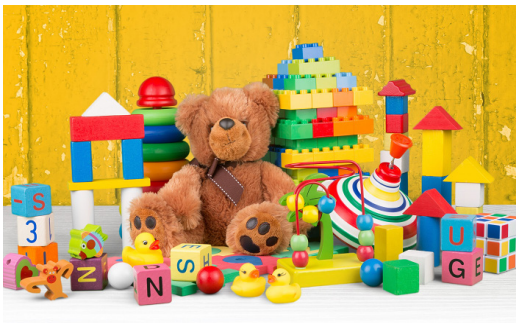
THE BAIS HAVAAD
HALACHA JOURNAL
Family, Business, & Jewish Life Through the Prism of Halacha



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PLAYFIGHTING: I CANCELLED MY PLAYGROUP SLOT

By: Rav Baruch Meir Levine

This past year, right after Tu'bshvat, I signed up my daughter in a playgroup next to my home, for the coming school year. Now it turns out that we will be moving to a new neighborhood. After doing some research I found out that there is a playgroup for my daughter's age on my new block and that they have an opening for the coming school year. This is a huge benefit for me, since travelling to my first playgroup at those times of the day would be as they say "a nightmare", and would take up time which I simply don't have. However, when I mentioned this to the Morah, she did not seem too happy about losing a slot in her playgroup. Am I halachically obligated to keep my daughter in the first playgroup, considering the difficulties it will impose?

The first thing to do in such a situation is to determine if the current playgroup slot can be filled. If indeed it can be filled you would have the right to back out, provided that the new child would not be more challenging for the Morah to care for. Nevertheless, even though you have the right to back out, *Chazal* allowed the Morah to have "*ta'arumos*" – a grievance, against you for causing her the inconvenience of replacing your slot. However, if she is able to find a replacement without difficulty, *ta'arumos* would not apply. Even so, according to one view in the *Shulchan Aruch,* since you would be reneging on your word you would be classified by *Chazal* as *mechusar amana* – lacking faithfulness.

If the slot cannot be replaced, you may be required to keep the slot. This is because anytime an employer hires a worker, even verbally, for a job and subsequently cancels the job, if at the time the worker was hired he could have found another job and is now no longer able to find one, the employer is considered as having caused him financial damage and is responsible to pay him his wages.

Accordingly, if by signing up, you caused the Morah to turn down additional children from enrolling in her playgroup, then even if you choose not to send your child there you would still be responsible to continue paying her until a replacement can be found. However, you would not have to pay the full amount rather you may deduct the amount that a Morah would agree to forfeit in order to have one less child in their playgroup.

On the other hand, if the Morah still has empty slots available, this indicates that by signing up with her you did not cause her to turn down any potential enrollees. Therefore, in such a case you would have the right to switch your child out of the playgroup unless a *kinyan* was done to finalize the enrollment. However as discussed before, the Morah is still given the right to have ta'arumos against you.

There is however a scenario where an employer may terminate an employment contract without any halachic ramifications even when this will cause financial loss to the worker. This is in a case of an *oness* – an unavoidable termination. The classic example of this, brought down in *Shulchan Aruch* is one who hires a worker to water a field and before the start of the job it begins to rain unexpectedly thus negating the need for the job. In such a case the employer does not have to pay the worker for cancelling the job as this was due to an *oness*.

There are no hard and fast rules as to what constitutes an "unavoidable termination". Cer-

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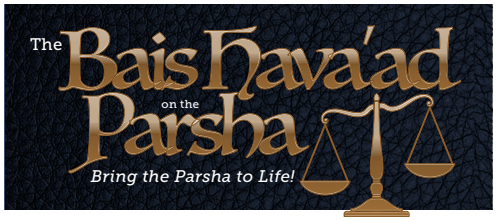

A Parsha Shiur by Rabbi Yitzhak Grossman

CONTEMPORARY LOAN REMISSION OMISSION: SHEMITAS KESAFIM NOWADAYS

The concept of *Shmitas kesafim* nowadays [remission of loans] is the subject of debate in Gemara.

