

Immunizing the Immunizers: Are Vaccine Manufacturers Liable for Vaccine Injuries?

Adapted from the writings of Dayan Yitzhak Grossman

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American Greatness reports:

At a private event over the weekend, Governor Ron DeSantis said that his administration intends to hold vaccine manufacturers accountable for making false claims about COVID products that have caused injuries and death.

The governor said he would be working with Florida Surgeon General Joseph A. Ladapo “to hold these manufacturers accountable for this mRNA [shot] because they said there were no side effects and we know that there have been a lot...We did a study in Florida and we saw an 86 percent increase in cardiac-related activity in people ages 18 to 39 from mRNA shots, and so we’re going to be doing some stuff to bring accountability there,” DeSantis told the RPOF Executive Committee members at the event. In the United States, the mRNA products are produced by Pfizer and Moderna...

Vaccines administered under an Emergency Use Authorization are protected from legal liability, but not if they were fraudulently produced. Brook Jackson, a whistleblower who worked for the Ventavia Research Group, the company that conducted Pfizer’s pivotal Phase III trial in Texas in 2020, has filed a lawsuit in U.S. District Court accusing Pfizer of committing fraud, abuse, and protocol violations in its COVID vaccine clinical trials...[1]

There are a number of halachic issues raised by the idea of holding the manufacturers of vaccines liable for their side effects; in this article we consider the general question of whether the fact of having been engaged in the saving of lives can serve as a shield against liability for harm caused by one’s actions.

U.S. law

As noted above, U.S. law generally shields vaccine manufacturers from liability for civil actions for damages, provided that they have complied with their relevant legal obligations.[2] The justification for this exemption, which was included in a comprehensive health bill signed by President Ronald Reagan in 1986, was obviously the goal of eliminating a major disincentive to vaccine production. As the *New York Times* reported then:

Mr. Reagan’s action came after heavy lobbying in favor of the bill by a broad-based coalition including drug companies, physicians, and groups representing children and the elderly...

The new law sets certain limits on the manufacturer’s liability in such lawsuits. A Congressional report said one purpose was “to lessen the number of lawsuits against manufacturers,” while compensating victims of vaccine injuries.

In recent years the number of such lawsuits has increased, and the prices of vaccines have risen rapidly. The increase in the cost of liability insurance and the unpredictable nature of such liability have forced some manufacturers to consider abandoning production of vaccines, even though the vaccines have been highly effective in protecting millions of children against disease...[3]

The rescuer's exemption

The Gemara sets forth the similar principle of a rescuer's exemption:

And a pursuer who was chasing after another pursuer in order to save the latter's intended victim, and he broke vessels, whether they belonged to the pursued individual (the would-be murderer) or to anyone else, he is exempt from payment. And this is not *min hadin*, but if you do not say so, you will not have any person saving another from a pursuer. (In order to encourage people to save the lives of others, Chazal instituted that one who damages property in the process of saving a life is exempt from payment.)[4]

Various limitations on the rescuer's exemption are posited by various authorities, due to the tension between the above Gemara passage and the following one:

There were stacks of barley belonging to Jews in which Plishtim were hiding, and Dovid Hamelech wanted to burn down the stacks to kill the Plishtim and save his own life. He asked the Sanhedrin, may one save himself by destroying another's property?

The Sanhedrin sent him this answer: It is prohibited to save oneself by destroying another's property. But you are king, and a king may breach a fence in order to make a path for himself, and no one may protest his action.[5]

This passage explicitly states that Dovid would have been liable for the destruction of the barley were it not for the special dispensation granted to kings. But presumably Dovid's military operations were on behalf of national security, so why would he not have been covered by the rescuer's exemption?[6] The *Acharonim* offer various explanations for this, at least some of which impose substantial limitations on the exemption, but these limitations are the subject of dispute.

