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

VOLUME 5779 · ISSUE II · PARSHAS NOACH · A PUBLICATION OF THE BAIS HAVAAD HALACHA CENTER

TO QUANTIFY THE QUALIFY

Qualifications for Holding Public Office

By Rav Yitzhak Grossman

A major theme of the recent elections and nominations for Supreme Court Justices has been the assertions that the leading candidates are "not qualified" due to deficiencies in temperament and character.

Back in 2016, a feud erupted between rivals for the Democratic Nomination - Senator Bernie Sanders and Secretary Hillary Clinton - over each other's qualifications. The Washington Post declared that "Clinton questions whether Sanders is qualified to be president", and Sanders retorted that "I don't believe that she is qualified".[1] There have been numerous assertions by prominent figures, as well as widespread public sentiment, that President Donald J. Trump is not qualified: a survey found that 61% of respondents did not consider him qualified. The Washington Post considers him "uniquely unqualified", and a letter signed by 30 former Republican lawmakers declared him "manifestly unqualified".

In the remainder of this article, we turn from the temporal to the eternal, and discuss some of the halachic rules governing qualifications for holding public office and voting on questions of public interest in general.

1 Sanders repeated the charge, but subsequently retracted it.

LOCAL GOVERNMENT

The *Terumas Ha'Deshen* was asked about a certain individual who had been caught taking a false oath, and had been assessed various penalties for his offense. The community had settled with him and now wished to appoint him to the local governing council (*tuvei ha'kahal*), despite his failure to accept upon himself a proper course of repentance. The *Terumas Ha'Deshen* ruled that he was ineligible for such an appointment. He established the doctrine that the governing council has the status of a court (*beis din*), and one who commits a sin motivated by venality is therefore ineligible to serve on the council, just as he is ineligible to serve as a judge.[1]

NATIONAL GOVERNMENT

R. Zalman Nechemia Goldberg is reported as having vehemently insisted, based upon this position of the *Terumas Ha'Deshen*, that it is Biblically prohibited to vote for any [Israeli political] party that contains "secular individuals (*chilonim*) who desecrate the Sabbath", even the [ostensibly religious] "Jewish Home" party.[2] Similarly, R. Ezra Batzri maintains that the Israeli Knesset's *halachic* legitimacy cannot be derived from the *tuvei ha'kahal* paradigm, since it includes members who are disqualified to serve as *tuvei ha'kahal* due to sinfulness.[3] R. Batzri nevertheless grants the Knesset legitimacy under the principle of *dina de'malchusa dina* ("the law of the government is the law"), which he argues is not affected by the sinfulness of the sovereign.[4]

1 Shut. Terumas Ha'Deshen pesakim ve'kesavim #214, cited in Darkei Moshe choshen mishpat beginning of siman 163, and codified in the Hagahos Ha'Rema at the end of siman 37.

2 Yishai Cohen for Kikar Shabbat, Harav Zalman Nechemia Goldberg Romez: Yesh Isur Torah Le'Hatzbia Le'"Habayit Ha'Yehudi", 10 Adar 5775. I have not found independent confirmation of this report and am uncertain of its accuracy.

3 R. Batzri rejects the view of Shut. Yaskil Avdi chelek 6 choshen mishpat siman 8 os 2 that takes for granted that the elected members of the Israeli Knesset "are not worse than the seven tuvei ha'ir". The Yaskil Avdi does not address the question of disqualification due to sinfulness.

4 Dinei Mamonos chelek 4 sha'ar 1 chapter 9 n. 10. This view that the sinfulness of the sovereign does not vitiate the

(continued on back)

Highlights of a shiur by Rav Yosef Jacobovits

BE FRUITFUL AND MULTIPLY: TILL WHEN?

פרו ורבו ומלאו את הארץ וכבשוה

Be Fruitful and Multiply... (Breishis 9:1)

What is the minimum needed to fulfill one's obligation? Or, more to the point: Can a person ever fulfill the obligation in its entirety?

The Mishna in Yevamos cites a discussion between Bais Shamai and Bais Hillel whether one needs both a boy a girl to fulfill one's obligation or is it enough to have two boys.

