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OUT OF PLACE: MAY A TENANT BE EVICTED FOR NONPAYMENT?

Adapted from the writings of Dayan Yitzhak Grossman
The Associated Press reports:

California law allows landlords to evict tenants for nonpayment regardless of whether they are willing and able to pay their overdue rent. Tenant advocates...are pushing a proposal in the Legislature that would bring California in line with 21 other states that ban nonpayment evictions for tenants willing and able to pay up... Meanwhile, California tenants have just three business days to respond to a landlord's initial notice that they must pay rent or be evicted. After that, the property owner can proceed with the eviction regardless of whether the tenants have paid their bill...

Property owners who file a nonpayment eviction may have other reasons to want to evict particular tenants, such as if they are not keeping their unit clean or are antagonizing other tenants, said Daniel Bornstein, a San Francisco attorney representing landlords. "The easiest type to prove is nonpayment of rent," he said.

If tenants can wait to pay their back rent until a sheriff is knocking at their door, he said, there's no incentive to pay on time, rendering the lease meaningless. "There has to be a line in the sand from a public policy standpoint or there never is an end point when the debt has to be paid." The bill pending in the Legislature would require a court to dismiss a nonpayment eviction if at any point before tenants are actually removed from their home, they can pay all the rent accrued up to that date...¹

Classic halachic literature includes little discussion of the right to evict a tenant for nonpayment of rent. The earliest direct discussion of this issue that I am aware of is by the Maharit (R' Yosef de Trani), who takes for granted that it is grounds for eviction:

One who rents a house to his fellow for twelve dinars per year—a dinar per month, payable monthly—and the tenant is poor and does not have the resources to pay for the past and for

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¹Felicia Mello/CalMatters. They tried to pay their overdue rent. Their landlord wouldn't accept it. CalMatters/AP News. <https://apnews.com/us-news/california-legal-proceedings-san-francisco-general-news-47a6b684bc5f458708a72b4433de56a8>.

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PARSHAS VAYAKHEL FIRE POWER

Excerpted and adapted from a *shiur*
by Dayan Yitzhak Grossman

You shall not light fire in any of your dwellings on
the Shabbos day.

Shmos 35:4

Ever since the discovery of electricity, *poskim* have hotly debated its halachic status. Although all *poskim* agree that it is forbidden to use it on Shabbos, there is significant debate whether the *issur* is *deOreisa* or *deRabanan*, and which prohibition is violated.

Some *poskim*, including the Maharsham, posit that using electricity, and even turning on incandescent lights, might not be included in the *melacha* of *hav'arah* (lighting a fire). This is because the chemical reaction of combustion does not occur, and nothing is burned, and because it is dissimilar to the *hav'arah* of the *Mishkan*. Others, including the Bais Yitzhak, suggest that electricity violates *molid*, the *issur deRabanan* to create a new entity—in this case, fire—on Shabbos. (He suggests that incandescence might be *hav'arah*.)

A third group of *poskim*, including the Melamed Leho'il, holds that lighting incandescent bulbs constitutes *hav'arah deOreisa*, because the filament gets hot and emits light (and it is consumed, albeit very slowly). *Poskim* like R' Yosef Eliyahu Henkin and R' Ovadiah Yosef note that according to this approach, electricity without incandescent bulbs (like in a refrigerator or microphone) is not forbidden

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Q&A from the
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A Blanket Rule

Q Why doesn't a blanket need tzitzis?

A The straightforward answer is that a blanket is not worn as garments are, as it is only draped over the body, and the mitzvah of tzitzis applies only to a *ksus* (garment). Indeed, the Mordechai (Menachos 941) offers this reasoning. But some argue that even a cloth used for covering requires tzitzis. Notably, Rabeinu Eliyahu, an Ashkenazi *Rishon*, would attach tzitzis to his blanket (cited in Bais Yosef O.C. 18), but this practice was not widely adopted.

