

THE BAIS HAVAAD

HALACHA JOURNAL

Family, Business, & Jewish Life Through the Prism of Halacha



VOLUME 5779 • ISSUE XXXIX • PARSHAS EIKEV • A PUBLICATION OF THE BAIS HAVAAD HALACHA CENTER

A FORCE TO BE RECKONED WITH:

ARE POLICE ABOVE THE LAW?

Rabbi Micha Cohn

On July 17, 2014, Eric Garner died in the New York City borough of Staten Island after Daniel Pantaleo, a New York City Police Department (NYPD) officer, put him in a chokehold while arresting him, and was subsequently fired. Video footage of the incident generated widespread national attention and raised questions about the appropriate use of force by law enforcement. 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.

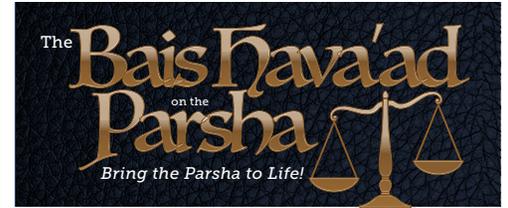
In 1830, Rabbi Moshe Sofer, the Chasam Sofer, was asked to give direction after a tragic incident (*Shu"t Chasam Sofer OC 177*). A young housemaid had fainted and her mistress panicked. She ran to get some whiskey to help revive her. In the rush the mistress mistook a bottle of petrol for whiskey. Thinking 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

(continued on back)



Rabbi Moshe Zev Granek

GUILT RELATED: CHILDREN ATONING FOR PARENTS' SINS

Do children atone for their parents' sins? An exposition on the bracha of Boruch Shepotrani

Two reasons for reciting the bracha of Boruch Shepotrani by a bar mitzvah.

Magen Avraham - Till the bar mitzvah the father is punished for son's sins, and now the son is punished for his own sins.

Levush- the reverse. The father is reciting a brocho giving gratitude in relieving the son from enduring punishment for the father's sin.

Question- the pasuk says *bonim lo yumsu al avon avos*- sons won't die on account of sins of their fathers.

Rambam-This passuk is only once he becomes an *ish*-an adult-but prior to then, a son may be punished on account of his father's sins.

Chochmas Shlomo /Rav Shlomo Kluger asks on the Levush: It can't be that the brocho is

(continued on back)



BAIS HAVAAD HALACHA CENTER

ADDRESS 105 River Avenue, #301, Lakewood, NJ 08701 • PHONE 1.888.485.VAAD (8223) • WEBSITE www.baishavaad.org • EMAIL info@thehalachacenter.org

המרכז לרפואה ע"פ הלכה שנינו בית הדין
M·E·D·I·C·A·L
HALACHA CENTER

HAVE A QUESTION?
HALACHIC GUIDANCE
in all
MEDICAL MATTERS

Consultation Line
732.276.2183
Email
info@themedhc.org

(continued from front pg.)

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 Vosner 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.

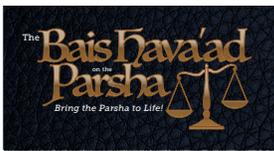
From these sources we can learn that an agent of *Bais Din*, a doctor, or law enforcement official that causes damage or death in

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 Vosner, 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.

(continued from front pg.)



to give gratitude for now relieving the son of punishment for his father because it

contradicts an explicit *passuk* in our *parsha*: *uvaharon hisanaf lehashmido*. This means that Aaron's children, who were already past bar mitzvah, were killed on account of Aaron HaKohen's sins.

Question- The source for the *Levush* is a Rambam. And although the question from Aaron's children is a valid question, it doesn't vacate the reality of this concept.

A possible answer is that perhaps the *passuk* in our *parsha* has a different connotation based on an apparent contradiction in two *psukim*.

One *passuk* is - *poiked avon avos al bonim* that implies that children are punished on account of parents sins. The other *passuk* - *bonim lo yumsu al avon avos* implies to the contrary. How to reconcile the two contradicting *psukim*?

The gemara answers- when sons continue in

their father's path with committing the same *aveiros* as their fathers', then sons can get

punished. Our *passuk* is referring to when the children are not continuing in the father's path.



BAIS HAVAAD HALACHA CENTER

RABBI YEHOShUA WOLFE, MENAHEL
RABBI YEHOShUA GREENSPAN,
SAFRA D'DAYNA

105 River Ave, #301, Lakewood, NJ 08701
1.888.485.VAAD (82223)
www.baishavaad.org
info@thehalachacenter.org



Business Halacha Services



Bais Din & Dispute Resolution



Zichron Gershon Kollel for Dayanus



Medical Halacha Center



Kehilla & Bais Din Primacy Initiative



Halachic Awareness & Education

Midwest Rabbi Dovid Aron Gross
Brooklyn Rabbi Dovid Housman
South Florida Rabbi Yosef Galimidi, Menahel
Rabbi Meir Benguigui, Safra D'dayna

לענ"ר דוד ב"ר משה גרוסמן ז"ל

NAFTALI 
www.naftaliinc.com

To become a corporate sponsor of the BHHJ or disseminate in memory/zechus of a loved one email info@baishavaad.org