

ליקוטי ופסקי הלכות "חוקי חיים"

ותלמוד
"תוקף התנאים"
לעשות רצונך
בלבב שלם



שע"י "חדר הוראה" שבגנת מנחת יצחק פעה"ק ירושלם תובב"א - בראשות הרב חיים אהרן בלייער שליט"א

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Please do not
read during
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Krias HaTorah

Mikvah Facility – 3 – Monetary Matters

Bo 5783

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Payments to a Mikvah

Mikvah Membership

- Letting someone else use it.** May a person who pays a monthly mikvah membership fee forgo a tevilah he normally does and allow his friend to go instead?
- One may not do this. A membership is for the member; it is not for him to give to others, even if he will not go that day. When a person is given a monthly membership for a reduced price, it is assumed he might miss some tevilos and not take maximum advantage of it. Thus, one may not allow someone else to use his membership in his place (שרית משנה הלכות חי"ז סי' ק"ג).
- Missed some days.** If one did not utilize his monthly membership for a few days, whether it was due to factors in his control or beyond his control, he has no right to demand money back from the gabbai. It is considered a rental arrangement, and even when one does not utilize a rental to its fullest, he has no right to get money back (ע"פ קצוה"ח ש"י ונתיבות שם).
- However, although strictly speaking one does not get a deduction for missed days, sometimes a community gives the gabbai the authority to settle things with members and give discounts when they miss a significant portion of the month, e.g., if a member travels and misses half a month or the like.

Revolving Gate

- Squeezing in with another person.** It is very common for a mikvah to have a revolving door at its entrance that can be opened with payment or by a member. Often, someone wants to squeeze in and enter with someone else, rationalizing that he forgot his card at home or does not have money now but will pay tomorrow, etc.
- If you know the person or he can be assumed to be a kosher, trustworthy person, you may take him in with you and trust his word that he already paid or will pay. If not, do not take him in with you, as through doing so, you might cause a loss to the mikvah; this involves potential issues of לפני עור and assisting in an aveirah.
- Also, the person justifying himself entering with another member should not just suddenly squeeze in. He should first ask the member permission to go in together so that the member is aware that he will be squeezing into a narrow space and prepare himself accordingly. One should also fulfill "והייתם נקיים" by explaining to the member the reason he is permitting himself to do this so that the member does not suspect him of entering without paying.

Found Money in Machine at Mikvah Entrance

- If one finds money in the machine at a mikvah's entrance [or in other vending machines or the like], e.g., there were some coins in the change dispenser compartment or someone else put money in the machine and now one just needs to pay the remainder, does it belong to him or does he have to give it to the mikvah's funds?
- Since many people frequent mikva'os and money does not have a siman, the money belongs to the finder. He does not have to return it to the mikvah's funds, as a mikvah has the status of an unguarded chatzer, so it did not acquire the money through a kinyan chatzer (ע"י משי"כ מ"ר בפתחי חושן דיני אבידה פ"ב סק"ב).

Chiyuv to Pay for Tevilah on Shabbos

- Strictly speaking, a mikvah may collect money for tevilos taking place on Shabbos (see what we wrote about sechar Shabbos, Issue 280, par. 37). Thus, a mikvah may put up a notice that no one may tovel without paying or that it is only for members or people in the community; if there is such a sign, using the mikvah without payment or permission constitutes stealing.

- However, if there is no such sign, one may assume he can use the mikvah on Shabbos without paying. Yidden are kadosh and allow others to increase their kedushah and taharah on Shabbos, a day of kedushah.

Payment for a Towel

- Fee for a towel.** Some mikva'os charge a fee for taking a towel in addition to the mikvah fee. Since this is an item rental [שכירות כלים], the mikvah may make conditions. Thus, if the mikvah stipulates that towels may not be placed on the floor, then one may not place his towel on the floor. Obviously one must pay for each towel. One may not take without paying and one may not take two.
- There are some people who come to the mikvah without a towel and take a used towel from the laundry bin [they are not istensim...]. However, if a mikvah charges for towels and there is a sign that one may not take even a used towel without paying, then one may not do so, as that was expressly stipulated.
- When one rents a towel, he must make sure upon exiting the mikvah bor to take his towel, not someone else's, as that is the only one he rented through hagbahah. If someone took his towel and he sees another one hanging there, he may take it, as it probably got swapped with his. However, if he does not see another towel hanging there, he may not take a different towel for free, as the one who accidentally took the towel took it from him, not from the mikvah.
- No fee for a towel.** Other mikva'os do not charge a fee for a towel; they include it in the tevilah fee. However, even in such mikva'os, usage of the towel constitutes a rental of the towel. Thus, if a sign forbids taking two towels, one may not take two towels.
- If one exits the mikvah and cannot find the towel he took, and it is likely someone else took it, he may take another towel from the mikvah. His payment for the mikvah entitles him to the usage of one towel; if he cannot find his, he can take another. But it is proper and upstanding for a person to always try to use the towel he took for himself (פסקי המשפט סי' שני"ט אות ט"ו).