One rationale for exempting a blanket is that it is a *ksus leilah* (a garment typically used at night). This follows

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the future, can the landlord not tell him, "Leave my house, for on these terms I did not rent it to you"?...It appears obvious that he may evict him, for he only rented the house to him on condition that he pay each month for that month.²

A seemingly opposing position appears to have been espoused centuries earlier by the Ritva. He asserts that if a person rented a house and then died, his heirs may continue using the house for the duration of the lease, and they are not obligated to pay rent unless the dead man's estate includes property subject to a lien for the rent.³

The Sha'ar Mishpat (R' Yisrael Isser Isserlin) argues that the Ritva might only mean that if the heirs have *already* used the rented property for the duration of the lease, they are not liable after the fact for the rent, but the Ritva would agree that during the term of the lease, the landlord may indeed evict the heir for nonpayment.⁴

Other *Acharonim* apparently take the Ritva's comments at face value and understand him to mean that the heirs are permitted ab initio to use the property despite not paying rent.

For example, R' Akiva Eiger adduces the Ritva in support of his suggestion that when a person purchases personal property (*metaltelin*) and dies before paying, his heirs may keep the property without payment, because heirs inherit rights from decedents but do not assume their obligations (and *metaltelin* are not subject to liens in this context).⁵ Elsewhere, in a *teshuvah* regarding a man who rented an apartment and then died, R' Akiva Eiger suggests that his widow might have the right to continue living there for the rest of the current year (i.e., in the case of a tenancy from year to year or similar arrangement) despite the fact that the rent had not and would not be paid. This is because at the beginning of the year, the husband had already acquired the rights to the apartment for the entire year, and the widow does not assume her husband's liability for the rent upon his death.⁶ R' Akiva Eiger provides no source, but his position here is consistent with his previously cited analysis in which he cites the Ritva.

The position of the Ritva (according to a simple reading of his words) and R' Akiva Eiger that a landlord may not evict the heirs or successors of a deceased tenant despite nonpayment would seem to contradict the Maharit's assumption that a landlord may "obviously" evict a tenant for that reason. Perhaps there is a distinction between the cases of living and deceased tenants, and the Ritva and R' Akiva Eiger would agree that a living tenant can be evicted despite their view that his heirs cannot, though the rationale for such a distinction

is unclear to this author.

The analogous question of voiding a sale for nonpayment is also not clearly discussed in early halachic sources, and it is seemingly first discussed by *Acharonim* of only a couple of centuries ago.

The Gemara says:

For Rava said: Concerning one who sold something to his fellow but did not receive immediate payment: If the seller goes in and out after the purchaser in pursuit of the money due ("*ayil venafik azuzei*"), the purchaser does not acquire the property. But if the seller does not go in and out after the purchaser in pursuit of the money due, the purchaser acquires the property.⁷

While the Gemara does set forth the rule that the seller being *ayil venafik azuzei* voids the sale, it does not address the more general question of the right of a seller who was not necessarily *ayil venafik azuzei* to void a sale for nonpayment. The Nesivos Hamishpat (R' Yaakov Lorberbaum) rules that whether the seller was *ayil venafik azuzei* only matters if the buyer is now prepared to pay in full, but the seller wishes to void the transaction because the buyer did not pay at the time of the sale. In such a case, if the seller was *ayil venafik azuzei*, the sale is void, but if he was not, it is valid. However, if the buyer is even now unprepared to pay, the sale is void even if the seller was not *ayil venafik azuzei*.⁸

The Nesivos articulates the same doctrine—that failure to pay in full renders a sale void—in another context as well: The *Acharonim* rule that if a husband purchases a get (bill of divorce) on condition of immediate payment and then does not make the payment, the get is considered stolen property (and thus invalid to use to divorce his wife).⁹ The Nesivos explains this in accordance with his previously cited position:

It is evident from this that one who sells on condition of immediate payment, we do not say that the money is merely an obligation incumbent upon the buyer, but rather that the item itself belongs to the seller if the buyer does not pay him...

The Nesivos goes on to clarify that this rule applies even in the absence of an explicit condition: As long as the item was sold on a cash basis rather than on credit, nonpayment voids the sale.¹⁰

In his Meshoveiv Nesivos, the Ketzos Hachoshen (R' Aryeh Leib Heller) disagrees and maintains that absent an explicit condition, a sale is not voided for nonpayment, unless the seller is *ayil venafik azuzei*.¹¹

⁷ Bava Metzia 77b.

