

Thank You, Hashem!

The Laws of Birkat HaGomel / Part 1

By Rav Mordechai Lebhav (Adapted by Rabbi Emile Amzallag)

The Shulhan Aruch (Orah Haim 219:1) writes that there are four situations which warrant reciting Birkat HaGomel, based on the Passuk in Tehillim (Ch. 107). The four situations are summarized in the word "חיים": Havush (ח) – someone who was imprisoned; Yisurim (י) – someone who was ill; Yorde HaYam (י) – seafarers; and Midbar (מ) – someone who crossed the desert.

An Assembly

The *Shulhan Aruch* (Orah Haim 219:3) stipulates that *Birkat Hagomel* must be recited before ten men, and that two among the ten have to be *Talmide Hachamim*, Torah scholars. The basis for this requirement is a verse in the chapter of *Tehillim* upon which *Birkat Hagomel* is founded, (*Tehillim* 107:32): "וירוממוהו בקהל עם, ובמושב זקנים יהללוהו" *"And they shall exalt Him in an assembly of people, and in a sitting of elders, praise Him."* An "assembly of people" refers to a quorum of ten men, and "elders" refers to Torah scholars (*Mishna Berura*, O.H. 219:7). One suggested reason for including Torah scholars is that they have a fuller appreciation of the handiwork of Hashem and of the miracles He performs. As such, it is advisable to seek out a *Minyan* which includes at least two *Talmide Hachamim* when reciting *Birkat HaGomel*.

Indeed, Hacham Ben Zion Abba Shaul (*Ohr L'Tzayon*, vol. II, ch. 14, § 42) rules that if one has the choice to recite the blessing in a *Minyan* in a synagogue while the Torah is out versus saying it in a *Bet Midrash* without the *Sefer Torah*, one should choose the latter as it is a place filled with Torah scholars and Torah study. Nevertheless, Hacham Ovadia Yosef (*Yabia Omer*, vol. III, *Orah Haim*, § 16) says that reciting *Birkat HaGomel* before *Talmide Hachamim* does not come at the expense of reciting it as soon as possible, namely, within three days. Therefore, if one has the opportunity to recite the blessing immediately in front of a *Minyan* that has no *Talmide Hachamim*, one should do so.

Seafarers

Regarding seafarers, there is a debate as to whether the *Beracha* applies to those who traverse a river. This debate stems from the Sephardic and Ashkenazic approaches to travelling in general: the Sephardic custom is that *HaGomel* is recited whenever one travels beyond one's city, whereas the Ashkenazic custom is not so.

Accordingly, the Sephardic opinion would agree that one should recite *HaGomel* after travelling by boat in a river, whereas the Ashkenazic

This week's E-Journal was sponsored
for the *Zechut* and *Refu'a Shelema* of

שרון זכייא בת מזל

By Abraham and Irene Hanan
and family

opinion would be that it is not recited. Nevertheless, Rav Betzalel Stern (*Betzel HaHochma*, vol. VI, § 115) and Hacham Ben Zion Abba Shaul (*Ohr L'Tzayon*, 14:43) rule that as long as the shore cannot be seen during the boat ride and one is travelling for 72 minutes, one may recite *Birkat HaGomel*. If the shore can be seen and one travels for less than this amount of time, then one would not recite the blessing.

Prisoners

One of the people obligated in reciting *Birkat HaGomel* is someone who was released from prison. The *Magen Avraham* (O.H. 219:1) understands that a prisoner refers to someone who is imprisoned for an alleged capital offense, such as murder. In such a case, the prisoner is likely jailed for a very long time and in dangerous conditions. When it comes to lesser allegations, such as tax evasion, there is not such a concern for the welfare of the prisoner and therefore *Birkat Hagomel* would not be warranted.

On the other hand, the *Hid"ra* (*Birke Yosef*, § 219), quotes Ribbi Yosef ibn Migash (*Shu"t Ri Migash*, § 90) who says that even one who was imprisoned for financial or monetary crimes would be required to recite *Birkat HaGomel*. Rav Hai Ga'on concurs with this approach. Practically speaking, Ribbi Moshe Toledano (*Shamayim Hadashim*, § 66) rules that the *Halacha* does not follow the *Magen Avraham's* opinion, and that *Birkat HaGomel* would apply to those imprisoned for financial crimes.

Regarding house-arrest, Rav Menachem Mendel Schneerson (*Sha'are Halacha U'Minhag*, § 110) writes that one would not recite *Birkat HaGomel* upon one's release. His rationale is that the verse in *Tehillim* (ibid:10) refers to prisoners as

prisoners of iron, meaning, a highly secure facility unlike a house. Nevertheless, he writes that it is not clear whether or not someone placed in house-arrest for murder would have to recite *HaGomel*.

As for the amount of time in prison that would warrant *Birkat HaGomel*, the *Bi'ur Halacha* (O.H. 219, s.v. "Havush") states that it is three days. However, other *Poskim* maintain that this would only apply to a holding cell or a police station jail, but that for an actual prison, even one day would be enough there to recite *HaGomel* due to its inherent danger.