Lost Items in a Mikvah Facility

Swapped Clothing with Someone Else

- Took someone else's.** If one mistakenly took someone else's garment, e.g., hat, jacket, pants, socks, gatchkes, etc., and later realized it is not his, he should not use the item he took. He should hang a sign in the area he took the garment or on the mikvah bulletin board or the like publicizing that he mistakenly took the garment, and return it to its owner with a siman even if he did not yet find his own item.
- Strictly speaking, he should not return the garment to the place he took it from because if owner came back in the meantime and did not find it, he will not come back again to search for it (סמ"ע סי' ר"ס) (סקמ"ה). Since the finder became a shomer aveidah, he must publicize the item by hanging a sign, as mentioned (רמ"א סי' ר"ס ס"ז).
- Nevertheless, if the owner will likely search for the item multiple times in the same place because he does not know when it will be returned to him; and there is a greater chance the owner will find the item in the place he lost it than through a note on a bulletin board; then it is better to return it to the place it was found if it is a simple, inexpensive garment that has no concern of being stolen.
- Someone else took his.** If someone else took a person's garment and he sees the other person's garment in his spot, he may not take or use the other person's item – even temporarily until they swap back – as that is called borrowing without the owner's knowledge (שו"א שלא מדעת) (שו"ע ח"מ סי' קל"ו סי"ב).

21. **Items people aren't particular about.** If the garment or item that was taken is the sort that people are not particular about using specifically theirs, one may use the other person's until they swap back assuming they realize the mistake. Some examples: undershirt, socks, umbrella, towel, thin raincoat, tzitzis, tallis (תשובות והנהגות ח"י סוף סי' רפ"ח), and the like. However, one may not take someone else's item, even temporarily, if it is the sort that people are particular about and specifically want theirs.

Thinks It's His

22. If one lost a garment or towel or something and upon returning, finds an item resembling his in the same area, but he does not know for certain it is his, he may take it, especially if it was there for some time without anyone coming to get it (ש"ת מנח"י ח"ג סי' יז).

Soap, Shampoo

23. One may not use soap or shampoo he finds in a mikvah without the owner's permission, as it may have been intentionally placed there or accidentally forgotten, but that does not make it a lost item. However, if a lot of time, e.g., a month, passes and one sees that it has not moved from its spot, he may take it and use it, as the owner has certainly given up on finding it ["yi'ush"] and it is in a somewhat guarded spot.

24. If one finds a bottle of shampoo in the shower with just a bit left in the bottle such that a person generally would not go back for it, he may take it. He can assume the owner gave up on finding it or made it hefker for the benefit of others.

25. **Mini shampoo.** Sometimes, one finds in a shower what is left of a single portion of shampoo in a mini hotel bottle or a plastic bag someone prepared at home for a single use that already has a hole. Since it is likely the owner already used what he wanted to and does not care about what is left, another person may use it. This is helpful when a person forgets to bring his own soap or shampoo.

Found Money

26. One who finds money in a place used by the public, e.g., a mikvah or shul, may keep it (ש"ת ח"מ רס"ב סי' יו). This is because people constantly feel their pockets (סמ"ע סק"ג), and money does not have a siman, neither by location, number, or amount (רמ"א שם סי"א). Hence, when the finder picks up the money, he can assume the owner already had yi'ush, and it came into his hand permissibly.

27. **Nowadays.** Some point out that the reality today is that people do not constantly feel their pockets and most people do not know exactly how much money is in their pockets, whether coins or bills. If so, it is possible the finder picked up the money before the owner knew he lost it – this is a case of yi'ush shelo mida'as, which is not considered yi'ush (הגר"ש, סי' השבת אבידה כהלכתה פ"ה הע' ח).

28. Nevertheless, most poskim hold that if Chazal did not distinguish between many coins and few coins, that implies that their rule remains in place; the halachah is that one can assume the owner already gave up and keep it (ש"ת אל"מ י"ד ח"ד סי' כ"ג אות י"ג, מ"ר בפתחי). At the very least, he can keep it because it is like something made hefker by beis din (הגר"ח (קנייבסקי בשם החו"א, השבת אבידה כהלכה פ"ה הע' ז).

