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RISK FACTORS: CAN YOU BE TOO SAFE?

Adapted from the writings of Dayan Yitzhak Grossman

In the aftermath of the horrific tragedy of the Surfside, Florida building collapse, analysts and reporters have been attempting, often with the benefit of hindsight, to explain why the existing frameworks of safety inspections and certifications failed to prevent the catastrophe, and whether the condominium ownership structure was part of the problem.¹ (The problem of individual owners being unwilling to contribute their share of necessary joint expenditures is recognized by *Chazal*, who describe it using the picturesque idiom that “a pot belonging to partners is neither hot nor cold,”² i.e., no one takes responsibility for an item that belongs to multiple people, a problem later characterized as the “tragedy of the commons.”)

Some have suggested that the collapse demonstrates that building safety certification rules need to be strengthened.³ The problem, of course, is that such strictness would translate directly into increased costs. As we have previously discussed in this forum, while halacha certainly does assign a very high value to the preservation of human life, it also provides for its balancing against economic cost. Thus, commercial activity (such as maritime travel in ancient times, or a dangerous profession like hunting) may be permitted even when it entails significant risk to life.⁴ It would seem, then, that in our context as well, the halachic attitude toward expensive safety precautions will hinge on how we balance the severity of the risk—high-rise collapses are extremely rare in the

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¹ See, e.g., Mary Harris. The Dream of Florida Is Dead: The Miami condo collapse is a crisis for the entire state. *Slate*. <https://slate.com/business/2021/06/miami-condo-collapse-florida-building-industry-crisis.html>; Matthew Gordon Lasner. Condo Buildings Are at Risk. So Is All Real Estate. *The Atlantic*. <https://www.theatlantic.com/ideas/archive/2021/07/surfside-tower-was-just-another-condo-building/619348/>.

² Bava Basra 24b.

³ See, e.g., Shirley Chan. Push to Strengthen High-Rise Safety Requirements in Jersey City after Surfside Tragedy. *PIX11*. <https://pix11.com/news/local-news/new-jersey/push-to-strengthen-high-rise-safety-requirements-in-jersey-city-after-surfside-tragedy/>.

⁴ Hurricane Housing: When A Storm Is the Norm. *The Bais HaVaad Halacha Journal*. <https://baishavaad.org/hurricane-housing-when-a-storm-is-the-norm/>; Value Judgment: What's a Life Worth? *The Bais HaVaad Halacha Journal*. <https://baishavaad.org/value-judgment-whats-a-life-worth/>.

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Dedicated in loving memory of
 HaRav Yosef Grossman zt"l



PARSHAS DEVARIM

WHEN TISHA B'AV FALLS ON SUNDAY

Excerpted and adapted from a shiur by
 Rav Yosef Jacobovits

This year, with Tisha B'Av on Sunday, many unique halachos apply, a few of which are presented here.

One must complete *seudah shlishis* before *shkiah*, when the prohibition of eating begins. The other prohibitions begin at *tzeis hakochavim*.

In Europe, when Tisha B'Av was on Sunday, people generally wore Shabbos clothes at Ma'ariv on *motza'ei* Shabbos, which was davened at the regular time. But in recent years, many shuls have adopted the practice of davening Ma'ariv a little later, giving people time to go home, change clothes, and drive back to shul. As a result, different minhagim have developed as to whether one removes his Shabbos clothes immediately after Shabbos or wears them for the rest of the evening.

This year, havdalah is not made until Sunday night, because drinking wine is forbidden, but one does recite the *bracha* of *borei m'orei ha'eish* after Shabbos. Al-

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Pushing On

Q In most years when Tisha B'Av is on Sunday, 9 Av is actually Shabbos, and the fast is *nidcheh* (pushed off) to Sunday and therefore more lenient. But this year 9 Av actually falls on Sunday.

When Tisha B'Av is *nidcheh*, one who is ill and permitted to eat must first recite havdalah. But this year, with 9 Av on Sunday, there is an *issur* to eat meat and drink wine (Ta'anis 30b).

So how does he recite havdalah?

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United States—against the economic cost of the precautions in question.

One particularly apropos precedent for our discussion is the fact that historically, Jews sometimes lived in disaster-prone areas with exacerbated risk due to subpar housing construction. On Yom Kippur, the Kohein *Gadol* would pray on behalf of “the men of the Sharon (plain)” that “their houses should not become their graves.”⁵ The risk was due to the valley location, high rainfall, and/or substandard local construction.⁶ *Chazal*, in a different context, tell us that brick buildings in the Sharon needed to be rebuilt “twice in seven years,” and they seem to connect this to the Kohein *Gadol*'s concern for their collapse;⁷ the commentaries explain that the instability was due to the earth of the Sharon being unsuitable for brickmaking.⁸

Could the men of the Sharon not have built safer, more durable buildings? If the problem was the poor quality of locally manufactured bricks, they could have imported bricks from elsewhere, or used other building materials. Perhaps the answer is along the lines of the above, that building more safely would have been significantly more expensive. (It is certainly possible that halacha would consider the conduct of the men of the Sharon unacceptably reckless, although I am unaware of any such criticism in the halachic literature.)

