



HABRUTA NIGHT

SHAARE ZION

Tonight's learning is dedicated
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Week 56

Topic

LAWS OF RENTALS REGARDING *HAMETZ*

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TOPIC DISCUSSION

**If one owns multiple homes, must he check them for hametz before pesach?
When renting a place strictly for pesach who should be the one to check, the landlord or the tenant?**

If I rented a villa "hametz free," and I get there and there is hametz all over, is the contract void? Can I make the owner pay for the cleaning crew?

פסחים ד:

לדך ואמרי הני אנתו צדקינו: בכיז' בעלמא. דכתיב תשציתו ולא כתיב תצערו והשצתה לנצ"ב היא השצתה: בדרבנן. הימנוהו רבנן צמיצא דיתא אלא מדרבנן דהס הנריכו והס תמירו לטמוך צאמירתן של אלו וכח צדיהס להאמינס צמידי דלאו דאורייתא: מי הוי נקח טעות. ואס צא השוכר לתזור צו על ידי

בדרבנן: איבעיא להו המשכיר בית לחבירו בחזקת בדוק ומצאו שאינו בדוק מהו מי הוי כמקח טעות או לא תא שמע דאמר אביי דלא מיבעיא באתרא דלא יהבי אגרא ובדקו דניחא ליה לאיניש לקיומי מצוה בגופיה אלא אפילו באתרא דיהבי אגרא ובדקו דניחא ליה לאיניש לקיומי מצוה בממוניה: **תנן** התם ר"מ אומר אוכלין כל

בעלמא סגי. פי' צקונטרס מדכתיב תשציתו ולא כתיב תצערו אלמא השצתה בנצ היא וקשה לר"י דהאי השצתה הצערה היא ולא ציטול דתניא צשמעתין רע"א אין צריך הרי הוא אומר תשציתו ומנינו להצערה שהיא אצ מלאכה ועוד דתשציתו אמרינן לקמן מנך חלק שהוא משש שעות ולמעלה ואחר

The Gemara discusses another issue pertaining to rented dwellings:

They inquired: Regarding one who rents a house to his fellow under the presumption that it was searched, ^[10] and [the tenant] discovers that it was not searched, מהו — what is [the law]? מי הוי? — Is it like a mistaken transaction, or not? ^[11]

The Gemara answers:

For Abaye said: לא — Come, learn an answer to your question. **It is not necessary** to say that the rental agreement is still valid in a place where they do not pay for someone else to search one's house, but rather each person searches his own house, **for** it is axiomatic that a person is pleased to fulfill a mitzvah with his body. ^[12] **But even in a place where they pay** for someone else to search, the rental is valid, **for a person is also pleased to fulfill a mitzvah with his possessions.** ^[13]

10. This refers to a case in which the house was rented on the fourteenth, assuming the answer to the Gemara's prior inquiry is that a house is always presumed to be searched by its owner within the allotted time. And if the landlord is a bona fide *chaver*, the house is certainly presumed to have been searched in a timely manner [see above, [note 1](#)]. Alternatively, it refers to a case in which the landlord mentioned explicitly that he had already searched the house (see *Ran* and *Rabbeinu David*).

[*Tosafos* argue that the Gemara must be referring to a rental on the thirteenth (and the landlord stated that he had searched the house earlier than required), because if the rental took place on the fourteenth, it is the landlord's responsibility to search the house, as the Gemara stated [above \(4a\)](#). *Ran*, though, does not find that Gemara relevant here, because granted that the landlord is *supposed* to perform the search, if for some reason he fails to do so, the tenant must conduct his own search.]

11. [A transaction made on the basis of false information is invalid. Since the consent of the party that was misled was based on a false premise, it is as if he never consented in the first place.]

Our Gemara asks whether the tenant can use this as an excuse to back out of his agreement to rent the house (*Rashi*).

According to many commentators, the Gemara's inquiry is applicable only when the tenant did not specifically state that he wished to rent a house that was already searched. But if he made such a stipulation, the rental agreement is certainly annulled by the landlord's failure to fulfill this condition (see *Pri Chadash* 437:3). Others maintain, however, that even in case of such a stipulation the agreement would not necessarily be nullified (*Rabbeinu David* in the name of *Ramban*; *Beur Halachah* §437:3 ט"ד כ"ג).

12. Thus, even had he known that the house was not searched, he would have nevertheless rented it (*Rashi*).

13. That is, even had he known beforehand that he would have to spend money to have someone search the house for him, he would not have refrained from renting it. If he is complaining now, it must be for some other reason, such as that he found a better house somewhere else (*Rashi*). He must therefore fulfill his rental commitment to the landlord.

Some Rishonim write that the landlord must nevertheless compensate the tenant for the money he spent to have the house searched. Even though a person is happy to have a mitzvah performed with his property, that is only when it will not cause him a financial loss (for example, a person does not mind if someone uses his *tallis* without permission). Others assert that the tenant is not entitled to compensation (see *Shulchan Aruch* 437:3). [*Rashi* appears to hold the latter view.]

DISCUSSION

Can I use someone's *tallit* or *tefillin* without asking permission based on this assumption "that people appreciate doing mitzvot with their money"?

רא"ש

חולין פרק ח סימן כו

It is common for people to borrow *talleitim* without permission, on the notion that the owner would like for his money to be used for mitzvot. However, if you found it folded, make sure to fold it as it was.