The general consensus of early *poskim* is that outside of *eretz yisrael* it is still in force in contemporary times, albeit only *midrabanan*.

Question: We find that many communities did not practice *shemitas kesafim*.

Potential rationales:

Ro"sh: regarding the community in Spain – the language of their loan documents had a clause that they can collect even in a secular forum which essentially is saying that the borrower stipulated that *shemita* will not apply.

Terumas Hadeshen- it doesn't apply in *artzos rechokos* akin to *terumah*.

Question- it's *chovas haguf,* there should be no difference?

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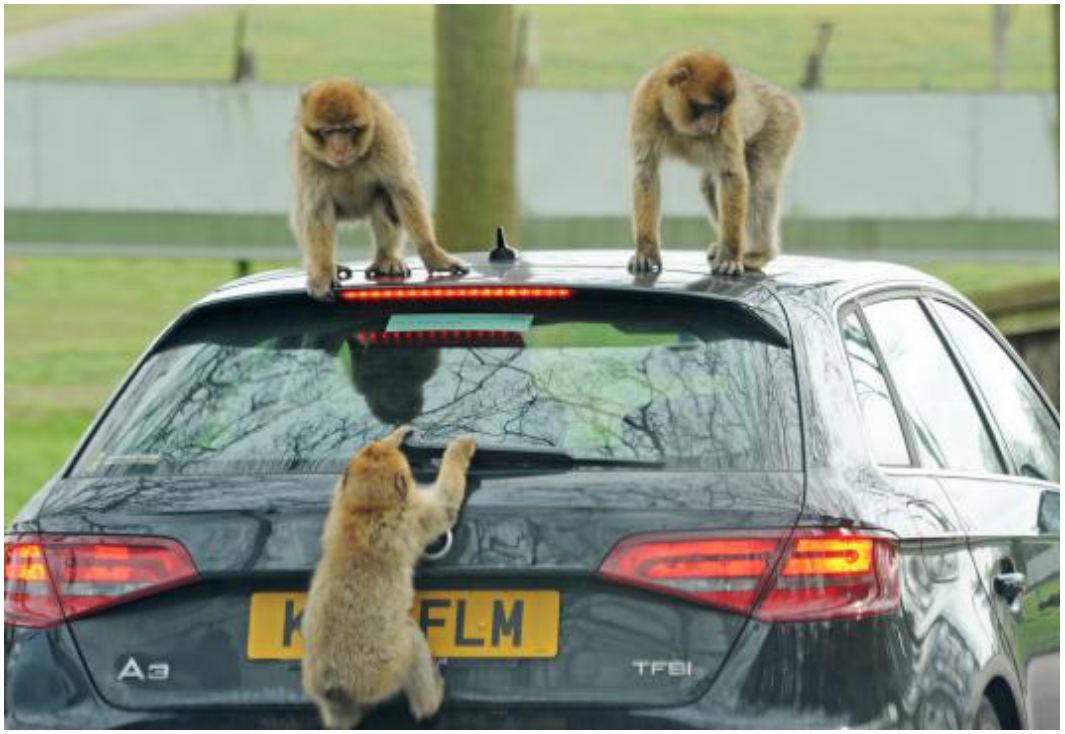
GENERAL HALACHA

PET PEEVE: YOUR ANIMAL DAMAGED MY CAR

Hezek on the Safari

By Rav Yonoson Hool



Let us begin with a story. Mr. Cohen is taking his family on a trip to the local safari park. He rides, uneventfully, with his family through the park. At one point Mr. Cohen gets out of his car to wash *Netilas Yodaim* so that he can eat his lunch. Mr. Cohen leaves the car door open and while he is out of the car a monkey enters, grabs Mr. Cohen's lunch and eats it in the car. Discovering this, Mr. Cohen goes to the owner of the safari park and asks him to pay for the damage his monkey has caused. The question is whether the owner is obligated to pay?