⁸ Nesivos Hamishpat siman 190 *Biurim* s.k. 7 (and cf. siman 191 *Biurim* s.k. 3). The Nesivos notes that this position was earlier articulated by the Machanei Efraim (Hilchos Mechirah—Kinyan Malos siman 12).

⁹ Chelkas Mechokek siman 120 s.k. 5, Bais Shmuel ibid. s.k. 3.

¹⁰ Nesivos Hamishpat siman 91 *Biurim* s.k. 9, and cf. Toras Gittin siman 120 *Biurim* s.k. 5. Shu"t Bais Shlomo E.H. siman 143 p. 139b agrees with the Nesivos. But Bais Meir E.H. ibid. se'if 2 sv. *Hagahah*: *Aval* gazal get maintains that the ruling of the Acharonim applies even in the absence of an explicit condition in the case of a seller who is *ayil venafik azuzei*, which would seem to imply that it would not apply in general, and thus that he does not accept the doctrine of the Nesivos that even in the absence of *ayil venafik azuzei*, a sale can be voided for nonpayment if the buyer is unprepared to pay.

¹¹ Cf. Nachal Yitzchak (cheilek 2) siman 96 os 4 and 1 p. 378; Shu"t Bais Yitzchak E.H. cheilek 1 siman 112 os 2; Shu"t Migdal Hashefen siman 87 sv. *Ve'atah navi*; Shu"t Or Hameir siman 55 os 5.

¹² Meshoveiv Nesivos ibid.

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the Rosh's view (cited in O.C. 18:1) that night garments are exempt from tzitzis even when worn by day. But the Rambam (cited ibid.) argues that during the day, night garments are obligated in tzitzis.

Since the Rambam's view here is followed *lechumra*, the Mishnah Brurah (ibid. 8) rules that a blanket should have tzitzis, or its corners should be rounded—but only if it's made of wool. With blankets of other fabrics, one may rely on the lenient view, because such materials are only obligated in tzitzis *mideRabanan*.

The Mishnah Brurah is also strict regarding woolen bedsheets. But the Chazon Ish (O.C. 3:36) disagrees, because they are not used for covering.

Many *poskim* dispute the Mishnah Brurah's stringency about blankets and exempt even woolen blankets from tzitzis, noting that this is the prevalent minhag. Various reasons are cited for this position:

- The Mordechai's opinion is considered halacha (Aruch Hashulchan ibid. 8).
- The four corners of the blanket do not align as front and back corners. This is one of the reasons that a scarf is exempt, as noted in Darchei Moshe 10:6 (Hisorerus Teshuvah 1:9).
- The size of a blanket makes it impractical to wear outside (see Piskei Teshuvos 10 fn. 85).

If a non-woolen duvet is placed inside a woolen duvet cover, all agree that there is no reason for stringency, as the duvet cover is secondary to the duvet (Piskei Teshuvos 10:13).

Additionally, we have seen that R' Akiva Eiger suggests that the heirs of a person who purchased personal property and died before paying for it may be entitled to keep it without paying, so it would seem that he, too, would disagree with the Nesivos that nonpayment voids a sale. Unless, as proposed above, we distinguish between a living purchaser and a dead one.

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mideOreisa, but it would still be *asur mideRabanan*. Within this approach, some argue that incandescent bulbs are subject to a dispute between the Rambam, who holds that heating metal violates

hav'arah, and the Ra'avad, who says it does not (though it may violate *mevashel*). Others reject this analysis. A fourth group of *poskim*, led by the Chelkas Yaakov, argues that electricity causes sparks and that makes it *hav'arah deOreisa*. But many others—including R' Yosef Eliyahu Henkin, the

Chazon Ish, and R' Shlomo Zalman Auerbach—disagree, arguing that sparks are not usually generated, and even when they are, they do not constitute *hav'arah* at all, because they are temporary and indirectly caused.



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