

THE BAIS HAVAAD

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HOSTING POSTINGS:

Is Facebook Responsible for Its Content? Is a facilitator liable for the actions of others?

Adapted from the writings of Rav Ariel Ovadia

People of the 'book

In the past 30 days, 3 out of every 10 people on the planet—some 2,227,000,000 souls—accessed their Facebook accounts.

This is a staggering fact.

On November 27, at the inaugural hearing of the “International Grand Committee on Disinformation” in London, lawmakers from nine countries took turns castigating Zuckerberg and his company for disseminating “fake news.” Not showing up for the meeting probably didn’t help his case.

Arguably, the company’s troubles are largely self-inflicted. Along with other social media companies, it chose not to be a passive forum where users publish what they will. Instead, it actively polices its platform, banning and promoting viewpoints according to its own values and politics.

By contrast, there are other services that provide a forum for communication but do not concern themselves with its content. Phone companies take no interest in what is said on their lines, so it occurs to no one to punish them for the activities of prank callers or telemarketers or terrorists planning attacks. Ditto for email providers and the postal service. Because these entities claim no jurisdiction over the content they transmit, they are not held accountable for it.

From the Torah perspective, which approach is correct? If I hang a bulletin board, must I monitor what is posted there?

LIFNEI IVEIR

The Torah (Vayikra 19:14) prohibits placing a stumbling block before a blind man. This

means that one may not create an opportunity for another Jew to sin (Avoda Zara 6a). Chazal prohibited *mesayeia lidvar aveira*, assisting in a transgression, even where the sinner could have done it on his own (Tosafos and Rosh, Shabbos 3a).

While the Shach (Y.D. 151:6) is lenient in the case of a *mesayeia* to a *mumar* (one who completely disregards Torah law), this doesn’t seem to be the consensus of the *Acharonim* (see Dagul Meirevava ad loc.).

HALL MONITOR

The owner of a wedding hall asked R’ Moshe Feinstein (Igros Moshe Y.D. 1:72) whether he could rent his facility to people who would serve nonkosher food or have mixed dancing at their event. R’ Moshe replied that this is permitted because the hall will not be the cause of the *aveira*, only its location. Otherwise, he argues, why doesn’t Halacha forbid the sale of dishes to Jews who don’t keep kosher?

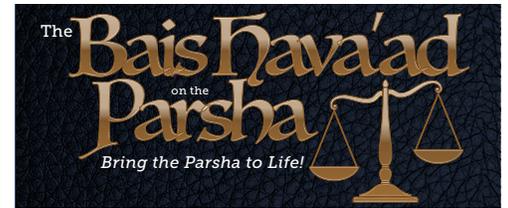
Facebook, it would seem, is no worse than a ballroom owner.

FEED THE EVILDOER

A similar scenario is discussed in the Mishna in Ma’aser Sheini (5:1). R’ Shimon Ben Gamliel says that outside of the *shemita* year (when all may freely enter any field and eat its produce) one doesn’t have to make it known to the public that the fruit of his vineyard is forbidden because of *kerem revai* or *orla*. The Gemara in Bava Kama (69a) explains that we follow the maxim *hal’itay-hu l’rasha v’yamus*—“feed the evildoer and he will die.” I need not see to it that someone who will steal my grapes doesn’t violate additional *issurim*. The Rambam codifies this in Hilchos Ma’aser Sheini (9:7).

There is a debate among the *Acharonim* how far this principle goes.

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Highlights of a shiur by Rav Yechiel Biberfeld

PARENTAL SUPPORT: WHO IS PAYING?

The financial obligation of honoring parents is on who?

We find in this week’s parsha praise for the ‘tzedakah’ of Yosef for supporting his father, Yakov Avinu, all the years in Mitzrayim.

Was it a charitable act or his obligation as a son?

There is a *machlokes* if the costs of *kibud av* are borne by the son or the father.

The halacha is that it is the financial responsibility of the father. However, if the father does not have the means, then it is the son’s obligation.