At first glance, it would appear that the safari owner would have to pay. It would seem that this is a classic case of the damage of *shein* where the owner of an animal who ate another's produce is liable to pay for his animal's damages. This is learned from the *posuk* of *U'bier b'sedei acheir*. While we learn from the word *achier* that the owner is only obligated to pay if his animal ate in the *reshus hanizak* i.e. in the other person's property and not for example in the public domain, it would appear that by eating Mr. Cohen's lunch in his car that is exactly what the safari owner's monkey did. The safari owner should therefore be obligated to pay Mr. Cohen for his monkey's damages.

However, from the Gemora in *Bava Kama Daf 23b:* one might see that it is not so simple. The Gemora there relates that the goats of a certain family were causing damage to Reb Yosef's property. Reb Yosef told Abaye to tell the family to guard their goats from doing more damage. Abaye responded that if he tells that to the family they will say to Abaye that Reb Yosef should build a fence around his property preventing the goats from causing damage. According to Abaye the responsibility is on the owner of the field to protect his field from outside damage. Asks the Gemora according to Abaye how is there ever an obligation to pay for *shein*? If there is no fence the owner of the animal is not obligated to pay and if there is a fence how did the animal get into the field to cause damage? The Gemora answers that either the owner had properly erected a fence but the animal knocked down the fence which is unusual or in the middle of the night the fence collapsed unknown to the owner of the field. The *Chazon Ish Bava Kama* 11:20 and the *Teshuras Shai Simon* 122 both say that the owner of the animal was aware that the fence was down and therefore he is obligated to pay for *shein*.

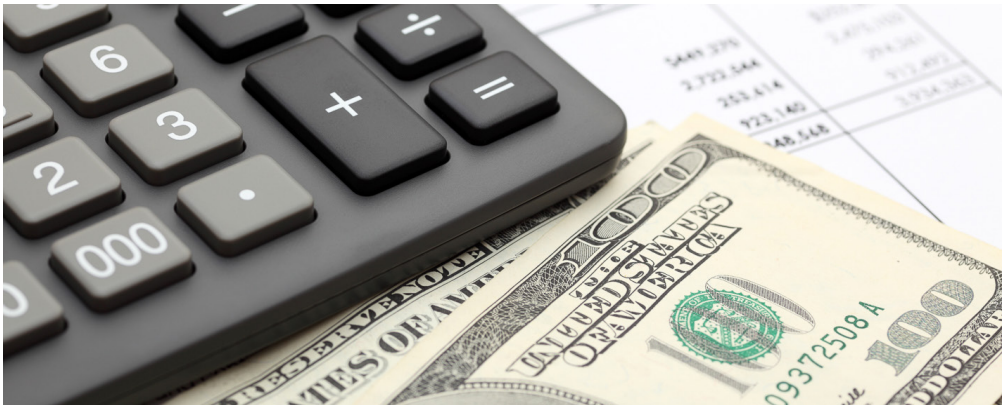
Do we *pasken* like Abaye that the obligation is on the owner of the field to protect his field and when he does not build a fence the owner of the animal would not be responsible for his animal's damages? Concerning this question, we find a *machlokes rishonim*. The *Rif* says that Abaye's ruling is not the Halacha. The *Rosh*, however, quotes the *Rabbeinu Chananel* that the Halacha is like Abaye. Although the Shulchan Aruch rules like the *Rif,* the *Shach* quotes the *Rosh* in the name of *Rabbeinu Chananel* and rules like him.

When an animal wanders into a neighbor's unfenced field and begins eating according to the *Rif* the animal owner will be *chayiv* and according to the *Shach* who *paskens* according to the *Rabbeinu Chananel* the animal owner is *patur*.

Therefore, if we are to answer our question concerning the monkey eating Mr. Cohen's food inside his car we can say that this would depend on the *machlokes* between the *Rif* and the *Rabbeinu Chananel*. According to the *Rif*, to which the Shulchan Aruch and the Rambam agree, the safari owner must pay for *shein* damages even though the door to the car was left ajar. Even according to the *Shach* who *paskens* like the *Rabbeinu Chananel* that there is no *shein* damages when the *reshus* of the *nizak* is left unprotected there is still an obligation for the safari owner to pay the cost of *mah shenehenis* i.e. the cost of cheaper monkey food as the *Chazon Ish* and the *Teshuras Shai* point out.

