

# Professional Malpractice : Part IV Shiur

## CORRUPTION AND SELF-DEALING

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A TRANSCRIPTION OF THE YORUCHA CURRICULUM WEEKLY SHIUR VIDEO

### CORRUPTION:

Much of the discussion regarding corruption in halacha begins with a *teshuva* of the Maharam of Rotenberg, where he discusses a city that is holding a vote to elect a public official, such as a *Rov* or *chazzan*, or to move forward with some public project, but cannot reach a unanimous decision. He says that every taxpayer should have a vote and the majority opinion should prevail. He adds that every taxpayer should have a vote on condition that they accept under penalty of *cherem* to vote *l'sheim shomayim*.

The exact parameters of what it means to vote *l'sheim shomayim* is discussed by the Poskim.

Rav Eliezer Gordon discusses a story where a city is voting on a new *Rov*, and some residents are relatives of the candidate. Are they allowed to vote or do we say that they are biased and their vote is not *l'sheim shomayim*?

Rav Gordon says that the relatives are allowed to vote, and offers two justifications to explain why. Firstly, he asks why a person has to vote *l'sheim shomayim*, rather than for his own interests. He notes that in every business partnership, each partner is going to consider his own best interests when a vote is held to determine business policy. Since a city is, in effect, a partnership of all the residents, why can't people vote for their own interests?

He answers that, of course, we understand that residents will not completely set aside all of their own interests when voting on any issue; however, for the good of the community as a whole we ask everyone to do their best to put aside their interests and to try to be as *l'sheim shomayim* as possible. We can only ask them to do this to a certain extent, and we understand that people may be biased in some way. This does not disqualify them from voting. Secondly, he says that in the particular story he was speaking about all the candidates were qualified for the job. The only question was whom the townspeople preferred, but it would not be harmful to the city to elect any of the individual candidates; therefore, he says there is no problem of voting for a relative.

### WHO CAN HOLD PUBLIC OFFICE?

Another important *teshuva* on the topic of corruption is found in the Terumas Hadeshen. He discusses a story where a resident of a city had been found guilty of making a false

vow and punished for his crime of perjury. Subsequently, the residents made peace with him and wanted to appoint him as a member of Tuvei Ha'ir, the local body of communal leaders. He was asked if this man is eligible for such a position.

The Terumas Hadeshen answered that the man is ineligible and explained that any communal leader is compared to a *Dayan*. There are certain qualifications a *Dayan* must have, and he certainly cannot be a person who is known to transgress Torah prohibitions. Since this man is ineligible to be a *Dayan*, the Terumas Hadeshen rules that he also cannot hold any position of public trust and power.

Both the *teshuvah* of the Maharam Rottenberg and the *teshuva* of the Terumas Hadeshen are codified by the Rema as binding halacha.

The *teshuva* of the Terumas Hadeshen is very relevant to contemporary democracies. If taken literally, this would also preclude a criminal or anyone who is not a *shomer Torah u'mitzvos* from holding public office.

There are other Poskim make the same general point as the Terumas Hadeshen. The Gemara relates a lengthy discussion between the Reish Galusa and Rav Ada bar Yaakov. The Reish Galusa asked Rav Ada to determine if a man who had been accused of a crime should be punished. After a long back and forth, Rav Ada managed to convince the Reish Galusa not to punish this man. The man was so grateful that he kissed Rav Ada's feet and promised to pay his taxes for him for life.

The Rosh asks why this wasn't forbidden as a form of bribery, as the halacha is that a *Dayan* cannot accept a bribe even after a court case is over. He answers that the Gemara in Bava Basra says that *talmidei chochomim* are not really obligated to pay taxes in any case; therefore, the man was not actually giving Rav Ada anything of value. The Pilpulei Charifta says that we see from the Rosh that the rules of qualification for a *Dayan* would be applied to Rav Ada, even though he was not acting as an actual *Dayan*. Even though this was not a judicial proceeding, we see from the Rosh that it still would have been forbidden for Rav Ada to accept a bribe. We can conclude from this that the laws that apply to a *Dayan* also apply to anyone in a position of public trust.

The Aruch Hashulchan writes similarly that the prohibition of bribery is not limited to *Dayanim* and equally applies to anyone appointed to a position of authority over the public.