One's own life

R' Yaakov Yehoshua Falk (the Pnei Yehoshua) explains that since the rationale for the rescuer's exemption is that otherwise "you will not have any person saving another from a pursuer," it would not have applied to Dovid Hamelech, who needed no encouragement to destroy Plishtim: "Since Dovid himself was in danger, this reason is inapplicable." [7]

R' Meir Arik also agrees that when the rescuer's own life is also in danger, the exemption does not apply,[8] but R' Yaakov Lorberbaum of Lissa (the Nesivos Hamishpat) disagrees and maintains that the exemption always applies as long as the rescuer is saving others; the fact that he is saving

himself as well does not matter.[9]

Bobover borrowings

In 5713 (1952), R' Shlomo Halberstam (the third Bobover Rebbe) consulted R' Moshe Feinstein regarding the repayment of loans he had taken out during the Holocaust for the purpose of rescuing Jews. Rav Halberstam maintained that he was not strictly obligated to repay the loans (though he intended to do so as a matter of piety and going beyond the letter of the law). R' Moshe, however, disagreed, arguing that the rescuer's exemption did not apply. First, it only applies to the law of tortfeasance (*din mazik*), but not to liability for theft and borrowings. Second, it only applies to the removal of obstacles in one's way, but not to other acts of destruction like Dovid Hamelech's burning of the stacks of barley in his campaign against the Plishtim.[10]

But R' Moshe's narrow construction of the rescuer's exemption and his assumption that it was fundamentally inapplicable to Dovid Hamelech's actions are implicitly rejected by Rav Falk, who clearly assumes that Dovid Hamelech would have been covered by the exemption had his own life not been at stake. And they are *explicitly* rejected by Rav Lorberbaum, who rules that one who borrowed an item for the purpose of saving people from a potentially lethal fire or a weapon to defend people against an attacking enemy with lethal intentions is not liable as a *sho'el* (borrower) for the loss of the property, due to the rescuer's exemption. (R' Aryeh Leib Heller, author of Ketzos Hachoshen and Meshoveiv Nesivos, indeed disagrees with Rav Lorberbaum's position in the case of the fire, although his precise reasoning is not entirely clear.[11])

[1]Debra Heine. Ron DeSantis Says He Plans to Hold Pfizer and Moderna Accountable For Making False Claims About Their Shots. American Greatness.

<https://amgreatness.com/2022/12/05/ron-desantis-says-he-plans-to-hold-pfizer-and-moderna-accountable-for-making-false-claims-about-their-shots/>. Cf. Just The News; Gateway Pundit; SeanHannity.com; Matzav.com.

[2]42 U.S. Code § 300aa-22-Standards of responsibility, 42 U.S. Code § 300aa-23-Trial.

[3]Robert Pear. The New York Times.

<https://www.nytimes.com/1986/11/15/us/reagan-signs-bill-on-drug-exports-and-payment-for-vaccine-injuries.html>.

[4]Bava Kama 117b.

[5]Ibid. 60b.

[6]My father has suggested that since the rescuer's exemption is only a Rabbinic institution, perhaps it had not yet been enacted in Dovid Hamelech's time.

[7]Pnei Yehoshua ibid. 60b to Tosafos s.v. *Mahu lehatzil atzmo*.

[8]Minchas Pitim C.M. 340:3.

[9]Nesivos Hamishpat *siman* 340 *biurim s.k.* 6, and cf. *siman* 72 *biurim s.k.* 17.

[10]Shu"t Igros Moshe C.M. *cheilek 2 siman 63*.

[11]Meshoveiv Nesivos *siman 72* *ibid.* Cf. Pis'chei Choshen Nezikin *perek 12* n. 36 s.v. UveNesivos; Mishpetei Halevi *perek 2 (mekoros venimukim os bais 2 bais)*; R' Yehuda Dovid Bleich, *Hamatzil Chaveiro Bamamon Shel Hazulas*, Bais Yitzchok 39 [5]767, and cf. Shu"t Mekor Baruch (Kala'i) end of *siman 41*.