Items Forgotten at the Mikvah

29. **Yi'ush shelo mida'as is not yi'ush.** If one finds an item without a siman and picks it up before he knows the owner had yi'ush, he must return it even if the owner subsequently had yi'ush. This is because it came into his hand in a forbidden manner [לידו באיסורא באה], as he picked it up before yi'ush (סמ"ע סק"ט).

30. **Is the mikvah supervisor chayav in hashavas aveidah?** With this in mind, the poskim discuss whether the mikvah supervisor is chayav to do hashavas aveidah on items forgotten inside. Some hold he is chayav. They reason that the items came into his possession in a forbidden manner, as right when the item was forgotten, the supervisor acquired it and became chayav in hashavas aveidah, whereas yi'ush only comes later, when the owner realizes he lost the item (הו"ר בש"ת אבן ישראל ח"ה סי' צ"ז).

31. However, many poskim hold that in a public area like a mikvah, shul, or the like, the concept of לידו באיסורא does not apply.

Hence, once enough time passes that it is reasonable to assume the owner gave up, the mikvah supervisor or attendant or any other person can take the lost item and do with it as he sees fit (ש"ת אבן ישראל שם).

System for Items Forgotten in Public Areas

32. **Notice.** Since many items are forgotten in places used by the public, such as mikva'os, it is proper to make a system wherein it is made known to everyone who enters that if a lost item's owner does not claim it for a certain amount of time, e.g., thirty days, the item becomes hefker and belongs to the mikvah or the finder, and the mikvah supervisor can do with it as he sees fit. When that time passes, the supervisor can sell it, throw it out, or take it for himself (ש"ת שבט הלוי ח"ה סי' ר"ח, ש"ת מנחת יצחק ח"ה סי' קמ"ו).

33. **Cleared out every Shabbos Mevorchim.** Some mikva'os clear out all items left in the facility at specific intervals, e.g., every Erev Shabbos Mevorchim. If there is a notice informing everyone that all items are cleared out every Shabbos Mevorchim, this is permissible. When the items are cleared out and left outside, anyone can take what he wants, e.g., towels, clothing, shampoo, soap, and the like, as everything becomes hefker. People who use the mikvah enter the facility with this knowledge from the outset.

34. However, if this type of notice is only posted a few days before Shabbos Mevorchim and it is possible someone came before the notice was posted and is unaware of the policy, the items do not become hefker.

Hezek

Glasses Left on a Bench Got Damaged

35. **Bench in a mikvah.** A person once left his glasses on top of a pile of his clothes on a bench in the mikvah. Someone else came and sat on the first person's clothes, breaking the lenses, which happened to be very expensive. Does he need to pay?

36. Since each person generally leaves his clothing on a spot on a bench which becomes like his designated spot, no one else has permission to sit on other people's clothes. Thus, the second person was negligent in sitting on the first person's clothes. He must pay the amount it costs to buy new lenses (מ"ר הגר"י בלויא (הו"ר בספר החשוב, אגודת או"ב ב"ק דף י' ע"ב, להגרא"ז בלייער).

37. However, if the changing room is very crowded and everyone is putting his things on top of his friend's, e.g., at alos on Shavuos morning or half an hour before Shabbos, it is the owner's responsibility not to put glasses in a spot where they could get damaged. In such a case, the damager is likely patur from paying. Each case depends on the particular circumstances.

Security Cameras

Notifying That There Are Cameras

38. It is sometimes necessary to install closed circuit security cameras in a mikvah changing room. Sometimes thieves empty other people's pockets ר"ל. It is also necessary to ensure bochurim and boys are safe in a mikvah from depraved men. However, since it is a sensitive place and people's privacy must be guarded, if a mikvah installs security cameras, there must be a notice informing everyone that there are security cameras present. Then, whoever enters does so knowing that he is being filmed.

Hashavas Aveidah through Security Cameras

39. One who finds an item without a siman, e.g., money, in a place with cameras does not need to go to the effort of asking the mikvah supervisor if he can find the money's owner on the video. That is a big hassle, and it can also cost the owner of the item, as he will likely have to pay for the time the supervisor was not working. Also, they will not necessarily recognize the owner's face or know his contact information. It is likely that the owner had yi'ush even in this case, as he does not know where he lost the money (הגר"ג קרליץ, ושמע משה ד"ב סי' רכ"ז).

40. **Large sum.** If one finds a large sum of money in a place with cameras, the owner likely did not have yi'ush since he would go to lengths and pay money to find the money he lost. If so, the finder must check the cameras (פסקי המשפט סי' רס"ב אות י').

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