## VOTE-BUYING:

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The Chasam Sofer cites the Maharam Rottenberg and Terumas Hadeshen to issue a ruling in a pertinent case. He speaks about an election for *Rov* of a city, in which one candidate won the majority of votes. It was later alleged that mass vote-buying had taken place, with relatives of this candidate giving people money to vote for him. The Chasam Sofer writes that if this accusation is true, the election results are null and void. He explains that all the bought votes are invalid, both because the residents had not voted *l'sheim shomayim* and because anyone who accepts bribery for their vote is not qualified to be a *Dayan*.

The Terumas Hadeshen himself only appears to be talking about public officials when he says that they need to be qualified to be *Dayanim*, but the Chasam Sofer takes this a step further and says that anyone who has a vote on a public matter must also meet this qualification. He further says that even ordinary citizens have to vote *l'sheim shomayim* and should not have their own interests in mind. Both of these positions seem to be big *chiddushim*.

According to his understanding, it would seem that a criminal would not even have the right to vote in a public election.

(We should mention that we do believe in *teshuva* and a person who has sinned in the past can repent and become a functioning member of society who is even allowed to serve as a *Dayan*; however, the standards for such *teshuva* are very formal and concrete in order for the individual to be deemed worthy of serving as a *Dayan*.)

Rav Yitzchok Zilberstein discusses a story where municipal officials were elected and were later discovered to have bought votes. He rules that if the people who won are unqualified, or even if they are qualified but the other candidates were more qualified, then the results of the election are null and void. However, if the winners were just as qualified for the positions as the losers, he says that the results would stand.

It is difficult to know how to judge whether one candidate is more qualified than another, as this is exactly what the election is meant to decide. In any case, unlike the Chasam Sofer who says that such an election is always voided, Rav Zilberstein says that there are times when it would be allowed to stand.

## BRIBERY AND CONFLICTS OF INTEREST:

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The Teshuros Shai discusses a case where the Zayin Tuvei Ha'Ir, the local body that oversees communal affairs, voted on whether or not to impose a wine tax. In this story, it was later determined that one of the members of the council had been bribed to vote for the tax, but the vote passed unanimously in any case. Is the fact that one of the seven members of the council was bribed reason to overturn a 7-0 vote?

The Teshuros Shai rules that the entire vote is null and void. He offers two reasons to explain this. Firstly, he says that, ideally, a full quorum of all the members of the council needs to be present in order for a vote to be held. While it is true that the

other members may decide to hold a vote even if a minority is absent, this is because it is understood by all that in order for the body to function efficiently it cannot always be expected to ensure that every member is present; however, if one member is bribed, his vote is certainly null and void as if he was not present for the vote, and it is considered as if a quorum is not present with no justification to hold any vote. Secondly, he says that bribery is "contagious". If one person is bribed, it can affect the entire council, as the bribed member will try to persuade the others of his position; therefore, the bribery of one member corrupts the entire board and the entire vote cannot be valid.

The Chasam Sofer seems to disagree with the Teshuros Shai. In his case, he seems to say that the reason the election is invalid is that the outcome of the election was corrupted by vote-buying. If only a minority of votes would have been bought, and that wouldn't have affected the outcome, he seems to say that the election would have been valid.

It is possible, however, that even the Teshuros Shai would agree in a case of a city-wide election that if a small minority of voters had been bribed that would not invalidate an entire election, as it is implausible that one or two bought votes would render an entire election null and void.

## BRIBING NON-JEWS:

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The Torah phrases the prohibition of bribery by saying that a judge may not accept a bribe. Accordingly, it would be prohibited for anyone to offer a judge a bribe, as this would be a prohibition of *lifnei iver*.

What about a non-Jewish judge? Is he also prohibited from taking a bribe, which would mean that a Jew may not bribe a non-Jewish judge? Some Poskim say that, indeed, having a fair court system is one of the *Zayin Mitzvos Bnei Noach*, which means that a non-Jewish judge may not accept a bribe and a Jew may not offer him one.

The Chavas Yair has a long and fascinating *teshuva* on this topic. He concludes that a Jew may not give a non-Jewish judge a bribe in order to pervert a court case; however, if the case is more ambiguous and it is unclear who is right, he suggests that a Jew may offer the judge a bribe to see his side of things, although he does not definitively permit this.

The Chasam Sofer writes similarly that perverting a court case through bribery is definitely forbidden, but bribing a non-Jewish judge to not be partial towards the other side of a case and to at least be fair towards your side is permitted. He adds that it is always permitted to bribe a non-Jewish judge in a capital case, where a Jew is facing the death penalty. A non-Jewish court does not have the authority to impose the death penalty on a Jew; therefore, such cases are always considered unfair and bribes may be offered.