In this scenario, to what extent is the son obligated financially? This will depend on the nature of the obligation.

The Ran is of the opinion that it is akin to *tzedakah*.

The Yerushalmi says that it is not *tzedakah* but rather a *mitzvah* of *kibud av* that is not based on *tzedakah*.

He infers this from the wording in the *pasuk*: ‘*kabed es avicha*’, honor your father. The Torah does not qualify how much a person should spend. This is in contra-

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spotlight
A Kesuba. Not just any old contract.
The Bais HaVaad is fortunate to count among its members advanced Poskim with specialties in multiple, sensitive areas of halacha. Rav Ariel Ovadia, shlit”a is a case in point. As the Menahel of our Sephardic Halacha Center and the author of many shiurim in the Journal, he is now adding yet another halachic specialty to his arsenal by joining the Even HaEzer Chabura. Recently, Rabbi Ovadia, shlit”a, presented a technical shiur on the options for composing a ksubah in delicate scenarios. Mabrouk!

GENERAL HALACHA

THE AFTERMATH OF EMANTIC 'E.J.' BRADFORD'S DEATH:

Are Police Above the Law?

Rabbi Micha Cohn



The recent death of Emantic 'E.J.' Bradford, resulting from a police officer's shooting from behind, has once again raised much public concern over the use of excessive force by police. In this article we will examine if law enforcement officials have a dispensation for unintentionally causing death, and what the parameters are.

The Mishnah in Tractate Makkos (8a) exempts a *Shliach Bais Din*, an emissary of the court, from going into exile for unintentional homicide. The agent of *Bais Din* was performing a *mitzvah*, and as the Mishnah explains, there is a dispensation from exile for accidental homicide that occurs while performing a *mitzvah*. The *Rishonim* dispute in what capacity did the agent of *Bais Din* cause death. According to the *Rambam* (*Rotzeiach* 5,6), the emissary of the court was forcing a person to appear before *Bais Din*. *Rashi* and the *Ra'avad* understand that the *Shliach Bais Din* was administering *makkos*

(flogging), and unintentionally gave more than the prescribed amount.

In 1830, Rabbi Moshe Sofer, the *Chasam Sofer*, was asked to give direction after a tragic incident (*Shu"t Chasam Sofer* OC 177). A young housemaid had fainted and her mistress panicked. She ran to get some whiskey to help revive her. In the rush the mistress mistook a bottle of petrol for whiskey. Thinking it was whiskey, she poured the petrol into the mouth of the housemaid killing her. The mistress turned to the *Chasam Sofer* to instruct her as to what form of atonement (*Kaparah*) she needs for this terrible mishap. The *Chasam Sofer* cites the abovementioned *Mishnah* as his primary source. He raises an important question regarding the opinion of the *Ra'avad*. If the emissary of the court gave too many *makkos* why should he be exempt from punishment? Rabbi Sofer explains, the emissary must have become confused with the number and thought he had not given the proper amount when he actually had. Although the actual hit that killed the person was not a *mitzvah*, since the beginning of the emissary's actions were a *mitzvah* and sanctioned by *Bais Din*, he still has this dispensation.

Based on his understanding of the *Ra'avad*, the *Chasam Sofer* offers insight into this incident. When the mistress ran to get whiskey, she was clearly involved in a *mitzvah*, and is therefore comparable to the emissary of *Bais Din*. Therefore, even if she could have possibly been more careful she has the same dispensation as the emissary of the court who became confused and gave too many *makkos*. The *Chasam Sofer* concludes that she is not considered responsible for the death of the housemaid, but she should do some form of *teshuvah* because this terrible mishap happened at her hands.

