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Dedicated in loving memory of  
 Harav Yosef Grossman zt"l

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## POLICE PROTECTION: ARE OFFICERS LIABLE FOR INJURIES THEY INFLICT?

Adapted from the writings of Dayan Yitzhak Grossman

On June 12, Atlanta Police Department officers Garrett Rolfe and Devin Brosnan were attempting to handcuff Rayshard Brooks and arrest him for driving while under the influence of alcohol. Brooks wrestled with the officers, seized Brosnan's Taser, and attempted to flee. With Rolfe pursuing him, Brooks turned and fired the Taser toward Rolfe. Rolfe then shot at Brooks three times, striking him twice in the back and killing him. Rolfe was subsequently charged with felony murder and ten other offenses.

In considering Rolfe's possible culpability for killing Brooks, the first issue is whether the shooting was justified as self-defense. We do not consider here this specific question, but only the general question of the liability of a duly authorized agent of the state for the use of force resulting in injury or death.

### AGENTS OF THE COURT

In the *Mishnah*, Abba Sha'ul rules that a father who strikes his son, a teacher who disciplines his student, and an agent of the court, who accidentally kill, are not subject to the law of exile (*galus*).<sup>1</sup>

The *Tosefta* rules similarly with regard to civil liability for nonlethal injury: The father, the teacher, and the agent of the court are all exempt, unless the force used is "more than is appropriate," in which case they are liable.<sup>2</sup> An alternate formulation appears elsewhere in the *Tosefta*: The agent is exempt if he injures

<sup>1</sup> Makkos 22. Cf. Rambam and Ra'avad Hilchos Rotzeiach Ushmiras Hanefesh 5:6, and Bnei V'lechem Yehudah, Bnei Shmuel, Gur Aryeh, Hamei'ir La'aretz, Kruv Mimshach, Ma'asei Rokeach, Mirkeves Hamishneh, Ein Tarshish, and Shuffrei D'Yaakov ibid.; Shu"t Shevus Yaakov cheilek 3 siman 140; R. Yehuda Zoldan, Tzidakas Yehuda V'Yisrael, siman 6 os 1; R. Moshe Taragin, Shlich Bais Din Sheharag Beshogeg. One version of the *Tosefta* contains a position contrary to that of Abba Sha'ul; see Or Sametach Hilchos Rotzeiach 5:6 and Tzidakas Yehuda V'Yisrael ibid.

<sup>2</sup> *Tosefta* Bava Kama 9:3.

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Excerpted and adapted from a shiur by  
 Dayan Yosef Greenwald

### PARSHAS CHUKAS-BALAK

#### DURATION OF IMPRECATION

The word of one who hears the sayings of G-d and knows the mind of the Most High...

Bemidbar 24:16

The Gemara (Berachos 7a) derives from this *pasuk* that Hashem expresses anger for one moment every day, and Bilam knew how to pinpoint that moment. Although Bilam attempted to curse B'nei Yisrael at that exact time to arouse Hashem's anger, Hashem protected us from him. Tosafos asks, how could Bilam utter a curse during such a brief period? He offers two answers, the second of which is that so long as he began the curse during that moment of anger, it would take effect.

The Aruch Hashulchan (O.C. 110) cites this as proof against the opinion of the Kenesses Hagedolah (cited in the Magen Avraham ibid.) that *Shemoneh Esrei* must be completed before the *zeman tefilah* deadline. The Aruch Hashulchan argues that according to Tosafos, one need only begin at the correct time.

In defense of the Kenesses Hagedolah,

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### Pickup Game

**Q** On my daily commute I pass a spot where travelers wait for a bus operated by a Jewish company. May I offer to take them myself to help defray my commuting expenses? If not, may I do a *chesed* and take passengers for free?

**A** Most contemporary *poskim* (see Pis'chei Choshen, *Geneiva*, Ch. 9, Meishiv Bahalacha 211, and Minchas Tzvi 5) prohibit taking the passengers for a fee, as they consider it forbidden encroachment. The *poskim* consider the passengers to be customers of the bus company for which they were waiting, so taking them would be stealing business from the owner.

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inadvertently (*b'shogeg*), but liable if he injures deliberately (*b'meizid*), "out of concern for *tikun olam*."<sup>3</sup> R' Shimon ben Tzemach Duran explains that these two formulations are equivalent: If the force used is "appropriate" but nevertheless results in injury, the agent is considered *shogeg*, but if it is "more than is appropriate," he is considered *meizid*. He also explains that the liability in the case of *meizid* is in accordance with the normal laws of torts, and the concern for *tikun olam* is the rationale for the exemption of *shogeg*, i.e., *Chazal* absolved a *shogeg* from liability despite the principle of *adam muad l'olam*, by which people are usually held liable for torts committed *b'shogeg*.<sup>4</sup>

It would seem that according to this approach, "*shogeg*" here has its general meaning of an act that while inadvertent, nevertheless has an element of negligence to it, and so would engender liability were it not for the concern for *tikun olam*, since it would seem absurd for an agent of the court who carried out his duty entirely properly to be liable for its consequences (were it not for *tikun olam*), any more than the court itself and its agents would be liable as tortfeasors for the very imposition of punishment such as lashes or execution upon a miscreant!<sup>5</sup>

