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PRIVACY CLAWS: CAN THE QUESTION OF LIABILITY FOR A DOG ATTACK BE IMPACTED BY *TZNIUS* AND *YICHUD*?

Adapted from the writings of Dayan Yitzhak Grossman

https://www.frocksinstock.com/collections The NJ Litigation Blog reports:

> ...Plaintiff filed this complaint, alleging that he had been invited to the defendants' house by their dog sitter and was lawfully at the home when defendants' dog repeatedly bit him, causing him severe and permanent injuries... In order to recover (money)...a plaintiff must prove the bite occurred while the plaintiff was in a public place or lawfully in a private place, including the property of the owner of the dog... Defendants opposed that motion, arguing that there was an issue whether plaintiff was a trespasser, because based upon plaintiff's Orthodox Jewish faith and his knowledge of defendants' faith, he could not reasonably have believed he belonged in their home... Plaintiff and defendants and Shore were all observant Orthodox Jews, and defendants asserted that Orthodox Jewish law "strictly prohibits unrelated single men and single women, like plaintiff and Shore, from being alone together in a secluded location, like defendants' home, unchaperoned."...
>
> The Appellate Division rejected the trial court's decision that the custom of *yichud* essentially converted plaintiff into a trespasser. The Court pointed out that the record demonstrated that the parties did not have a common understanding or practice. The Court found that plaintiff "reasonably believed" that the invitation permitted him to be where he was when defendants' dog bit him. The Appellate Division noted that "nothing in the record demonstrates plaintiff knew or should have known defendants had a different understanding and interpretation of *yichud* than he and Shore had"...[1]

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1 Betsy G. Ramos. Court Finds That Strict Liability Dog Bite Statute Applies While Plaintiff Visiting Dog Sitter at Defendants' Home. NJ Litigation Blog.

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PARSHAS NASO

ANGLE OF ADVANCE

Excerpted and adapted from a shiur *by Rav Moshe Zev Granek*

The one who brought his korban on the first day was Nachshon ben Aminadav of Sheivet Yehudah...one male goat for a chatas.

Bemidbar 7:12,16

A *korban chatas* normally atones for its offerer's *aveirah*. According to the Sifri, quoted by Rashi here, the *korban chatas* of Nachshon ben Aminadav provided *kaparah* for *tum'as hatehom* (performing the *avodah* in the *Bais Hamikdash* while unknowingly *tamei* and never discovering the sin).[1]

This Sifri is difficult to understand. The Gemara (Gittin 60a) says that all the *parshiyos* of *tum'ah* and *taharah* were given on Rosh Chodesh Nisan (see Tosafos). That was the same day that Nachshon brought his *korbanos* for the *Chanukas HaMishkan*, including this *chatas*, so no violation of *tum'as hatehom* could

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1 The Gemara (Zvachim 9a) understands it differently: This was an exceptional *chatas*, not brought for *kaparah*.

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A Conflict of Interest

Q I am a residential landlord. When a tenant signs a lease, he provides me with a security deposit, which I am legally required to deposit into an interest-bearing escrow account. I confess that I often didn't do so and instead used the funds for my own expenses. (I wasn't concerned about coming up with the money to return to the tenant at lease end, because I have sufficient cash reserves.) I regret this and would like to return a now-departing tenant's deposit with the interest it would have earned had I escrowed it. Is this a problem of forbidden interest, considering that this tenant is Jewish?

A You are indeed correct; this would be a violation of *ribbis*. You effectively borrowed the money from your tenant (see Shulchan Aruch Y.D. 168:13), so returning more than you

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There are at least three halachic questions raised by this case:

- Was the plaintiff permitted to sue the defendants in secular court?
- Did the plaintiff's conduct violate the laws of *yichud*?
- Assuming it did, does the violation affect the homeowners' halachic liability for the dog bite?

In this article, we explore the third of these questions.

The Gemara cites a case in which the demands of *tznius* impact the rules of civil liability:

> There was a certain woman who entered a certain house (with permission) to bake bread. The homeowner's goat came, ate the dough, became overheated, and died. Rava obligated her to pay the value of the goat…Since she requires privacy (as kneading dough requires that she roll up her sleeves and expose her arms), the owners absent themselves from the property when they allow her in to bake, and therefore, the responsibility of guarding their property rests upon her.[2]

But the Maharshal rules that this requirement of privacy for activities that expose the arms is only relevant to the question of liability if people actually observe this *tznius* norm:

> In our great sins, in these countries of Poland and Germany neither men nor women pay any heed to this, and [women] expose their arms even when not baking, so if such a case were to arise, it is obvious that the woman is not liable. If the owner of the house claims that he went outside out of modesty, he is required to take an oath (*shvuas hessess*) to that effect and is then believed, and she must pay, and "the Merciful One wants the heart." But if it appears to the judge that [the homeowner] is not presumed to be one who "shuts his eyes from seeing evil,"[3] then it is obvious that he is not believed to unjustly collect compensation.[4]

R' Yosef Shalom Elyashiv asserts that it is obvious that even in the Maharshal's era, it was not the practice of most women to expose their arms; only the frivolous who did not respect communal norms (*portzei gadeir vekalei da'as*) did so.

