

THE BAIS HAVAAD

HALACHA JOURNAL

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



VOLUME 5780 • ISSUE IV • TOLDOS • A PUBLICATION OF THE BAIS HAVAAD HALACHA CENTER

DO ME A FAVOR

Is A Public Official Allowed to Ask for Favors?

Rav Ariel Ovadia

“I would like you to do us a favor, though” — are what triggered the House impeachment inquiry that has imperiled his presidency.

DID PRESIDENT TRUMP commit bribery? House Speaker Nancy Pelosi leveled this accusation this month, as additional evidence emerged, potentially implicating him directly in the abuse-of-power controversy surrounding U.S. relations with Ukraine. Trump was accused of committing “bribery” by seeking to use U.S. military aid as leverage to pressure the Ukrainian government to conduct investigations that could politically benefit the president. Half-way around the globe, Israeli officials finally indicted PM Benjamin Netanyahu on bribery charges of his own, after years of lengthy – and controversial – investigations. It seems like democratically elected leaders the world over are subjected to extreme scrutiny by the opposition for allegations of abuse-of-power or bribery – an impeachable offense.

Is a public official, let alone the president, allowed to ask for favors? What if they are not conditioned on anything but will just be accorded high-priority? In this article, we will examine the various limits and applications of this prohibition.

THE PROHIBITION OF SHOCHAD - BRIBERY

The Torah warns a Dayan not to accept bribes, as the Pasuk says: “And thou shall not take bribes, as bribes will blind the eyes of the wise and distort the words of the wise...” The Shulchan Aruch (C.M. 9:1) introduces this Halacha in the following manner: One should be very, very careful (me’od, me’od) - an expression

found in few places in the Shulchan Aruch. The Gemara in Kesubos asserts that this prohibition applies even when the bribery is given to acquit the innocent party or convict the guilty party.

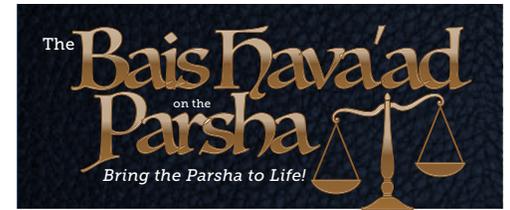
The Chazon Ish in Emuna U’Bitachon explains this phenomenon: “shochad is a special concept... it carries a special power to blind the eyes of the wise which is embedded in the very creation of the world... in addition to the nature of bribery to blind the eyes of the wise, it carries an impure power (Koach HaTum’ah) to stuff the heart and put wisdom to sleep... the Dayan is no longer protected by his wisdom...” This would explain why even the wisest and most objective Dayan would still be warned against accepting even the most minute form bribery.

PARTY FAVORS

The Gemara in Kesubos (105b) expands the concept of shochad to include the slightest favors. For example, the Gemara says that there are instances in which a Dayan who has an item on loan from someone may not adjudicate his Din Torah (see Shulchan Aruch ibid.). Furthermore, the Gemara relates that Ameimar, one of the Amoraim, was once sitting in a Din Torah when a feather landed on his head. A nice man shooed the feather away. Ameimar asked the man what he was doing there, and he answered that he wanted to bring a Din Torah in front of Ameimar. Ameimar told him that he wouldn’t be able to be his Dayan because of this small favor.

The Rishonim debate whether these cases fall under the prohibition of shochad or whether it is just a Middas Chasidus (a pious measure) to refrain from sitting on such a Din Torah. Tosafos (Kesubos ibid.) understand that it is only a Middas Chasidus not to sit on a Din Torah if one has received a small favor, while the Rambam (Hil. Sanhedrin 23:3) - according

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Highlights of a shiur by Rav Daniel Dombrove

EISAV SELLING THE FIRST BORN

How could Eisav sell the rights of the first born to Yakov? [two issues]

1. Regarding the double portion of inheritance, it is considered a *davar shelo ba'olam*.
2. Regarding the leadership and other aspects, these are intangibles and considered a *davar she'ayn bo mamesh*.

Ketzos- this is determined based on an individual's ability to renounce his rights of inheritance.

A husband may renounce his rights to inherit his wife because his ownership is only *midrabannan*. Therefore, a *bechor*, which is *de'raysa*, can not renounce his rights of inheritance.

Ran- Ordinarily, one cannot renounce his rights to inheritance after he is in a position to inherit. [A husband may renounce his rights only prior to marriage.] Nevertheless, the first born is unique, in that it is not considered to be a stan-

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GENERAL HALACHA

CLEAR THE AIR! DRONES AND PRIVACY CONCERNS

May one fly a drone over someone's property and infringe on their privacy?