The Talmud Bavli is clear that their opinions are mutually exclusive; i.e., two boys according to Bais Hillel is not sufficient, and vice versa according to Bais Shamai.

The Yerushalmi – quoted by the Rashba - implies otherwise: both Bais Shamai and Bais Hillel agree that either of the two situations are sufficient.

The Maharit's first wife bore him only boys, yet he did not remarry. How do we understand this in light of the well known dictum that we follow Bavli over the

(continued on back)

spotlight

The Kollel Zichron Gershon L'Dayanus now to begin the halachos of ribbis-interest and usury. Although it is not in Choshen Mishpat; it is a staple of business related halacha, and the Bais HaVaad is proud to provide a heter iska that is binding both in bais din as well as a civil court of law.

GENERAL HALACHA

A Landlord Takes by Storm: Losses, Leases & Natural Disasters

By Rav Dovid Grossman

It is now barely a month since Hurricane Florence wreaked havoc on the Carolinas, with the memories still fresh of Hurricane Sandy that inflicted extensive damage to countless Jews on the East Coast with heavy flooding in some areas, and lengthy power disruptions in other places. For homeowners, damage from the hurricane meant serious financial loss. But what about renters and landlords? What did the various problems caused by Sandy mean for them?

There are a number of questions to consider:

Does a renter have to pay for the time where there is no electricity or heat in a house or apartment and it is difficult to live there?

What if it is flooded in a manner that makes it impossible to live there?

Can a renter demand that the landlord put in a generator?

If the tenant puts in a generator can he take its cost off the rent?

As with any monetary question involving two parties the matter should be brought before an arbitrary third party to render a decision. This is especially true give the complexity of this specific matter, as well as the divergence of opinions discussed in the Shulchan Aruch and other poskim.

The following are some of the issues which may have significant impact on the *halachah*:

EXPLICIT OR IMPLICIT AGREEMENT

Whenever discussing a contractual relationship between two parties, there is a concept of "*minhag mevatel halachah*." This means that a clear custom or an industry standard can override that which is discussed in the Shulchan Aruch and the *poskim*. The *halachah* is merely discussing the eventuality where this matter was not agreed upon by the parties either explicitly or implicitly. Therefore the first question would be, Was there a contract signed and were these items addressed in the contract? Many leases have the following (or similar) "Damage to Premises" clause which would simplify the *halachah* significantly:

DAMAGE TO PREMISES

In the event the entire Premises or a portion thereof are destroyed or rendered wholly uninhabitable by any casualty not caused by the negligence of Tenant, the Owner shall have the option of either repairing such injured or damaged portion within the period of ____ days, or terminating this Lease, to which The Agreement shall terminate except for the purpose of enforcing rights that may have then accrued hereunder. In the event that Owner exercises its right to repair the Premises, the rental shall decrease in the proportion that the injured parts bears to the whole Premises, until all repairs are performed, after which the full rent shall recommence and the Agreement continue according to its terms.

In the absence of a contract which includes a "Damage to Premises" clause, one must determine if there is a clear and dominant *minhag* which the average rental would be subject to. If such a *minhag* does not exist, then the matter would be determined based on the following guidelines.

UNDERSTANDING A RENTAL ARRANGEMENT

There are a number of ways to understand the fundamental structure of a rental arrangement. Based on the halachic rule of "*schirus liyomei memkar hu*" [a rental for that day is considered a sale], some *poskim* view a typical rental as if the rented premises is owned by the tenant for the duration of the lease. Based on this, they maintain that if the rental becomes uninhabitable during the term of the rental the tenant would suffer the loss as if his own asset got destroyed.

Other *poskim* don't view a rental in that manner. Their view is that a rental arrangement is not a "sale" of the premises for the term of the lease, but rather it is a contractual agreement in which the landlord obligates himself to furnish the tenant with this specific place of residence, and in return the tenant obligates himself to pay the rent after he uses the domicile as agreed. According to those *poskim*, insofar as the landlord is not able to produce a functioning residence, the tenant would not have to pay the rent.

