

Sdei Base Haba'al: Is a Runner Liable for Injuring the Catcher While Sliding into Home?

Adapted from the writings of Dayan Yitzhak Grossman

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VINnews reports:

Recently, two sincere, *ehrlicheh* Jews had a friendly dispute to resolve. While playing baseball, one of the men was dashing across home plate and collided with the other man, the catcher. One of the men, a doctor, broke his leg and was not able to work for two weeks. He estimated his loss at \$15,000, and wanted to know if he was permitted to sue the other man, whose liability happened to be covered by an insurance company.

They brought their *shaila* to Rabbi Betzalel Y. Rudinsky *shlit"a* of Forshay, the popular and renowned Rosh Yeshiva of Yeshivas Ohr Reuven in Wesley Hills and Rav of Kahal Ahavas Yitzchok.

Among other factors, the Rav invoked a *psak* issued by Rabeinu Tam, who ruled that if two people are jousting for sport (which was not uncommon in his days),[1] there is no *chiyuv mazik*, because *savar v'kibel*—the participants accept the potential injury as a risk, and essentially they are *mochel* the damage.

Rabbi Rudinsky advised the doctor to be *mevater* and added that Hashem has many ways to compensate his loss.[2]

There are obviously numerous halachic issues involved in this case; in this article, we focus on the jousting precedent cited by Rav Rudinsky.

The Mishnah states:

The adults would grab the children's lulavim from the hands of the children and eat the children's esrogim.[3]

This translation of the Mishnah follows Rashi, who explains that the adults would grab the lulavim from, and eat the esrogim of, the children, "and this does not entail theft...because they are accustomed to do so out of joy."

Tosfos cites Rashi's explanation of the Mishnah and proceeds to derive therefrom the "rowdy celebration exemption," that there is no liability for damage caused by rowdy behavior if it is a customary form of celebration in a particular social context:

We may learn from here that those young men who ride horses [to entertain] the groom, and they battle each other, and one tears another's garment or damages his horse—they are exempt from liability, because they are accustomed to do so [in celebration of] the joy of the groom.[4]

The Or Zarua attributes this inference from the Mishnah to Rabeinu Simcha;[5] I am unaware of a source attributing the inference or the halachic position to Rabeinu Tam.

The Agudah cites this position of Tosfos, and adds:

And so have I occasionally ruled regarding young men who play in the shul courtyard on Shabbosos and strike each other, provided they do not do so intentionally.[6]

It is unclear if this position is universally accepted. After citing Rashi's understanding of the Mishnah and extrapolating to the case of the young men at the wedding, Tosfos cites an alternate interpretation of the Mishnah, from which the rowdy celebration exemption cannot be inferred, and the Rosh endorses this latter explanation over that of Rashi.[7] Some *Acharonim* accordingly understand that the Rosh does not accept the exemption,[8] but others maintain that despite his rejection of the interpretation of the Mishnah invoked by Tosfos as the basis for the principle, he nevertheless accepts the principle itself.[9] In any event, the consensus of halachic authorities accepts the exemption as normative.[10] Later German authorities, as well as various *Acharonim*, apply the exemption to other cases,[11] the most famous of which is the following:

All food that the young men snatch from each other, even without permission, due to the joy of Purim...this does not entail theft or robbery, and they should not be summoned to *bais din*, and we are not concerned about this, as long as they do not behave improperly according to the municipal leadership (*shivah tuvei ha'ir*).[12]

Of course, the various applications of the exemption to particular scenarios are not absolute but dependent on cultural mores. Thus, although the Rama (R' Moshe Isserles) codifies the Purim rule,[13] the Shulchan Aruch (R' Yosef Karo) does not, declaring that "for us who are not accustomed to do so, there is no difference between Purim and the rest of the year in this regard." [14]

Some *Acharonim* limit the exemption to property damage, as opposed to personal injury,[15] but others do not make this distinction.[16] R' Yoel Sirkes (the Bach) endorses the latter view but insists that the principle is limited to cases of "small" damage (to person or property).[17] It is unclear whether anyone disagrees with this limitation of the Bach.

In a collision between runner and catcher at home plate, according to the *Acharonim* who exclude personal injury from the rowdy celebration exemption, the exemption would clearly not apply to liability for a broken leg. But according to the Bach, the exemption's applicability hinges upon whether a broken leg is classified as small or large damage. The case that the Bach characterizes as large is the apparently-irreversible blinding of one of the victim's eyes, and his example of small damage is the wounding of a limb that will heal. On the one hand, it can be argued that a broken leg that will mend is not as serious an injury as the permanent loss of an eye, and it may be technically accurate to describe a broken leg as the wounding of a limb that will heal. But on the other hand, it seems implausible to characterize an injury as serious as a broken leg as small damage, particularly if the injury will cause the victim a \$15,000 loss.

[1]Regarding the practice of jousting among medieval Jews, see *As the Christians Do...Bein Din Ledin*. Nov. 9, 2010; *Jewish Sword and Buckler Fighters*. Patreon ("Dimicator"). Mar. 9, 2018.

[2]Baruch Green. *Collision at Home Plate: Life-changing Lesson from a Top Rosh Yeshiva*. VINnews.

<https://vinnews.com/2023/12/06/collision-at-home-plate-life-changing-lesson>

-from-a-top-rosh-yeshiva/.

[3]Sukah 45a.

[4]Tosfos ibid. s.v. *Miyad*.

[5]The printed edition of the Or Zarua (5622/1862—Hilchos Sukah Velulav *siman* 315 p. 137 column 2) has Rabeinu *Shimshon*, as does the Mordechai Sukah *remez* 5743. The Yam Shel Shlomo Bava Kama *perek* 5 *siman* 10 cites the Or Zarua as citing Rabeinu *Simcha*.

[6]Agudah ibid.

[7]Piskei HaRosh ibid. *perek* 4 *siman* 4, and cf. Mordechai ibid.

[8]Bais Dovid (R' Yosef Dovid of Salonika) C.M. (*Nizkei Mamon*) *siman* 148; Biur HaGra C.M. *siman* 378 *os* 25.

[9]Knessess Hagedolah ibid. *hagahos* Tur *os* 12; Mishkenos Haro'im *ma'areches os nun os* 19. Cf. Bach C.M. end of *siman* 378 and Shu"t HaBach (*yeshanos*) end of *siman* 62...*Vehachi mashma mitoch divrei ha'Ashri atzmam*.

[10]See the sources cited throughout this article.

[11]Trumas Hadeshen *cheilek* 2 (*psakim uchesavim*) *siman* 210 (see Rama to Shulchan Aruch O.C. 695:2, and see Knessess Hagedolah ibid. *hagahos* Bais Yosef s.v. *Vera'isi* beSefer Hamapah; Hagahos R' Akiva Eiger to 695:2); Shu"t Mayim Chaim (Messas) O.C. *siman* 216.

[12]End of the *teshuvos* of R' Yehudah (Mahari) Mintz (*siman* 16, p. 36); Trumas Hadeshen *cheilek* 1 *siman* 110.

[13]Shulchan Aruch O.C. 696:8.

[14]Bais Yosef ibid. *siman* 695.

[15]Knessess Hagedolah *siman* 695 *hagahos* Bais Yosef s.v. *Vera'isi* beSefer Hamapah. This was the opinion of the Bach's correspondent in Shu"t HaBach ibid. as well (see following note).

[16]Shu"t HaBach ibid. s.v. *Umah shekasavta de'ein lefotro*; Magein Avraham ibid. s.k. 7. Mishnah Brurah *siman* 695 s.k. 14 cites the position of the Bach without further comment.

[17]Shu"t HaBach ibid.