Possibly, we can add another reason why the safari owner would be *patur* from damages. Since the car is given permission by the safari owner to ride through the park it is a case of where the *reshus* of the *nizak* i.e. the car is found within the *reshus* of the *mazik* i.e. the safari park owner. The safari owner can say to the car owner, "I only gave you permission to drive through my park if you would take care of yourself in a responsible was and not by leaving your car and leaving the door open." Possibly for this reason as well the safari owner would be *patur* from damages.

MATTERS OF INTEREST



AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE:

USING A COLLATERAL PHONE

If a lender was given collateral (a mashkon) by the borrower, such as a cellphone with unlimited minutes, may the lender make use of the collateral for himself, or would that be considered as extra payment and consequently present a ribbis problem?

If the borrower had not allowed the lender to use his phone *previously* in the *same* manner, he would not be allowed to use it now either.

If the borrower had allowed such use previously, the lender may do so now as well.

EXPENSIVE COLLATERAL

A borrower gave the lender an item as collateral which was significantly more valuable than the loan amount. Subsequently, the borrower defaulted and did not pay back the loan.

May the lender keep the collateral, or would the extra value of the collateral be considered "extra payment" and thereby present a ribbis problem?

There is a disagreement among *poskim* if this resembles ribbis. Therefore one should be *machmir* and return the difference to the borrower.

However this *issur* only applies where the parties verbally agreed at the outset that the collateral will be confiscated in the event of loan default (since such an "agreement" can resemble *ribbis ketzutza*).

In cases where the lender decided on his own volition to keep the *mashkon* (with the borrower's subsequent consent) and there was no pre–determined agreement, it would be permitted.