A contemporary ruling from Rabbi Shmuel Wosner (*Shevet HaLevi* 4,151) about dental malpractice illustrates this point. According

to *Halacha*, a doctor has a similar dispensation as an agent of the court. Therefore, if he accidentally injures in the course of treatment he is not obligated to pay. Nonetheless, Rabbi Wosner ruled that a dentist who accidentally drilled the wrong tooth is fully obligated to pay. He explains that the doctor's favorable position in *halacha* is only when he damages in the actual course of treatment. Drilling the wrong tooth is not considered in the course of treatment and he has the same responsibilities as a layman.

From these sources we can learn that an agent of *Bais Din*, a doctor, or law enforcement official that causes damage or death in the course of doing his legitimate duties may not be held liable. However, this is only if the initial action that lead to harm was justified. In the case of the *Chasam Sofer*, the mistress had legitimate reason to get whiskey to revive the girl, as it was apparently considered a proper way to revive a person who fainted. Conversely, if she should have run to get a doctor and instead decided to use whiskey, then the *Chasam Sofer* might have held her liable for mistakenly bringing petrol. Similarly, in the case of Rabbi Wosner, the dentist never should have drilled that tooth and is not considered one who is 'involved in a *mitzvah*'. On the other hand, if while working on the proper tooth the dentist drilled too deep, Rabbi Wosner would seemingly rule more leniently.

These same concepts could be applied to the use of force by law enforcement officials. Similar to the emissary of *Bais Din*, law enforcement officials should have a favorable halachic status if they unintentionally caused death, but only if they were following proper procedures. Therefore, if death accidentally occurred while the officer was using an appropriate form of force, even if he could have been more careful, the dispensation of *mitzvah* would apply. However, if the officer had no permission to use that form of force in a given situation, he loses this dispensation and is fully responsible for an inadvertent homicide.

EVENTS AT THE BAIS HAVAAD A Real Bais Vaad LaChachomim

Given the myriad programs and projects of the Bais HaVaad, it was a rare occurrence, when this past week, all the Dayanim, Poskim, Chavrei HaKollel and Hanhala members gathered for a gala Chanukah mesiba at the Bais HaVaad headquarters in Lakewood.

The event began with introductory remarks from the Rosh HaMosad, Rabbi Dovid Grossman, shlit"á, about the expansion of the Bais HaVaad in the last few years. Then, Dayan Yehoshua Wolfe, Menahel of the Bais Din, presented the activities of the Bais Din including an update on the regional Kehilla Batei Din, in the Midwest, South Florida and Brooklyn. The Medical Halacha Center was featured next with a report from the Menahel and Dayan, Rabbi Yehoshua Greenspan, shlit"á. *Acharon choviv*, HaRav Yakov Simiatiecki, shlit"á, gave the group a window in to the new Even HaEzer Chabura. The event ended with Divrei Bracha from Harav Chaim Weg, shlit"á, Rosh Kollel Zichron Gershon LeDayanus.

Watching the veteran Dayanim sharing notes with Medical Halacha Poskim, aspiring Dayanim, and members of the Even HaEzer Chabura, elicited from one participant the observation, "this gathering is the ultimate Bais Vaad Lachachomim". Amen.

MATTERS OF INTEREST

Avissar Family Ribbis Awareness Initiative: Greeting as a form of Ribbis



GIFTS FROM THE LENDER

Sending the lender a gift as a token of appreciation has a different set of rules. If the gift is sent before the loan is repaid, it is considered *avak ribbis*. If however, the gift is sent after the loan has been repaid, it falls under the category

of *ribbis me'ucheres* (delayed interest) and is subject to the following guidelines.

If the borrower specifies that the gift is in appreciation of the paid loan, it is considered *ribbis*. Sending a bottle of wine with a thank you note after repaying a loan would be included in this prohibition.

If the borrower does not specify the reason for the gift, then the *halachah* depends on the value and the timing of the gift. An expensive present that would clearly not be given if not for the loan is *ribbis* even if given a while after the loan is repaid. This often occurs in a situation when people realize that they have inadvertently entered into a prohibited *ribbis* agreement. The borrower, who is prohibited from making any interest payments, may want to reimburse the lender for the lost interest by giving him a gift. This would be prohibited even after the loan has been repaid if the

size of the gift makes it obvious that it is being given because of the loan.