By Rabbi Micha Cohn



CIVILIAN DRONES AND PRIVACY CONCERNS

Drones in civilian and military use has proliferated over the last few years and has raised many safety and privacy concerns. In this article we will explore some of these issues from a halachic perspective. Is it permitted to fly a drone over another person's property if it will infringe on their privacy? It is permitted to stop a drone from flying over one's property by disturbing its communications or shooting it down? If the law of the land would permit this under certain circumstances, would this affect the halacha?

HE'ZEK RI'AH

The Talmud poses the well known question whether infringing on a neighbor's privacy is considered a damage. The Talmud concludes hezek ri'ah shmei hezek, damage by seeing (i.e. causing a lack of privacy) is called a damage. Therefore, it is prohibited to make windows that overlook a neighbor's courtyard because it would prevent them from doing chores that require privacy in the courtyard.

Why is simply opening a window in one's own property considered an act of damaging the neighbor? Some explain that part of the neighbor's ownership of their courtyard is the right to perform their household needs there. By creating the window you are partially taking away their property because they are prevented from using it fully. Furthermore, some point out that the entire question of the Talmud is if creating the window is forbidden, as this may be only considered an indirect damage. However, actually standing at the open window and causing the neighbor to be uncomfortable is a direct

act of damage and is certainly forbidden.

We can learn from this discussion that intentionally flying a drone in a way that would inhibit people's legitimate right to use their property is certainly prohibited.

DAMAGING TO PROTECT PROPERTY

The Talmud (Bava Kama 28a, CM 383) describes a scenario where a person's ox is being attacked by another ox. The Talmud says that the owner should not damage the attacker but should pull out his ox from under it. If the attacker gets damaged as a result, he is not responsible.

The Shulchan Aruch HaRav (Nizkai Mamon 5) explains that one should do everything possible not to cause damage to another person's property, even when that object is causing him damage. Therefore, if it is possible to save his ox without directly damaging the other ox he should do so. The Shulchan Aruch HaRav seems to imply that if the only way to save his own ox would be to directly damage his friend's ox, in such extenuating circumstances, it is permitted.

However, the Aruch Hashulchan (383) seems to understand this concept differently. The reason why the Talmud permitted 'pulling out' his ox from underneath the attacker is because it is not an act of damaging but one of saving. Therefore, if the attacker inadvertently gets damaged he is not responsible. It seems according to the view of the Aruch Hashulchan that it is never permitted to intentionally damage another person's property even to protect his own property.

The views of the Shulchan Aruch HaRav and the Aruch Hashulchan are important when considering the halacha about damaging a drone to prevent it from invading one's privacy. First of all, it is never permitted to cause damage to another person's property to prevent damage, if other options are available. It goes without saying that every recourse must be taken to contact the owner and warn him of the recklessness of his behaviour. If all attempts have failed, there still may be a dispute between the Shulchan Aruch HaRav and Aruch Hashulchan if it would be permitted to directly damage the drone, i.e. shoot it down (assuming that it is legal!). According to the Aruch Hashulchan only an indirect act of protection is permitted, not a direct act of destruction. Putting up a high fence or net that would prevent it from coming in would be permitted, even if the drone may fly into it and become damaged.

PUTTING OUT POISON

The Maharsham (4:140) was asked an interesting question. A neighbor's animal was repeat-

edly coming into his field and causing damage. All attempts to contact the owner were futile. Could he put out poison in his field so the next time the animal would come into the field it would poison itself and die?

The Maharsham quoted an earlier responsum of the Chavos Yair. A store keeper killed his neighbor's chicken because it would constantly come into his store and eat the beans and seeds he was selling. The Chavos Yair ruled that the store keeper was not allowed to do this. He understood that although it is sometimes permitted to take the law into one's own hands to stop a person from damaging, this is limited to a person not his property. Therefore, if the chicken or animal is damaging due to the neighbor's negligence, it is not permitted to stop them by damaging or killing them.

However, the Maharsham reasoned that the question about putting out poison may be different than the case of the Chavos Yair. In the case of the Chavos Yair the shopkeeper acted and killed the chickens. That was not permitted. However, putting out poison in one's own property is much more indirect. As such, it may be permitted. The Maharsham, however, concluded that since the neighbor does not intend to damage but is just negligent, it may not be permitted to cause his animal to die, even indirectly.

