

## Watching (Like) a Hawk: Must Snowmobilers Avoid Chopping Choppers?

Adapted from the writings of Dayan Yitzhak Grossman

April 4, 2024

AP News reports:

Jeff Smith was whizzing along on a snowmobile one evening a few years back when something dark appeared in front of him. He hit his brakes, but he couldn't avoid clipping the tail of a Black Hawk helicopter parked on the trail.

The March 2019 crash almost cost Smith his life and is now the subject of a federal lawsuit by the Massachusetts lawyer. He is demanding \$9.5 million in damages from the government, money he says is needed to cover his medical expenses and lost wages, as well as hold the military responsible for the crash...

Smith's lawyers in the yearslong court case argue that the crew of the Black Hawk helicopter that flew down from New York's Fort Drum for night training was negligent for parking a camouflaged 64-foot aircraft on a rarely used airfield also used by snowmobilers...

Smith argues that the crew didn't do enough to protect him, including failing to warn snowmobilers of the helicopter's presence on the trail, leaving the 14,500-pound aircraft unattended for a brief time and failing to illuminate it. The helicopter landed on an air strip approved by the Federal Aviation Administration, and the crew members testified that trainings are often conducted in similar locations. But Smith, who said he had snowmobiled on the trail more than 100 times, said the last time an aircraft used it was decades ago when he was a child—and never a military aircraft...

[The government] attempted to cast blame on Smith for the accident, claiming he was driving his sled more than 65 mph at the time of the crash and that he had taken both prescription drugs and drank two beers before his ride...[1]

The question of the government's liability for injuries experienced by Smith, and conversely, Smith's liability for damage to the helicopter, is obviously highly dependent on the precise details of the case. In this article, we discuss the basic halachic principles governing such a case where both parties are Jews.

### ***Watch your step***

The Mishnah states:

If one places a *kad* (a container) in the public domain, and another person comes and stumbles on it and breaks it, he (the pedestrian) is not liable. And if he was damaged by it, the owner of the *chavis* (barrel) is liable for his damage.[2]

The Gemara cites four approaches to these rulings:

Why is he not liable for breaking it? He should have watched where he was going!

- A member of the yeshiva of Rav said in the name of Rav: The Mishnah is speaking of a case where the owner of the pitcher filled the entire public

domain with pitchers.

- Shmuel says: They taught this in a case where it was dark.
- R' Yochanan says: In a corner (where he couldn't see the utensil before rounding the corner).
- R' Aba said to Rav Ashi: This is what they say in the West (Eretz Yisrael) in the name of R' Ula: Because it is not the way of people to study the roads.[3]

According to the first three approaches, a person in motion is required to look out for obstacles; according to the fourth, there is no such burden.[4]

Normative halacha follows the latter view.[5]

The Gemara proceeds, however, to set forth an exception:

There was such an incident in Neharde'a, and Shmuel obligated the pedestrian to pay. It happened also in Pumbedisa, and Rava obligated him...

Rav Papa said: Rava's ruling was issued in a case where the barrel was near the corner of a public olive press. Because the barrel's owners acted with permission in placing their barrels there, the pedestrian is required to watch where he's going.

Rav Papa's principle is that if an object is placed in the public domain with permission, all agree that pedestrians are obligated to look out for it, so they are liable for any damage they cause, and the object's owner is exempt from any damage it does to pedestrians,[6] except in the dark.[7]

### **Permission**

The distinction between acting with and without permission appears throughout tort law in the Mishnah and Gemara,[8] but there is a fundamental ambiguity: Does it hinge on halachic sanction for the conduct in question, or whether it is in line with social convention? In our context, Rashi seems to espouse the latter interpretation:

For such was their custom: When the olive press was full of people, those who would come there would place their utensils in the public domain and wait until the others left.