In apparent contradiction to the assumption of the *Tosefta* that an agent of the court is not authorized to use more force than necessary to carry out his duty stands a ruling of Rabbeinu Yerucham ben Meshulam, accepted by some *poskim*, that an agent of the court who strikes the body or damages the property of a recalcitrant person is exempt even if he was able to accomplish his goal by other means.<sup>6</sup>

3 Ibid. Gittin 3:13.

4 Shu"t Tashbatz cheilek 3 siman 82.

5 This is certainly true according to the *poskim* that maintain that the principle of *adam muad l'olam* does not apply to *ones gamur* (see *Tosafos* Bava Kama 27b s.v. *uShmuel amar*; *Shulchan Aruch* C.M. 378:1-3 and *Shach* ibid. s.k. 1).

6 *Sefer Maysharim* Nesiv 31 cheilek 2 p. 92 second column, cited by

It seems that this opinion understands that the availability of nonviolent means does not automatically render the use of violence "more than is appropriate." Thus in Rabbeinu Yerucham's case, although alternative nonviolent means were available, once the agent chose to utilize violence, the level of force he used was the minimum necessary to accomplish his goal, whereas in the case of the *Tosefta*, the level of force utilized was gratuitously high. Alternatively, some contemporary writers consider it self-evident that Rabbeinu Yerucham concedes that the authorities have no right to use "excessive" and "unreasonable" force relative to the goal of preserving the rule of law.<sup>7</sup> Perhaps, then, when the *Tosefta* assigns liability where the force used was "more than is appropriate," it is referring to just such "excessive" and "unreasonable" force.

In any event, other *poskim* disagree with Rabbeinu Yerucham's ruling and maintain that an agent of the court is only exempt from liability for the use of force if he had no other means to achieve his goal.<sup>8</sup>

The exemption of an agent of the court only applies insofar as force was used in order to compel compliance with the court's directives, but not when motivated by anger.<sup>9</sup>

Some contemporary writers assume that a police officer would have the same status as the "agent of the court" discussed by *Chazal* and would therefore be exempt from liability provided his use of force was appropriate.<sup>10</sup>

Sema C.M. siman 8 s.k. 25 and Ba'er Heitev ibid. s.k. 8.

7 Adv. Yaakov Shapiro and Dr. Michael Vigoda, *Shimush B'choach al Yedei Hamishtarah*, n. 33.

8 *Toras Chaim* Bava Kama end of daf 28; *Shevus Yaakov* cheilek 1 siman 180, cited in *Pis'chei Teshuvah* ibid. s.k. 6; *Sha'ar Mishpat* ibid. s.k. 2; *Aruch Hashulchan* ibid. se'if 6; *Yeshuos Yisrael* ibid. Ein Mishpat s.k. 2 and *Chukas Hamishpat* s.k. 6. *Erech Shai* ibid. se'if 5 concludes that the matter is a *s'feika d'dina*. Cf. *Halacha Pesukah* ibid. p. 86 n. 214.

9 *Shu"t Ra'anach* (Yerushalayim 5720) siman 111 p. 475. Cf. *Shevus Ya'akov* cheilek 3 end of siman 140 and *Shimush B'choach al Yedei Hamishtarah*.

10 *Tzidkas Yehuda V'Yisrael* ibid.

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the point of *Tosafos* applies only to tapping into a specific spiritual *eis ratzon* (time of acceptance) before the opportunity passes.

But *zeman tefilah* is a specific time period defined by *Chazal*, and one must complete *Shemoneh Esrei* before that period has concluded.

Perhaps a better parallel for the principle of *Tosafos* could be the suggestion of the *Arizal* (cited in *Machatzis Hashekel*, O.C.

6:6) that one *davening* with a minyan should continue saying *Tehillim* even after the minyan has dispersed. According to the *Arizal*, such recitation has the same potency as if it were recited with the *tzibur* since it was begun while the minyan was still present.

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There is great discussion among the *poskim* about which *sugya* we derive this from. The *Meishiv Bahalacha* compares it to *ani hamehapech bechararah* (a poor man pursuing a biscuit), i.e., chasing an opportunity that has already been negotiated by another. Because the customers are already in place and waiting for the bus, they are reckoned as having already reached a deal with the bus company before you arrived on the scene with a better offer.



Other *poskim* argue that *ani hamehapech bechararah* isn't applicable because the traveler and the bus company haven't actually discussed a proposal. Rather, says the *Minchas Tzvi*, this is forbidden because it is a case of *yored l'umnu chaveiro* (one who "descends" into his friend's livelihood). According to *Rashi* (Bava Basra 21b), this prohibits a competitor from taking a client who otherwise would certainly have patronized the current vendor. According to the *Ram* (father of Rabbeinu Tam; *ibid.*), it prevents a competitor from taking clients that have gathered due to the efforts of the current vendor.

Most *poskim* permit picking someone up for free on an occasional basis (*Pis'chei Choshen*, *Meishiv Bahalacha*, and *Minchas Tzvi*). Note that the foregoing is concerned with your specific question about offering someone a ride. In the opposite instance, where someone asks you to take him, there would be no problem for you to grant his wish.



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