Reading in between the lines of the Maharsham we could draw a distinction between whether the drone is being flown intentionally into the property as a menace or out of negligence. If it is being flown intentionally, the Chavos Yair may agree that the drone could forcefully be removed, even if it will get damaged. It is no different than if the person themselves would trespass. Halacha permits using force when necessary to remove a trespasser from one's premises. However, if it is out of negligence, it is questionable if it is permitted even to indirectly cause damage to the craft.

CONCLUSION

Halacha clearly recognizes the importance of respecting privacy. As such, the usage of drones in a way that infringes on these legitimate rights is certainly prohibited. The recourses that a person may take if a drone consistently violates one's privacy are not clear. If the drone is intentionally being flown in such a way, and the intervention is indirect or will cause little damage, it should be permitted. However, if the flyer does not intend to be a menace, it is questionable what forms of recourse are permitted. The developing legislation on civilian drone usage should play an important role in how drones may be used and which recourses may be taken according to halacha.

MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE:

RIBBIS IN TRADING FOOD

Borrowing Food

Neighbors frequently borrow small amounts of food from each other, such as a dozen eggs or a cup of flour. Similarly, classmates borrow cans of soda or danishes from each other.

A class decides to make a late night siyum, and asks the fellow who runs the soda machine if they can borrow twenty cans of soda, which they subsequently repay.

Do any of these cases involve a ribbis issue?

Introduction: Although mid'oraisa there is no issue, nevertheless Chazal instituted a gezeirah that one should not borrow (even) a fixed measure of food or merchandise and



repay with a similar measure. Although they are repaying the same amount; nevertheless, since the market price of merchandise is subject to fluctuation and may increase in the interim, there is a possibility that the item returned will now be more valuable. This is known as seah beseah.

This only applies when returning a different item, such as borrowing a dozen eggs and repaying with a different dozen eggs. Borrowing a car or an MP3 player, where one returns the same item borrowed, would not be subject to this prohibition, even if there was a

price increase in the interim.

There are two primary exceptions to the gezeirah of seah beseah mentioned in the Gemara:

Yatza ha'shaar: When the item borrowed has a fixed market value.

Yesh lo: The borrower has some of that item in his possession at the time of the loan (even if the lender gave him this small amount as a present at the time of the loan).

to be continued...

OU DAILY LIVING

SHOVELING SNOW ON SHABOS: IS THE SHOVEL MUKTZA?

Weekly Questions

We have discussed many aspects of shoveling snow. What about the shovel, isn't it muktza?

If snow shoveling is permitted on Shabbos, a snow-shovel is certainly not muktza

since it is a Kli SheMelachto L'Heter, a utensil whose primary function is for permitted usage on Shabbos. What if I only have a regular shovel available? Sefer Nishmas Shabbos (4:247) concludes that a regular shovel is considered a Kli SheMelachto L'Issur, a utensil whose primary purpose is for melacha, such as shoveling earth. This type of item can be moved on Shabbos if one needs the muktza item for a permissible use on Shabbos. Assuming there are leniencies in shoveling snow on Shabbos, one would be permitted to use a shovel for this purpose.

In addition to the concerns of carrying, muktza, and demolishing, which were addressed in previous installments of Halacha Yomis, are there any other concerns regarding snow removal on Shabbos?



Yes, there are in fact two more issues:

Some prohibit snow shoveling because of mashveh gumos (leveling the ground – a form of boneh, building) (The 39 Melachos, Vol. 4 p. 1098 c). However, Sefer Nishmas Shabbos (4:247) rules that this does not apply to surfaces covered indoors by wood, tile, carpet, or linoleum and outdoors by cement or asphalt.

Other poskim consider snow shoveling to be forbidden under the category of tircha yiseira (excessive strain) because it is a very laborious activity (The 39 Melachos, quoting Shu"t Lev Avraham Siman 49). The Nishmas Shabbos (ibid.) rules leniently in this regard because tircha is permitted for a mitzvah. Since shoveling the snow prevents people from slipping and falling on the snow and ice, it is considered tircha done for the sake of a mitzvah.

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דף מ' *A Caesarian Delivery*

דף מ"א *Hysterectomies in Halacha*

דף מ"ב *Waiting for the Hefsek*

(continued from front pg.)

to the understanding of the Bais Yosef - maintains that it is a violation of the prohibition of shochad. The Bach adds that it seems that the Tosafos in Sanhedrin take a third position, and distinguish between doing a favor in connection with the Din Torah which is forbidden, and just reminding the Dayan of a favor done in the past, in which case it is not forbidden but rather commendable to refrain from being the Dayan. The Chukas HaDayanim (cited in Pischei Teshuva) writes that in the case of a slight favor, all would permit one to sit if there are two others with him. To the other extreme, some Poskim write that if the favor was done in front of the other party, then it is forbidden according to all opinions, as it causes the other party to stumble and lack confidence in its arguments.