Yet others maintain that both of the above can be true and it would depend if the tenant paid up front or not. If the monies were paid in advance, the tenant is "purchasing" the premises for the duration of the lease and the tenant would suffer any losses. If, however, the rental monies are only due at the end of each month, than the landlord would suffer the loss in the event that the apartment is deemed not livable.

WHERE THE PREMISES ARE RENDERED UNINHABITABLE

Based on the above, as well as on the concepts of *muchzak* and *kim li* (the halachic principles which dictate that the litigant who is in possession can maintain his position even based on a minority opinion), much would depend on if the monies were paid up front or not. Under normal circumstances, where the tenant pays on a monthly basis, if he cannot live in the rental due to flooding or the like, he likely would not have to pay for the time of the restoration process. However, if he had paid in advance the landlord might be able to withhold the rent that was advanced.

The above discussion is true where the premises are totally not usable. If, however, the tenants plan on staying in the apartment after it is fixed up, and they are still using the apartment to house their furniture in the meantime, they could be obligated to pay a discounted rate even if they physically move out until it is restored. Similarly, if the apartment is in livable condition but there is a loss of power, even where the landlord would be responsible, the tenant could still have to pay for most of the rent as will be explained herein.

MAKAS MEDINAH–A REGIONAL CALAMITY

Though in a normal circumstance if the tenant paid in advance, the landlord may be allowed to withhold funds from the tenant, where the source of the loss is one that affected an entire region, the *halachah* may differ. Part of the reason that the tenant might not get a refund in a regular case is because once he pays up front it is viewed in *halachah* as if "*mazalo garam*"—his (the tenant's) *mazal* caused this mishap. However, where the identical calamity occurred to an entire region, *halachah* no longer attributes the mishap exclusively to the *mazal* of the tenant. It is indeed the *mazal* of the entire region. (Exactly what constitutes a *makas medinah* is also a discussion in the *poskim*.)

GENERATORS AND LOSS OF POWER

In regards to the landlord's responsibility to supply power, this again depends on the expectation in the industry. A landlord is responsible to maintain the internal electrical infrastructure to ensure a constant flow of power to the home. Conversely, a typical rental (at least until Hurricane Sandy) does not include a generator. Therefore, a landlord would have an obligation to fix and maintain the internal electrical infrastructure, but would not have an obligation to purchase a generator for the tenant. Therefore, if the tenant decides to purchase one on his own, he may not deduct it's cost from the rent.

As far as fixing the electric or discounting the rent due to the lack of electricity, one must consider what the source of the problem is. If the lack of electricity is coming from a problem within the apartment, the landlord would likely be responsible to fix it and therefore a discount of the rent may be warranted. If however, there is nothing wrong with the actual wiring of the home but rather the loss of power is coming from the outside the landlord might not have any responsibility to address the issue as he is producing what is under his realm of responsibility.

MATTERS OF INTEREST

Avissar Family Ribbis Awareness Initiative: Ribbis Facts

WHO IS SUBJECT TO RIBBIS? All participants in the transaction violate issurim: lender, borrower, witness, guarantor, and scribe or attorney.

BANKS AND PUBLICLY TRADED COMPANIES As ribbis is only prohibited where both parties are Jewish, one may borrow at interest from a publicly-traded bank or financial institution where the religion of principals of the company are not identifiable.

FUTURISTIC RIBBIS STIPULATIONS One may also not enter into a contract today to charge or pay ribbis when a loan is made at some future date, as with a capital call.

RIBBIS ON OTHER BORROWED ITEMS It isn't only loans of money that are subject to the prohibition. Any item that is loaned with the expectation that, like money, it will be consumed by the borrower and a substitute delivered in return, is subject to the laws of ribbis. Thus, lending a pound of sugar to a neighbor in exchange for two pounds in a week is forbidden. But lending something for pay where the very item that was loaned is to be returned—a car, a gown, a house—is Halachically deemed a rental and permitted.

HETER ISKA

Most ribbis problems can be averted by executing a heter iska agreement. This document structures the transaction as an investment, with a trivial risk to the investor, rather than a loan. This obviates the possibility of ribbis. The particulars of heter iska are beyond the scope of this article; consult a ribbis professional for guidance.