If, however, the gift is small enough that the borrower would have given it even in the absence of the loan (and the loan has been repaid) the lender may accept the gift. There are no set rules that define the exact size of a problematic gift. The particular relationship between the borrower and lender will determine what is considered appropriate.

Even in circumstances in which the lender may accept the gift, there are *poskim* that prohibit the borrower from giving it with the *intention* of thanking the lender for the loan.

If the lender inadvertently accepted *ribbis me'ucheres*, he may keep the present and has no obligation to return the gift to the borrower. In contrast, *avak ribbis*, which is given before the loan is repaid, should be returned to the borrower.

YOU DAILY LIVING

Weekly Questions

Laws related to yoshon nowadays



Why does it seem that there is a greater emphasis on Yoshon today than there was generations ago?

The Rama (*Yoreh De'ah* 293:2) writes that where we are uncertain when grain is planted and harvested, it is permissible based on a *sfek sfeika* (double doubt): The wheat may have been harvested before Pesach, and even if it was harvested after Pesach, it may have taken root before Pesach. In past generations, it was impossible to know when a particular sack of wheat was harvested or in which month it was planted. In addition, historically (until the 1970s) the U.S. stored their surplus grain from one year to the next. Under such circumstances, it was possible to apply the *sfek sfeika* of the Rama.

However, today the wheat supply can be tracked so efficiently that there is much less doubt as to whether the wheat is from this

year's or last year's crop. Every shipment of wheat contains paperwork that identifies the type of wheat and the year it was harvested. Crop reports inform us when each variety of wheat is planted for every state. Furthermore, there is little chance that the wheat is from a previous year, since the U.S. exports its wheat surplus. Far from qualifying as a double doubt, in certain circumstances one might even know with certainty that a particular batch of flour is *chodosh*. The Mishnah Berurah (489:45) cautioned against purchasing Russian wheat which was known to be *chodosh*.

However, the opinions of the Magen Avraham and Bach (cited in the previous Halachah Yomis) would still apply, for those who wish to be lenient.

Does the prohibition of chodosh apply in the diaspora?

Shulchan Aruch (*Yoreh De'ah* 293:2) writes unambiguously that the laws of *chodosh* apply in all circumstances, both in Israel as well as outside of Israel. Indeed, many Sefardim are known to be careful to not eat *chodosh* in accordance with this ruling of Shulchan Aruch. However, there are two main dissenting opinions among the Ashkenazic *poskim*.

The Bach (*Yoreh De'ah* 293) disagrees with Shulchan Aruch and writes that the prohibition of *chodosh* outside of Israel only applies to grain grown by Jewish farmers. Grain grown by non-Jewish farmers outside of Israel is permitted.

The Magen Avraham (489:17) writes that because of the difficulty in observing this law, many rely on the opinion that the prohibition of *chodosh* is limited to Israel and adjacent

lands. Though *chodosh* would apply to grain from countries neighboring Israel, it would not apply in Europe or America.

The Rama (*Yoreh De'ah* 293:2) mentions a third consideration. Since it is uncertain when the planting occurred, one may be lenient and permit eating these grains, because of a double doubt (*sfek sfeika*). [This point will be discussed further in a future Halachah Yomis.] The Mishnah Berurah (489:45) writes that the majority of people follow the above leniency, and one should not disapprove of those who follow this approach. Nonetheless, it is preferable to be stringent.

What do the terms chodosh flour or yoshon flour mean?

The Torah (*Vayikra* 23:14) states that it is forbidden to eat the new year's grains until after the *omer* sacrifice (a barley offering) is brought in the *Bais HaMikdash* on the second day of Passover. This prohibition applies exclusively to five varieties of grain: wheat, barley, spelt, rye and oats. Once the *omer* sacrifice was brought, all grain which took root before Passover is viewed as *yoshon* (old), and is permitted. Grain which took root after the second day of Passover is known as *chodosh* and is not permitted until the following year's *omer* offering.