Welcome Aboard! Part 3

The Halachic Considerations of Hiring By Dayan Yehoshua Wolfe

Upon embarking on any business venture, it is beneficial to anticipate that things might not go as planned, and staffing a job is no exception. When it comes to a worker's liability for damages, employers might not be as safe as they think. For example, consider the process of building a house. If, during construction, a builder damages some of the accomplished work, Halacha will certainly exempt him from paying the full value of the damage. Thus, the prospect of serious losses to the employer undeniably exists. This article will discuss various liability concerns as they pertain to independent contractors, employees and employers.

There are three important categories that we will discuss in this article: a) *Nezikin*

(tort/damages), b) Loss/Theft, c) Liability of a business for damage caused by its employees.

Nezikin (Tort)

There is a difference between an employee and an independent contractor in *Halacha*, with regards to damages. As we mentioned in our previous articles, the general status of an employee (as opposed to an independent contractor) in *Halacha* is similar to that of an *Eved Ivri* – a servant. Therefore, many of the *Halachot* pertaining an employee are derived from the laws of *Avadim*. However, with respect to the issue of liability for damages, the distinction between employee and independent contractor is based on economic reality. The essence of an employee is that he is compensated for labor, whereas, a contractor is paid for production.

A damages claim is limited to damages inflicted to the accuser's property. In contrast, if damage occurs to the *Mazik's* (damager) own property, he technically cannot be held liable, even if the accuser's interests are affected. As *Maran* states "one who damages another party's property is obligated to pay for the damage". Thus, the issue of a craftsman's liability on his work is dependent on the following matter: to whom does the product of a worker belong; is it the property of the employer, or the worker?

Let us say, for example, that a tailor is hired to make a suit from fabric furnished by the employer. The value of the fabric is 300 dollars and the completed net result is 1,000 dollars. Approaching the end of the tailor's work, he damages the suit. The question arises whether the tailor is responsible for the damage. In view of the

abovementioned principle, that a *Mazik* is only liable for damage to the complainant's property, it would depend on to whom the suit-in-progress belongs. If it is property of the tailor, the tailor is exempt from liability. If however it becomes property of the customer, he will be held accountable for the damage.

The source of this discussion is from the *Talmud* in *Bava Kama* and *Bava Metzia*. As a matter of *Halacha*, the *Shach* contends that it remains unresolved, and that the claim of *Mazik* cannot be invoked to require recompense from the worker.

According to the *Aruch HaShulhan*, this *Halacha* only applies to independent contractors, but employees ("day laborers") are held liable for their damage. The *Ketzot HaHoshen*, on the other hand, holds that this exemption includes employees as well.



Loss or Theft

Another aspect of worker liability is loss/theft, or any other damage to the employer's property. This issue also depends on whether the worker is an independent contractor or an employee. The *Mishna* states: "All craftsmen are *Shomer Sachar* (paid custodians)". A *Shomer Sachar* assumes responsibility for anything that happens to the depositor's property, which is possible for him to prevent. Granted that in the *Shach's* opinion, unless the work is performed in the employer's premises, this *Halacha* also applies to independent contractors; the *S'ma* nonetheless maintains that only employees accept this responsibility.

Liability of a Business for Damage Caused by its Employees

When it comes to an employer's liability on damages caused by his workers, the *Halacha* is largely unclear. For instance, if a business hires a truck-driver to deliver goods to its customers, and the driver gets into an accident and damages someone else's property, is the business held accountable?

This question is based on a *Mishna* in *Bava Kama*. The *Mishna* says, that a builder who is hired to knock down a wall, and directly damages either the wall itself or something else, is obligated to pay for the damage. The *Shita Mekubetzet* cites various *Rishonim* who maintain that this rule that the worker, and not the employer, is responsible, only applies when hiring independent contractors. If, however, the worker is an employee, according to some opinions, the employer must pay an equal portion of the damage. Other opinions contend that the employer is exclusively accountable.

Thus, a business that hires an independent trucker (that has an independent contractor status) will never be held liable for damages caused by the

driver, but if the driver is hired as an employee, the business may be accountable. That being said, the *Halacha* in this case is not clear, because the employer is not present at the time of the damage.

Though this article addresses many key *Halachic* distinctions between employees and independent contractors, there are many more differences between them. Therefore, it is always advisable to seek *Halachic* guidance on how to best structure human resources.

Sponsor
the Halacha
Weekly!

Sephardic Halacha Center

Halacha Consultation Line:
Dayanim (Talmudic judges) and *Poskim* (Halachic decisors) available for Halachic consult
Available throughout the day via phone, email, text, or in person
Weekly Halacha e-Journal
Monthly print Journal
State-of-the-art website
Parasha and Halacha – Audio Series
Awareness and education

Business Halacha Services

Contracts and Heter Iska
Halachic wills and estates
Partnership, employment, and other business agreements
Shabbat agreements
Business Halacha consultations
Halachic resources

Sephardic Bet Din and Dispute Resolution Center

Experienced Dayanim and dedicated administration
Professional, expedient, and cost effective
Business, divorce, and familial matters
Mediation and arbitration
(Licensed mediators and arbitrators)
Legal Advisory Board

To dedicate an issue of the Sephardic Halacha Weekly E-Journal in honor, Refu'ah Shelema or memory of a loved one, please email us at info@theshc.org or call 732.276.1332

For Halachic guidance, questions, or services, call or text 732.9300.SHC (742)

SEPHARDIC HALACHA CENTER / WWW.THESHCH.ORG / P 1.844.200.TSHC (8742) / E INFO@THESHCH.ORG