ונהגו להתעטף בטלית של חבירו אפילו בלא ידיעה ומברך, וסמכו על זה דניחא ליה לאיניש דלעביד מצוה בממוניה, ואם מצאה מקופלת יחזור ויקפלנה כבראשונה.

The *Gemarah* in *Bava Metzia* (29b) says, that one cannot use someone else's *Sefer Torah* without permission.

מרדכי

בבא מציעא סימן רסג

Don't we say in our *Gemarah* that one would promote using his property for mitzvot even without consent, so why can't you use the *Sefer Torah*, what happened to ניחא ליה לאיניש לקיים מצוה בממוניה?

אין להקשות מהא דמסיק פ"ק דפסחים דניחא ליה לאיניש למיעבד מצוה בממוניה, דהכא מיירי שלא מדעתו והא ודאי לא ניחא ליה אבל לקיומי מצוה בממוניה מדעתו בודאי ניחא ליה. ולי נראה דהתם גבי בדיקת חמץ דאית ביה טרחא ולכך גמר ומשעבד נפשיה אבל בעלמא לא.

Answer 1: By *Bedikat Hametz* while he's checking he **knows** he's doing it (he's going through the motions) and he accepts it. However, by the *Sefer Torah*, he has no clue that it's happening. Therefore, only by *Hametz* we can assume that one is happy.

Answer 2: Only by *Bedikat Hametz* we assume he wants to do the *mitzvah* himself (even though it's not his *Hametz*), since it is a *mitzvah* that one has to exert himself, to which one gets more reward, based on the concept "the more toil the more reward", that's when we say that he doesn't mind. But for someone to use someone's *Sefer Torah* without permission we don't assume that people are happy with it.

From these 2 answers of the *Mordechai*, we can see that he does not agree with the *Rosh's* opinion regarding a *tallit*; both explanation's apply to *tallit* as well.

נמוקי יוסף

Only books people don't want to lend, since they can tear during usage people are more possessive. *Tallit* one can use, since they don't get ruined upon usage we say, people are happy with the usage of their *tallit*.

במקום שנהגו להניח טליתות בבית הכנסת, אם בא להניח להתעטף לפי שעה ולהחזירה למקומו מותר, ולא חשיב שואל שלא מדעת גזלן הוא, כיון דלא כליא קרנא ניחא ליה לעביד מצוה בממוניה, מה שאין כן ספרים דחושש שיקרע.

מותר ליטול טלית חבירו ולברך עליה, ובלבד שיקפל אותה אם מצאה מקופלת.

רמ"א: והוא הדין בתפילין, אבל אסור ללמוד מספרים של חבירו בלא דעתו דחיישינן שמא יקרע אותה בלימודו.

משנה ברורה: ודוקא באקראי אבל בקביעות אסור, ואפילו באקראי דוקא באותו מקום אבל להוציא מבית הכנסת או איפכא אסור, דאפשר שמקפיד עליו והוי גזל.

One is allowed to use someone's *tallit* and *tefillin*. However, it is not permitted to use other people's books, because we are concerned that it may tear.

Even *tefillin*, is only allowed once in a while and only in that area, it is not permitted to take it out of the shul.

בן איש חי

פרשת לך-לך

Today's days, people are not as generous and would not want someone using their *tallit* or *tefillin* without permission, therefore, one should not do so, since "borrowing," without consent is a thief unless the *Shamash* of the shul knows that this specific person doesn't mind.

He does conclude that the owner is not around and if you try to reach him you will miss the appropriate time to pray, then you can rely on what he calls "the Jewish giving heart," would want you to use it for a *mitzva*. One should then approach the owner and mention that they used his *tallit* and hope he's okay with it.

בזמן הזה חזינן רובא דעלמא קפיד שלא ילבשו אחרים ציצית ותפילין שלהם, ולכן אין ליקח מן השמש ציצית ותפילין של אחרים שלא מדעת הבעלים דשואל שלא מדעת גזלן הוא, אלא אם כן יודע השמש בברור שהבעלים לא קפדי, ואין כל הדעות שוות הלוא גם אנכי מכיר בעצמי דאנא מאינשי דקפדי בזה.

ובשעת הדחק דלא אפשר לו ללבשם מדעת בעלים דאינם מצויים לפניו ואם ימתין יעבור הזמן, אז יש לסמך על נדבת לבם של ישראל דניחא להו למעבד מצוה בממוניה, וטוב שיגיד אחר כך לבעלים ויבקש מהם רצון מה שעשה למפרע אם אפשר לו למצוא אותם.

ANSWERS TO THE ORIGINAL QUESTIONS

If one has multiple homes, he should either check or sell the *Hametz* to a *goy*, even if its unoccupied.

The landlord must check, if he has access to the property on Thursday evening the night of the checking.

But if the tenant got the keys even if he didn't yet move in it is his responsibility.

The tenant cannot back out of the deal, even if it was advertised *Hametz* free.

INTERESTING QUESTION

We have learned, that someone who rents a house on the basis that its *Hametz* free, even though it ends up that it has not been cleaned, still it is not considered a void contract, because of the concept of *ניחא ליה לאיניש לקיים מצוה בממוניה* people like to do *mitzvot*.

The *ברכי יוסף* asks an opposite question, what if someone rented a house that wasn't supposed to be checked and in the end the landlord did check it, can they void the rental saying, "I wanted to the *mitzvah* myself"?

Just think about it, imagine someone stole your *petihat ha'hechal*, how would you feel?