HALACHOS OF DAILY LIVING

One Hundred Daily Brachos Part 1: The Origin

Topics From The Gerald & Karin Feldhamer OU Kosher Halacha Yomis

The Talmud in tractate Menachos (43b) tells us that a person is obligated to recite 100 brachos every day. It bases this obligation on Deuteronomy 10:12: "v'ata, Yisroel, mah Hashem Elokecha shoel mei'imach?" ("Now, Israel, what does Hashem Your God ask of you?") The Gemara doesn't really explain how we derive that law from that verse but Rashi fills in the gap. He clarifies that the word written "mah" (what) is pronounced as if it were written "meah" (100). With this understanding, the verse can be interpreted to mean "Now, Israel, Hashem Your God asks 100 of you." From this we see the obligation to recite 100 brachos daily.

Tosfos provide additional explanations. For one thing, the verse from which the obligation is derived, Deuteronomy 10:12, has 100 letters in it. (The verse is somewhat longer than the phrase excerpted in the previous paragraph.) Additionally, the numerical value of the word "mah" in atbash is 100. [Atbash is a cipher in which the first letter, Alef, is exchanged with the final letter, Tav. The second letter, Beis, is exchanged with the penultimate letter, Shin, etc. (Alef-Tav-Beis-Shin spells "atbash.") In atbash, Mem is exchanged with Yud (numerical value 10) and Hei is exchanged with Tzadi (numerical value 90), so the atbash of "mah" is 100.]

The Tur (Orach Chaim 46) codifies reciting 100 brachos a day as halacha but he clarifies the origin of the practice even further. The verse in Deuteronomy, quoted by Rabbi Meir in the Gemara, is not actually the source of the obligation. Rather, it is an asmachta – a Biblical verse cited in support of a rabbinic enactment. The Tur relates a story from the Midrash (Bemidbar Rabbah 18; Tanchuma, Korach 12) that occurred during the reign of King David.

At one point during David's reign, there was a plague that was killing one hundred people a day. The Sages investigated for the underlying spiritual cause they determined that the problem was that the people were lacking in gratitude to God. They therefore instituted that everyone should recite 100 sincere and heartfelt brachos each day, which stopped the plague. (The Tur differs from the Midrash as to whether it was King David himself of the Sages of his day that instituted the practice, though that is a fairly insignificant detail in the grand scheme of things.)

R. Shmuel David Ha'Cohen Munk, on the other hand, maintains that the principle of *dina de'malchusa dina* does not apply to the contemporary Knesset due to its members' moral or religious shortcomings.[5]

CITIZEN-ELECTORS

In a remarkable ruling, the *Chasam Sofer* apparently extends the principle of the *Terumas Ha'Deshen* to ordinary citizen-electors. He was asked about a community that had held an election for the position of rabbi. Subsequently, scandalous allegations emerged that some of the voters had been bribed to vote in the interest of one of the candidates. The *Chasam Sofer* ruled that insofar as these allegations have been conclusively established, the vote is void. One of his arguments is from the ruling of the *Terumas Ha'Deshen*: since the *tuvei ha'kahal* have the same qualifications as judges, and a judge who accepts a bribe is thereby disqualified, the same applies to the *tuvei ha'kahal* – and, apparently, to ordinary citizen-electors.[6]

The *Chasam Sofer* apparently understands that even citizen-electors have the same qualifications as judges when voting on public questions. R. Eliezer Gordon of Telz notes this implication of the *Chasam Sofer's* ruling, and initially suggests that, consequently, relatives of a candidate for (rabbinic) office should be barred for voting in the election for the position. He concludes, however, that relatives are indeed eligible to vote.[7]

R. Elazar Meir Preil also notes the implication of the *Chasam Sofer's* ruling that even citizen-electors are held to the same standards as judges, and he considers this a decisive argument against female suffrage: since women cannot serve as judges, and citizen-electors are held to the same standards as judges, ergo women cannot have the franchise.[8]