FREE HEALTHCARE

The Pischei Teshuva, cites the Birkay Yosef who discusses a Dayan who receives free medical treatment from one of the parties. The Devar Shmuel (54) distinguishes whether the free treatments were given long before the Din Torah arose and will continue after it or whether they started around the time the claim arose. In the former case there would be no prohibition of shochad although there may be an issue of judging an ohev (close friend, see C.M. 7), whereas in the latter case, it would seem to be classified as shochad. The Birkay Yosef disagrees and maintains that both examples would violate the prohibition of shochad. If, however, the Dayan pays the doctor for his services, there would not be a prohibition of shochad, although it may be best for the Dayan to refrain from judging his personal doctor.

OTHER FIGURES OF AUTHORITY, BNAI NOACH

Is the prohibition of shochad only on a Dayan? How about a powerful or influential figure, such as a governor, fund trustee or school principal? The Pilpula Charifta (on the Rosh, Sanhedrin 3:17) as well as the Chida and the Aruch HaShulchan maintain that all officials with power are subject to the Torah prohibition of shochad. The Kli Chemda (Devarim 16:18) adds that this would also apply to police officers. The Chasam Sofer in a teshuva (160, cited in Pischey Teshuva 8:2) and others, maintain that there is a prohibition to accept money to appoint public officials.

The Poskim (cited in Pischay Teshuva 9:3) argue whether there is a prohibition of giving shochad to a Ben Noach (non-Jew) who is also commanded to establish a justice system. The Tumim argues that just like it is permissible for a Ben Noach to judge a relative (which is forbidden for a Jew) so too shochad is permitted. However, the Chasam Sofer and the Divrey Mishpat cite the Ramban in Parshas VaYishlach who maintains that the prohibition of shochad also applies to a Ben Noach. The Shoel U'Meshiv and others distinguish between one who gives shochad to a Ben Noach to skew justice which is forbidden, and one who gives shochad to ensure that justice is served (which is still forbidden with regards to a Dayan).

CONCLUSION

Based on the aforementioned sources, it would seem that there is a prohibition of shochad to bribe a public official, although there

may be a leniency when the desired outcome is the just and proper outcome and the judge is a Ben Noach who is not meting out a Din Torah. [It is interesting to note, that the President of Ukraine, Mr. Zelensky, is Jewish, while President Trump is not!]

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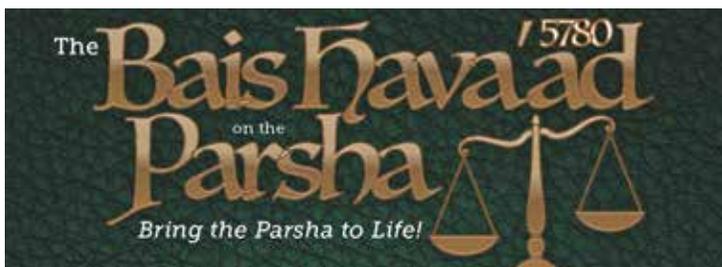
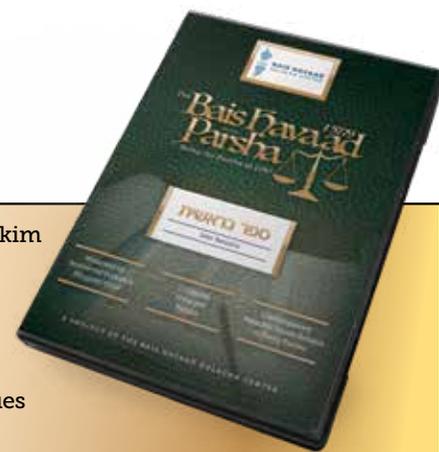
dard inheritance, but rather, a Torah mandated 'gift'. If so, Eisav was in a position to at least renounce his right

to the first born.

Ohr HaChaim – davar shelo ba l'olam is lacking gemiras daas. When one is in a desperate situation, there is gemiras daas even on a davar shelo ba l'olam. Eisav was acting out of desperation, which accords full gemiras daas to the kinyan.

Additionally, concerning selling an intangible item- davar she'ayn bo mamesh- when one accompanies the transaction with an oath- a shevuah- the transaction is binding.

Rosh- prior to Matan Torah, there was no issue transacting in a davar shelo ba l'olam. The Rivosh disagrees with this.



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