The Chasam Sofer's statement seems to be contradicted from numerous sources, including the Gemara in Bava Metzia that says Rav Elazar ben Shimon worked as a policeman to catch

criminals and hand them over to the non-Jewish authorities for capital punishment. This seems to imply that non-Jewish courts are allowed to impose the death penalty when it is warranted.

### STEALING FROM THE COMMUNITY:

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In another *teshuva* of the Teshuros Shai, he discusses a story where a local government would sell the rights to collect tolls by auctioning them off to the highest bidder. In one such case, a Jewish man bribed the local officials to give him a sweetheart deal and accept only his bid. A different man was upset about this and informed on him, thus ruining his deal. The first man actually took the informer to *bais din* and demanded payment for harming his livelihood.

The Teshuros Shai dismissed his claim and said that the first man was guilty of several transgressions. First of all, he is guilty of bribery, as bribing non-Jews in this manner is prohibited. Secondly, he is guilty of stealing from the government. The Teshuros Shai concedes that it may not be explicitly prohibited to steal from the government under certain circumstances, but, in this story, he says that the man intended to steal money from every toll-payer, as he wanted to collect money from them without having real authority to do so. Finally, he is guilty of stealing from the Jewish community. He explains that Jews have a stake in the government, as they are taxpayers and have an interest in their representatives using the public money wisely. Since he stole money from the public coffers, he is, by extension, stealing from the Jewish community.

### KICKBACKS:

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The Divrei Chaim speaks about a guardian who was appointed by a court to oversee certain properties and find renters for them. Instead of looking for a fair price for the properties, the guardian accepted kickbacks and rented them out below market value. For example, instead of finding a renter for the \$100 the property was worth, he accepted an offer of \$70 and pocketed \$10 in kickbacks from the renter.

The Divrei Chaim says that the guardian is guilty of theft from the landowner; therefore, it is up to the owner whether he wants to nullify the entire deal or accept the rent plus the money the guardian pocketed, which he would be obligated to hand over to him.

Similarly, the Divrei Malkiel discusses a case that occurred in a place where it was customary for an outgoing *Rov* to sell the rights to his position to an incoming *Rov*. In one instance, the

outgoing *Rov* was planning on moving to Eretz Yisroel, and he made a deal with an incoming *Rov* that he would accept his offer of 50 rubles if the buyer also would arrange with his father-in-law, who operated a charity that supported Jews in Eretz Yisroel, to provide him with a stipend after he moved.

The Divrei Malkiel first says that it would be theft for him to receive this stipend, as he is, in effect stealing money through his Rabbinical position. He then suggests a more lenient stance, saying that the outgoing *Rov* may be entitled to a share in the *tzedakah* money in any case, as he is actually moving to Eretz Yisroel and is one of the people the funds were intended for.

In any case, he still rules that what the *Rov* did is forbidden, as a *Gabbai Tzedakah* is not allowed to have any *negius*, personal considerations, when he distributes *tzedakah* money. He explains that it is accepted that a *Gabbai Tzedakah* is held to the standards of a *Dayan*; therefore, he cannot have *negius* when giving out the money, which would make this kickback forbidden.

A contemporary *sefer*, *Sefer Siach Mishpat*, presents a case where a principal has a stack of applications for an open teaching position. He tells one applicant that he will move her application to the top of the pile if she arranges for her father, a successful businessman, to hire his son. This *sefer* says that this behavior would be forbidden because the principal is accepting bribes, and because it is *geneivas daas*, as the principal works for the owners of the school, who assume he is hiring the best worker based on qualifications. If he hires someone based on other reasons, he is being deceitful to them, which he says is a transgression of *geneivas daas*.

His first assertion, that this would be prohibited as a form of bribery, is highly debatable, as the prohibition of bribery only applies to judges or public officials, and it is questionable whether a school principal would be considered a public official. Regarding his assertion that this would be *geneivas daas*, it is true that this prohibition is very wide-reaching and broad, but the Divrei Chaim and Divrei Malkiel do not mention it when discussing the concept of kickbacks. It would seem that there would need to be some precedent before it was applied to a case like this. However, it would often be forbidden for other reasons and is certainly not an acceptable practice.

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