FEMALES

R. Preil raises the same objection from a woman's ineligibility to serve as a judge, combined with the ruling of the *Terumas Ha'Deshen* that holders of public office are held to the same standards as judges, to a woman holding public office (although he subsequently raises the possibility of the community's right to waive her ineligibility).[9] This argument for women's ineligibility to hold public office was also raised by R. Preil's contemporary, R. Aharon Levine (the Reisher Rav).[10]

applicability of the principle of din de'malchusa dina is also the position of Shut. Yechaveh Da'as chelek 5 siman 64 and Shut. Be'er Sarim chelek 6 siman 90 os 4, and cf. Shut. Netzach Yisrael siman 33 os 9.

5 Shut. Pe'as Sadecha siman 91 os 1. See also R. Yehudah Silman's uncompromising views in Darkei Ha'Choshen pp. 394, 396.

6 Shut. Chasam Sofer choshen mishpat siman 160, cited in Pischei Teshuvah choshen mishpat siman 8 s.k. 2.

7 Teshuvos R. Eliezer siman 4.

8 Sefer Ha'Maor beginning of siman 55. Female suffrage and the related question of women's eligibility to hold public office were intensely debated topics among twentieth century Torah scholars, paralleling the contemporary debate in general society; in addition to R. Preil's lengthy treatment of the questions, see R. David Zvi Hoffmann, "Chavas Da'as al Odos Bechiros al Yedei Nashim U'Bechirasam al Yedei Acheirim", in Ha'Kibutz Be'Halachah (Asufas Maamarim), pp. 286-87; Malki Ba'Kodesh chelek 2 teshuvah 4; Shut. Mishpetei Uziel chelek 3 (choshen mishpat) siman 6; Shut. Seridei Eish chelek 2 siman 52 s.v. ve'al devar zechus ha'bechirah le'nashim and chelek 3 siman 105.

9 Sefer Ha'Maor ibid. s.v. u'venogea le'ha'she'eilah ha'sheniah.

10 Shut. Avnei Cheifetz siman 1 os 6 s.v. u'vemakom acheir.

The Daf in Halacha
Bring the Daf to Life!

מסכת מנחות

This Week's Topics

RAV YEHOSHUA GRUNWALD
RAV MOSHE ZEEV GRANEK

דף ס"ג A Numbers Game
דף ס"ד Pikuach Nefesh on Shabbos Without Intent
דף ס"ה Taanis Esther: Minhag or Takanah?
דף ס"ו Days & Weeks: One Mitzvah or Two?
דף ס"ז The Measure for Separating Challah
דף ס"ח Seeing the Light
דף ס"ט Food Created Through a Neis

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

Yerushalmi?

The Avnei Nezer introduces a Zohar in explicit accordance with the Yerushalmi, suggesting that the Maharit may have been following the Yerushalmi given the 'support' of the Zohar.

So much for *pru urvu*.

There is still another obligation of *la'erev al tanach yadecha*. [Koheles 11:6] *In the evening do not rest your hand*. From here, we learn that one is obligated to continue his efforts to bear children even after he has fulfilled his Pru Urvu obligations. So, where *pru urvu* ends, *al tanach yadcha* begins, but they are not alike. The Chida, cited in Pischei Teshuva, cites some differences between the two.

Business Halacha Services
Bais Din & Dispute Resolution
Zichron Gershon Kollel for Dayanus
Medical Halacha Center
Kehilla & Bais Din Primacy Initiative
Halachic Awareness & Education

BAIS HAVAAD
HALACHA CENTER
RABBI YEHOSHUA WOLFE, MENAHEL
RABBI YEHOSHUA GREENSPAN, SAFRA D'DAYNA
105 River Ave, #301, Lakewood, NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org

MIDWEST DIVISION
RABBI DOVID ARON GROSS
A 3718 SHANNON ROAD
CLEVELAND, OH 44118
P 216.302.8194
E MIDWEST@BAISHAVAAD.ORG

BROOKLYN DIVISION
RABBI DOVID HOUSMAN
A 2238 85TH STREET
BROOKLYN, NY 11214
P 718.285.9535
E 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