Though we no longer sacrifice the *omer* in the *Bais Hamikdash*, the prohibition of *chodosh* is still in effect. While it is accepted that the Torah prohibition of *chodosh* applies in Israel, there are different opinions as to whether the prohibition of *chodosh* applies in other countries as well.

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The Rash Sirilio holds the most lenient view, that one never has to be concerned about the potential additional transgression of an evildoer.

The Chazon Ish (Demai 8:9) writes that the Mishna is only lenient where the potential violator would have to steal the item with which he would transgress.

R' Shlomo Zalman Auerbach (Minchas Shlomo, Bava Kama ibid.) and other *Acharonim* maintain that so long as one is not partaking in the *aveira* actively, he is exempt, so he is not required to intervene.

The most stringent view is that of the *Chavos Ya'ir* (142), who forbade placing nonkosher food in a place where it could be stolen and eaten by a Jew.

(A jarring story, recorded in Kovetz Pa'amei Yaakov, demonstrates how far the approach of the Chazon Ish can legitimately be taken: A chemist had his lunch stolen every day at work. To unmask the thief, he put poison in his food, put it in the office fridge, and waited to see which of his co-workers developed symptoms. When the culprit got sick, the triumphant chemist administered the antidote, doubtless sure he had lost his lunch for the last time. R' Yitzchok Zilberstein, asked about the incident, concluded that allowing the thief to harm himself was permitted based on the "feed the evildoer" concept. R' Chaim Kanievsky concurred.)

Our Facebook question would seem to

hinge on this *machlokes*: According to the Chazon Ish, because the service enables forbidden conduct, it is the provider's responsibility to prevent it. To R' Shlomo Zalman, however, because the sinner is helping himself, as it were, one need not intervene. It would seem that even the Chazon Ish would agree if the platform's rules forbade the behavior in question.

ARVUS

We are all *areivim* (guarantors) for each other's Torah observance. Would that require us to prevent another's violation in a case like ours?

R' Yerucham Fischel Perla (Parsha 57) and other *Acharonim* understand that *arvus* doesn't apply when a person is in any case transgressing other *issurim*. Additionally, R' Yitzchak Elchanan Spektor (Ain Yitzchak O.C. 1:11) writes that *arvus* only applies when one knows that a sin is being committed.

GOING BEYOND

The Mishna in Ma'aser Sheini concludes that the pious would always refrain from causing other people to sin, even where it is permitted and even at a cost to themselves. The Rambam cites this, and Igros Moshe (O.C. 1:52) writes that one should strive to attain this level.

In conclusion: If you establish a communications platform and you publish rules that ban forbidden speech, you are not required to intervene against violators (unless someone is endangered). Nevertheless, it is an act of piety to do so.

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inction to general mitzvos where we follow the dictum of *kabed es Hashem mayhoncha*, which *chazal* explain to mean, 'from that which He has blessed you', and not more than what you have.

The Chazon Ish observes that the practical implication between these two opinions will be in the extent of the son's responsibility. If it is *tzedakah*, it will be limited to the guidelines what a person must generally contribute to charity.

If it is not *tzedakah* based, then there is no limit. For example, according to the Yerushalmi, a



The Daf in Halacha

Bring the Daf to Life!

מסכת חולין

This Week's Topics

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- דף י"ז CHECKING YOUR KNIVES
- דף י"ח PERFECTLY SQUARE: RIBUAH B'TEFILLIN
- דף י"ט HAGRAMA: LAWS & CONCEPTS
- דף כ' SHECHITAH & MELIKAH: A STUDY IN CONTRAST
- דף כ"א USING YOUR MA'ASER FOR TUITION?
- דף כ"ב THOU SHALT BRING THY NEDARIM...
- דף כ"ג KEEPING YOUR FRIEND'S WORD



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