Another possible precedent for the idea that not every feasible safety measure, no matter how expensive, is necessarily appropriate, is from the Talmudic account of an exchange between R' Pinchas ben Yair and R' Yehuda Hanasi, in the course of which R' Pinchas ben Yair expressed disapproval of R' Yehuda Hanasi's possession of white mules (which were dangerous animals): “The Angel of Death is in this person's house.” R' Yehuda Hanasi responded

by proposing, inter alia, to kill them, but R' Pinchas ben Yair retorted that this would violate the prohibition against wanton destruction of property (*bal tashchis*).⁹

R' Yitzchok (Itzele) Blazer (Peterberger) raises an obvious problem: If white mules pose a serious danger, then destroying them should not violate *bal tashchis*, which only prohibits “wanton” destruction! He therefore explains that the white mules in question were not wild animals but domesticated and economically useful. They were considered very unlikely to cause harm, but they might do so on occasion. Maintaining such animals is permitted as a matter of halacha, but it fails to meet a higher standard of piety (*midas chassidus*). Since the issue is merely one of *midas chassidus*, the destruction of the mules would indeed be considered wanton and would violate *bal tashchis*.¹⁰

This is somewhat difficult to understand: If the mules were dangerous enough that maintaining them violated the standard of *midas chassidus*, and their owner could be described as harboring the Angel of Death, their destruction would hardly seem wanton! R' Itzele apparently holds that even genuine, legitimate concern for safety is not always sufficient grounds to justify wasteful behavior. Perhaps R' Itzele would distinguish between inherently destructive behavior like killing animals and constructive activity like adding structural elements to a building to make it safer, but this distinction is not entirely clear.

Of course, none of this negates the basic notion that the Surfside tragedy should serve as a reminder to review building safety inspection and certification regimes—but it should be understood that it is impossible to completely eliminate risk, and the expenditure of substantial resources to avoid far-fetched risk scenarios may even be prohibited under *bal tashchis*.

5 Yerushalmi Yoma 5:2 (27a) and Sotah 8:7 (36b) and various midrashim (cited by the sources in the following note as well as here).

6 R' Yehuda Zoldan, *Ta'anis Usefilah Al Ribui Geshamim B'Eretz Yisrael Uvechutz La'aretz, Shanah Beshanah* (5753), pp. 236-248. See also here.

7 Yerushalmi Sotah ibid.

8 R' Ovadia MiBartenura and Tiferes Yisrael to Sotah 8:3; P'nei Moshe to Yerushalmi Sotah ibid.

9 Chulin 7b.

10 Shu"t Pri Yitzchak *cheilek 1 siman 24*. Cf. Shu"t Shvus Yaakov *cheilek 3 siman 71*; R' Gedalia Aharon Rabinowitz, *Bedin Acharayus Hamad'an Lesotzaos Mechkaru, Halacha Urefuah* Vol. 4 p. 221.

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though there are usually different minhagim about whether to stand or sit for havdalah (based on the question of which is the greater *kvius*), in this case everyone should sit, because sitting is

considered more of a *kvius* for a single *bracha*.

One should not fully clean up after Shabbos, because this takes one's mind off mourning (Aruch Hashulchan O.C. 554). After *chatzos hayom*, when the mourning is less strict, it is permitted. R' Shmuel Kamenetsky permits turning on the dishwasher at night.

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A Theoretically, one can use *chamar medinah* (an important drink) for havdalah. But in the United States, it is not clear what drinks qualify. One solution is to give the wine to a child



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not old enough to be required to refrain. If no such child is available, some *poskim* rule that one should not say havdalah but wait until after Tisha B'Av and hear it from someone else. This approach is supported by the fact that the Ramban holds there is no Havdalah obligation at all when Tisha B'Av falls on Sunday. In his opinion, unlike other cases of *ones* (extenuating circumstances) on *motza'ei Shabbos*, where one delays havdalah until Sunday or Monday when he is able to recite it, in this case he is fundamentally exempt. The Shulchan Aruch rules that havdalah is said, against the Ramban. Nevertheless, this year, when Tisha B'Av is actually Sunday, one might support the above *poskim* by arguing that perhaps we should combine the opinion of the Ramban with the factor that wine is forbidden and rule that havdalah in principle should never be recited until Sunday night.

In practice, though, the Sheivet HaLevi (7:77) writes that the common custom is to recite havdalah in all cases even this year, including a *choleh*, who should make havdalah before eating on Tisha B'Av. But R' Moshe Sternbuch (*Mo'adim Uzmanim 7:255*) suggests that perhaps this rule should be limited to men. For women the matter may be different, because they generally avoid reciting Havdalah themselves *lechatchilah* due to one opinion of the *Rishonim* that they are exempt. If so, perhaps one should combine this factor with the other considerations mentioned and rule that women should not recite havdalah at all on Tisha B'Av. But practically, even Rav Sternbuch rules that women, too, should recite havdalah in cases where they must eat on Tisha B'Av.

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