a *bracha* should be recited, though the Mishnah Berurah maintains that a *bra-*

cha should not be recited because of the conflicting opinions.

Should birchas ha'Torah be said standing?

The Beis Yosef (O.C. siman 8) quotes a Yerushalmi which states that all *brachos* should be recited standing. This Yerushalmi is understood by the *poskim* to be referring to *birchos ha'mitzvos* and would seemingly include *birchas ha'Torah* as well. However, The Pnei Yehoshua (Megillah 21a) writes that this rule of the Yerushalmi refers only to *mitzvos* that are performed standing, such as *shofar*, *tzitzis* or *hallel*. However, regarding *mitzvos* that can be performed while sitting, such as reading the *Megillah*, the *bracha* can be recited sitting as well. The Gemara (Megillah 21a) relates that until the generation of Rabban Gamliel, Torah was studied standing, but after Rabban Gamliel passed away, weakness descended upon the world and from then on Torah was studied sitting. Therefore, Rav Ovadya Yosef, *zt"l* (Yechaveh Daas 5:4) writes that one may recite *birchas ha'Torah* sitting. He writes that this is also the opinion of the Rama MiFano (102:7) and others.

Is it forbidden to teach Torah to one who has not said Birchas Ha'Torah?

In regards to *birchos ha'nehenin* (*brachos* recited on food), there is a concept that one is not permitted to give someone food if the recipient will not recite a *bracha*. Offering food to one who will not recite a *bracha* is a violation of "lifnei iver lo sitain michshol" (enabling one to stumble) (See Shulchan Aruch OC 169:2). However, Rav Shlomo Zalman Auerbach, *zt"l* (Minchas Shlomo 1:91) writes that this does not apply to teaching Torah to one who did not recite *birchas ha'Torah*. *Birchas ha'Torah* is a *birchas ha'mitzvah*. Though *birchos ha'mitzvos* are obligatory, we do not find that Chazal forbade the performance of a *mitzvah* if a *bracha* is not recited. He notes that not

studying Torah (*bitul Torah*) is a more serious offense than omitting the *bracha*. If possible, one should instruct those who have come to learn Torah how to recite the *bracha*, but if this is not practical, one should teach them Torah in any event.

Is Birchas Ha'Torah considered two brachos or three brachos?

There is a difference of opinion among *Rishonim* as to whether the *brachos* recited for *birchas ha'Torah* are counted as two *brachos* or three. The Rambam (Hilchos Tefila 7:11) writes that *birchas ha'Torah* consists of three *brachos*. According to the Rambam, "v'haarev na" begins a second, separate *bracha*. However, Tosfos (Brachos 46a s.v. Kol) writes that "v'haarev na" is a continuation of the first *bracha*. The practical difference between these two opinions is whether a listener should answer Amen prior to "v'haarev na." Because this is a matter of dispute, Shulchan Aruch (OC 47:6) recommends being strict. Therefore, if someone is reciting *birchas ha'Torah* on your behalf, you should not answer Amen after "La'asok b'divrei Torah." According to Tosfos, this is the middle of the *bracha*, and answering Amen at this point would constitute a *hefsek* (interruption). One must wait to answer Amen, until the very end of the *bracha*, "ha'melamed Torah l'amo Yisroel." It is interesting to note that regarding the daily requirement to recite one hundred *brachos*, *poskim* are lenient to count *birchas ha'Torah* as three *brachos*.

HAVE A QUESTION?

HALACHIC GUIDANCE in all MEDICAL MATTERS



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However, he always has the exemption of *tamun b'aish*. Rav Yochanon disagrees and says that sometimes "*isho m'shum chitzo*", fire is akin to an arrow that someone shoots – meaning he is directly responsible for the damage, just as he would be responsible if he shot an arrow at someone's property.

The Gemara concludes that Rav Yochanon would agree that *isho m'shum memono* if the fire was lit in a way that it should have stopped before reaching someone else's field. For example, if there is a wall between the two fields that should have stopped the fire, but the wall fell down and the fire spread past the wall. In such a case, Rav Yochanon would agree that the lighter is exempt from payment on things that were *tamun*. However, if nothing stood in the way of the fire and it naturally spread to someone else's field, Rav Yochanon says the fire is *m'shum chitzo*, a direct result of the lighter's action, and he is liable to pay even on *tamun*.

The Poskim rule that the practical halacha is like Rav Yochanon.

The Shach⁴ adds that if someone actually

enters his friend's field and lights a fire there, according to the view of Rav Yochanon he is directly responsible for the damage caused by the fire, even if a wall stood between the fire and the objects that were burned, and he would be liable to pay even for things which were covered.

WATER DAMAGE:

As mentioned earlier, the *mazik* of *aish* can include damage caused by water. Thus, if someone forgets to turn off his faucet and the sink overflows and damages his downstairs neighbor's ceiling, he would be liable for the damages. According to Rav Yochanon, he would even be liable for damages done to covered items, as the damage was caused directly by the water he let out of the sink. However, if one's pipes flood in a way that is not a direct result of his actions, the damaging water definitely falls under the category of *m'shum mimono*, and one would not be liable to pay for anything that is covered.

In Part 2 of this series, we will continue our discussion by moving on to the status of electrical fires and the liability one would have if a fire he started actually kills somebody.

4 418:3

(continued from front pg.)



The *Minchas Chinuch* apparently holds that the mitzvah of *Zechira*

and *Sippur* have the same basis, but differ technically on some details. *Zechira* –to internalize the lessons and apply them to our lives: Hashem controls nature, He can perform miracles, and we are dependent upon him (see Ramban, end of Bo). This is

tion and answer), even if no one else is there, which makes it a story; *Hishtalshelus Devarim* (relating a chain of events), including Lavan, Yaakov, and the miracles in Egypt; explaining the reasons for the mitzvos at the Seder.

What is the reason for these differences? *Sippur* – We transmit this lesson to future generations (as in the context of *vehigadeta*) and inspire them by relating the story and explanation.

and *Sippur* have the same basis, but differ technically on some details.

Rav Chaim Soloveitchik holds that *Sippur* is distinct, with three *nafka minos*:

It must be: *Derech Sheeilah Uteshuva* (ques-

The Daf in Halacha

Bring the Daf to Life!

מסכת חולין

This Week's Topics

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- דף מ"ה TALKING "TEIKU"
- דף מ"ו WHEEZING LUNGS
- דף מ"ז TREIFOS BASICS : PART 2
- דף מ"ח CESAREAN COWS
- דף מ"ט BIRKAS KOHANIM: LAWS & CONCEPTS
- דף נ' UNDER THE KNIFE: IS A COW THAT HAD SURGERY KOSHER?
- דף נ"א DEFECTIVE MERCHANDISE: WHEN DID THE DEFECT HAPPEN?

EVENTS AT THE BAIS HAVA'AD

As we begin the period known as Shovavim [an acronym of the parshiyos: שָׁמַת וְאָרָא בְּאֵל בְּשַׁלַּח וְתָרוּ מִשְׁפָּטִים], the Bais HaVaad is once again presenting an annual shiur series on the halachos of Niddah, presented by Rav Chaim Weg, shlit"א, Rosh Kollel of Zichron Gershon, the Bais HaVaad Kollel for Dayanus. Rabbi Weg, shlit"א, is a sought after advisor in family matters and his shiurim garner wide-spread interest. The shiurim take place at the Bais HaVaad and are open to the public. Come join!



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