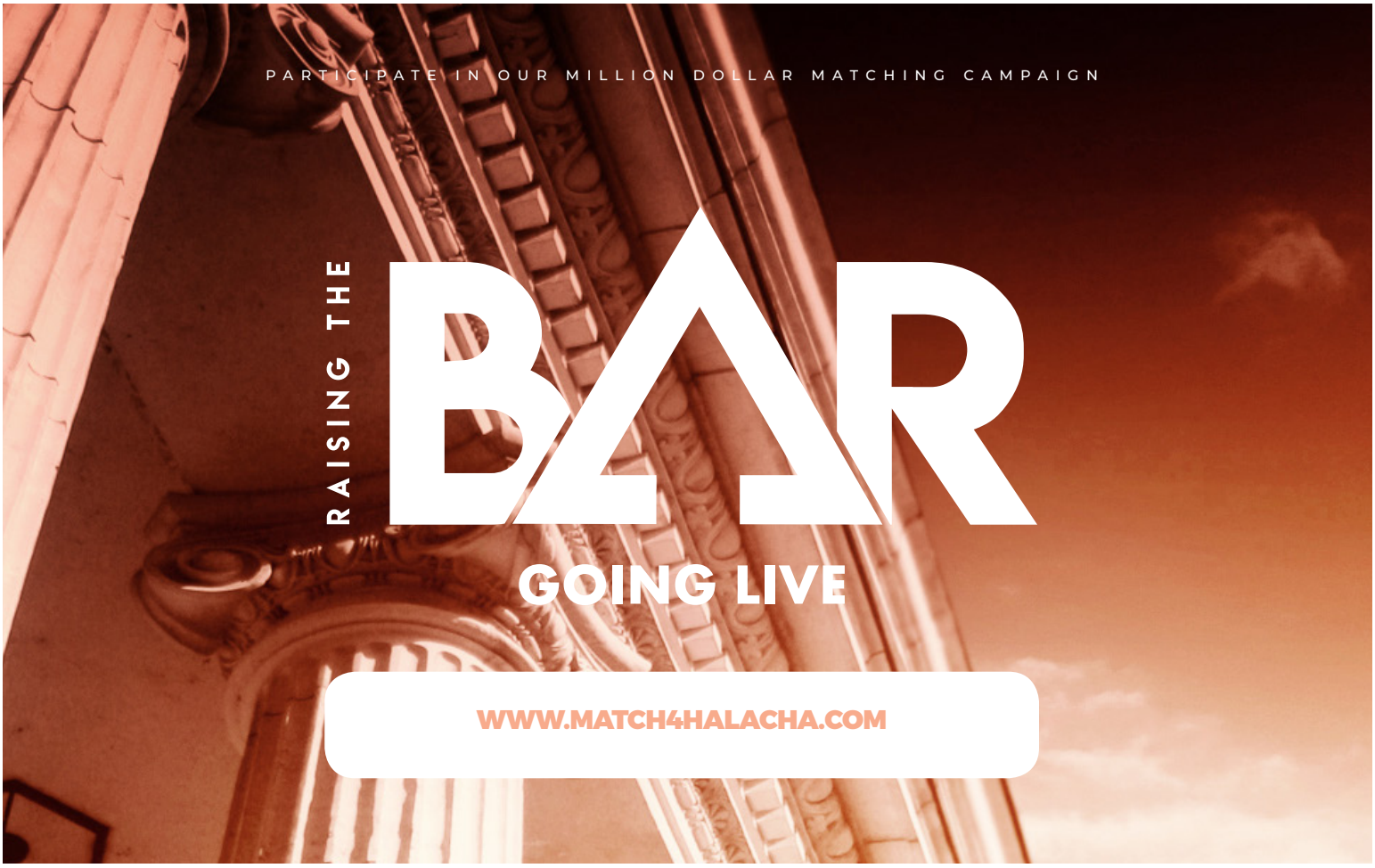
OU DAILY LIVING

Weekly Questions

BRACHOS FOR THE HURRICANE SEASON

Is there a bracha that should be recited on a hurricane?

Yes. Shulchan Aruch (OC 227:1) writes one may recite either *Oseh Maasay Bereishis* or *Shekocho Ugvuroso Molay Olom* for thunder, lightning or "great winds that blow with rage". Common practice is to recite *Oseh Maasay Bereishis* for lightning (this *bracha* speaks of the wonders of creation), *and Shekocho Ugvuroso Molay Olom* for thunder (this *bracha* refers to the awesome power of *Hashem*) [Mishna Berura 227:5]. The Mishna Berura also writes that the blessing of *Shekocho Ugvuroso Molay Olom* – "That His power and strength fills the world" is only said on a wind that howls with such intensity that it can be heard across the world (until the horizon) similar to thunder. Since we are not proficient in delineating what exactly is a "wind that blows with rage", we do not recite this blessing. Instead, we recite the blessing of *Oseh Maasay Bereishis*. Although a hurricane would seemingly qualify as "a wind that blows with rage" the custom is to avoid the issue by always reciting *Oseh Maasay Bereishis* which can be recited on any dangerous gust of wind.



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The Bais Havaad on the Parsha
Bring the Parsha to Life!

Bach – the concept was never litigated since a lender is always believed to say he had a *pruzbul*.

Aruch Hashulchan - *shemita* was only enacted when there's a companion solution [*pruzbul*] which is dependent on a *bais din* with enforceable power. Given that *bais din* nowadays is only enforceable on a community level, the *pruzbul* option is not in effect, and by extension, *shemita*, too. Additionally, we don't have land.

Igros Moshe - *pruzbul* nowadays is only a *midas hachasidus*.

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tainly without knowing all the details of your situation and what you mean by "time which I simply don't have", it would be impossible to determine if your termination were halachically considered "unavoidable". You would likely need to go to a Bais Din or a Dayin, who could personally hear your situation and possibly determine if it is indeed one of an *oness*, thus allowing you to back out.

One important point though is, that if you had knowledge of the likelihood of this move at the time that you signed up yet did not inform the Morah of this, the fact that it is an *oness* would not absolve you from your responsibility. In such a case you should have informed the Morah of your possible plans and let her decide if she wanted to accept your child and the possible risk of losing a slot or rather look for another child. Since you did not do so, you would be responsible to reimburse her for all the payments she ends up losing because of your cancelation.

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