> But even due to them, the halacha changes with respect to the claims of the homeowner, and if he tries to hold her liable, it is incumbent upon him to verify his assertion that it was due to modesty that he vacated the location.[5]

While the halachic framework governing a homeowner's liability for his animal injuring a visitor is not identical to New Jersey's, it does share with it the requirement that the visitor was not a trespasser. This rule appears in a variety of contexts in the Mishnah, Tosefta, and Gemara, with respect to both property damage and personal injury:

> Mishnah: Whatever I am obligated to guard from doing damage, I have caused the damage it does if I fail to guard it properly. (Therefore, I am liable to pay for that damage.)…And one is liable for damage done in any place except for a premises that is reserved exclusively for the damager.[6] Gemara: For if the damage occurs on his premises, the damager can say to him, "What was your ox doing on my premises?"[7]

And later in the Gemara:

> For it was taught in a *breisa:* If one enters the yard of a homeowner without permission and the homeowner's ox gores him and he dies…its master is not liable to pay *kofer.* Now, what is the reason the ox's master is not liable to pay *kofer?* Because he can claim, "What are you doing on my premises?"[8]

And later, in the Mishnah:

> If a potter brought his pots into a homeowner's courtyard without permission, and the homeowner's animal broke the pots, the homeowner is exempt…but if he brought them in with permission, the owner of the courtyard is liable.
>
> If one brought his produce into a homeowner's courtyard without permission, and the homeowner's animal ate it, the homeowner is exempt…but if he brought it in with permission, the owner of the courtyard is liable.
>
> If one brought his ox into a homeowner's courtyard without permission, and the homeowner's ox gored it or the homeowner's dog bit it, the homeowner is exempt…but if he brought it in with permission, the owner of the courtyard is liable.[9]

These sources, in combination with the Gemara about the woman who entered a house to bake, may support the position of the defendant homeowners in the dog-bite case. In the case of the baker, the owner of the courtyard is exempt from liability on the grounds that since modesty norms dictated that he vacate the premises, the burden of responsibility for accidents there shifts from him to his visitor. Similarly, in the dog-bite case, if the halacha prohibits a man from being in the home while a female dog sitter is there, he would be considered a trespasser and bear responsibility for his own fate.

According to the Maharshal, however, this might hinge on whether the laws of *yichud* in situations such as these are generally adhered to in the community in question; if they are not (and according to Rav Elyashiv's understanding of the Maharshal, even if that is so only among the frivolous), then perhaps the visitor would not be considered a trespasser despite being forbidden to be there.[10]

2 Bava Kama 48a.

3 Based on Yeshayah 33:15.

4 Yam Shel Shlomo ibid. *perek* 5 *siman* 7 (cited in Taz C.M. 393:3).

5 *Kovetz* Teshuvos *cheilek* 1 O.C. *siman* 13 s.v. *Ach be'emes.* Cf. R' Aharon Cohen, *Be'inyan Das Yehudis Im Yecholah Lehishtanos*, p. 15; Shu"t Lehoros Nasan *cheilek* 5 end of *siman* 93 *os* 10.

6 Mishnah Bava Kama 1:2

7 Gemara ibid. 13b. Cf. Rambam Hilchos *Nizkei* Mamon 1:7 and Shulchan Aruch C.M. 389:10; Rama ibid.; Sma ibid. *s.k.* 9-10; Be'er Hagolah ibid.
Cf. Derech Pikudecha mitzvah 51 *cheilek hadibur os* 2; Pis'chei Choshen Hilchos *Nezikin perek* 5 n. 22.

8 Ibid. 23b, and cf. ibid. 33a, "*Tanu Rabanan: Po'alim sheba'u lisbo'a secharan…*"; Piskei HaRosh ibid. *perek* 3 *siman* 12; Rama C.M. 389:10; Taz ibid.

9 Mishnah Bava Kama 5:2-3.

10 This analysis assumes that the rationale for the defenses of "What was your ox doing on my premises?" and "What are you doing on my premises?" is that the animal's owner was not required to anticipate the trespasser's presence; see, e.g., Lechikrei Halachos to *Nizkei* Mamon 1:7.

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DAYAN YEHOSHUA GRUNWALD

borrowed constitutes *ribbis*. Hence you may not pay the interest, and you must seek a way to avoid it. If the tenant isn't religious and will forcibly require you to pay, many *poskim* would allow you to do so if you tell him that you aren't giving the excess as an interest payment but to protect yourself.

There are *poskim* that allow an alternate resolution: Share your dilemma with someone you're close with, and tell him that if a friend would pay the tenant, in your stead, the deposit principal plus the owed interest, that would resolve the issue. You may commit to reimburse the hypothetical donor (don't say "you") for the principal, but you can't mention that you will reimburse him for the interest. This way, your friend will pay your debt, but not as your *shaliach* (proxy). You also may not inform the tenant that your friend will be paying the interest on your behalf. Later, you could repay your friend the principal you committed to pay as well as the interest that you didn't (see Sefer Mishnas Ribbis, *perek* 1, footnote 16).

Note that you may not repeat this routine with the same friend, as after he has completed the process once and been reimbursed, were you to approach him again with a similar request, it would be akin to asking him directly.

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possibly have preceded it! Perhaps we can answer that this *chatas* was intended not to rectify past events, but to ameliorate future incidents in which a kohein would offer *korbanos* in an unwitting state of *tum'ah* but never discover his *aveirah*.