R' Tzvi Yehudah Ben-Yaakov, a *dayan* in Eretz Yisrael, suggests that Rashi means that the *custom* to place the utensils in the public domain somehow engenders the *right* to do so, and it is ultimately this right that matters.[9]

### **A driver**

Contemporary *talmidei* chachamim disagree whether the principle that it is not the way of people to study the roads extends to vehicle operators. Rav Ben-Yaakov maintains that it does not extend to the driver of a car or even to the rider of a bicycle,[10] but others assume it applies to both.[11]

### **Large objects**

Additionally, there is some debate whether the principle is limited to small items like pitchers, or it extends even to larger ones like cars and bicycles.[12]

### **Other limitations of permission**

On the other hand, R' Yeshua Ratabi, a *dayan* in Eretz Yisrael, has suggested other limitations based upon various *Rishonim* and *Acharonim*, including restricting it to public rather than individual needs (*takanas*

*rabim*), to specific fixed locations, and to objects that are left for brief periods—as opposed to scenarios that do not involve a fixed location and objects that are commonly left for a day or two.[13]

### **Conclusion**

The government's liability for the damage its helicopter caused would hinge upon these considerations:

1. The normative principle that it is not the way of people to study the roads implies that the government would be liable unless it had "permission" to park the helicopter on the trail, which, as above, is subject to two possible interpretations.
2. Even if the government did have permission, it may nevertheless be liable because the accident occurred in the dark, and some have suggested additional limitations on the permission dispensation.
3. On the other hand, even if the government did not have permission, drivers may be unlike pedestrians and always responsible to look out for obstacles.
4. Similarly, the principle may not cover collisions with large objects like a Black Hawk helicopter, although its size may be coun

[1]Michael Casey. A man who crashed a snowmobile into a parked Black Hawk helicopter is suing the government for \$9.5M. AP News. <https://apnews.com/article/black-hawk-helicopter-crash-massachusetts-laws-uit-28c6ec0e4252d475c384e8de49a60a04>.

[2]Bava Kama 27a.

[3]Ibid. 27b.

[4]Cf. Shu"t Maharshal *siman* 96; Kovetz Teshuvos Chasam Sofer *siman* 18 (cited here); Mishpatecha LeYaakov vol. 4 *siman* 22 os 1 (also available as *Din Udvarim Be'inyan Nizkei Mamon Bis'unas Drachim, Mispar Siduri* 846).

[5]Rambam Hilchos *Nizkei Mamon* 13:5; Shulchan Aruch C.M. 412:1. Some *Rishonim* rule in accordance with Shmuel and R' Yochanan—see Mishpatecha LeYaakov *ibid*.

[6]*Nizkei Mamon* 13:6; Shulchan Aruch C.M. 412:2. Cf. Kessef Mishneh *ibid*. and Bais Yosef *ibid*.

[7]*Hilchos Nizkei Mamon* and Shulchan Aruch *ibid*. See Magid Mishneh *ibid*.; Kessef Mishneh *ibid*.; Pri Ha'adamah *ibid*.; Mekorei HaRambam LeRashash *ibid*; R' Yeshuah Ratabi, *Rechev Shepaga Betik Tzilum*, 23 Tamuz, 5780/Jul. 15, 2020 (os 3).

[8]See, e.g., Bava Kama 30a, 32a, and 47a-48b.

[9]Mishpatecha LeYaakov *ibid*.

[10]Mishpatecha LeYaakov *ibid*. and vol. 10 *siman* 36 end of os 4.

[11]*Pegiah Bemar'eh Bemakom She'ein Regilus Lachanos*, Din-She'al Es HaRav; Torah Umedinah Halacha *Lema'aseh-Chiyuv Nizkei Hata'avurah Vechukeha Al Pi Torah*, Chai Ro'i. Rav Ratabi *ibid*. (os 1) extends the principle to the driver of a car, at least in the case of a collision with an object that is low to the ground.

[12]Mishpatecha LeYaakov *cheilek* 4 *ibid*.; R' Yinon Zamir, *Nezek Lechaver Beta'us Bederech Harabim-Hemsheich Hadiyun*, Kollel Dayanus Psagot-She'al Es HaRav; Eretz Chemdah, Halacha Psukah, *Gilyon* 59.

[13]Rav Ratabi *ibid*. os 2.