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Dedicated in loving memory of
HaRav Yosef Grossman zt"l

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POOL RULES AND ROAD CODES: SAFETY IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

VINNews reports:

The owners of a building in Williamsburg may be facing a hefty fine, over a massive swimming pool discovered on its roof.

A full-sized swimming pool was installed on the roof of the commercial building. The gleaming 480-square-foot above-ground pool, which apparently was used regularly this past summer, was drained this week, according to the Department of Buildings.

"New York. We know. It's hot. We get it," the DOB tweeted. "But please don't try to build a rooftop swimming pool without first getting permits and hiring professionals to do the job properly."¹

This article considers halachic problems with work done without permits and (as per the continuation of the DOB's tweet) not according to code. The result may be dangerous, and the work may violate applicable law.

Additionally, there is the paramount concern of chillul

Hashem;² Chazal are very clear that even conduct that is otherwise entirely legitimate becomes prohibited when it entails chillul Hashem.³ Dangerous construction that violates safety codes and laws would very likely be included in this category.

THE HALACHIC OBLIGATION TO RECTIFY DANGEROUS SITUATIONS

Regarding the concern for danger, the relevant halachic principles are simple, although their application to real-world scenarios is less so. The Rambam rules:

Anyone who leaves his roof open without a guardrail negates the observance of a positive mitzvah and violates a negative mitzvah, as it says in Devarim 22:8: "Do not cause blood to be spilled in your home"...

This requirement applies to a roof, and similarly to any place that might present a danger and cause a person to stumble and die. For example, if a

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¹ Williamsburg Landlord Facing Huge Fines Over Illegal Rooftop Swimming Pool. VINNews. <https://vinnews.com/2022/08/12/williamsburg-landlord-facing-huge-fines-over-illegal-rooftop-swimming-pool/>

² See Yevamos 79a; Yoma 86a; Tosefta Bava Kama 10:8.

³ Bava Kama 113b; Cf. Yerushalmi Bava Metzia 2:5; Rambam *Hilchos Gezeilah Va'aveidah* 13:3; Shulchan Aruch C.M. 266:1.



PARSHAS SHOFTIM

CITY LIMITS

Excerpted and adapted from a shiur by
Rav Moshe Zev Granek

If a body is found in the land that Hashem your G-d is giving you to inherit it, fallen in the field, and it is not known who struck him down...And the elders of that city shall take a calf with which work has never been done and that has never drawn a yoke...

Devarim 21:1-3

The Gemara (Bava Kama 82b) says that if a body is found in close proximity to Yerushalayim, *eglah arufah* is not applicable, because the Torah here uses the word *lerishtah* (to inherit it), and Yerushalayim was not included in the distribution of Eretz Yisrael among the *shvatim*. Likewise, Yerushalayim cannot become an *ir hanidachas* (condemned city) because the Torah uses the word *arecha* (your cities).

The Rambam (*Hilchos Avodah Zarah* 4:4) records the halacha that Yerushalayim cannot be an *ir hanidachas*, and he says the same about *arei miklat* (cities of refuge), because they were given to the *levi'im*.

The Rambam (*Rotzeiach* 9:4) also codifies the halacha that an *eglah arufah* is not brought for Yerushalayim, but unlike with *ir hanidachas*, he doesn't apply the ruling to *arei miklat*. Why the difference?

Perhaps it is because the Rambam (*Ma'aser Sheini* 11:17) rules like R' Yosi that the *levi'im* are the owners of their cities, which all had the status of *ir miklat*. If so, *eglah arufah* applies to them, even if it does not apply to Yerushalayim.

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Pruzbul Presiders

Q I'm concerned that I might be asked to join an ad hoc bais din for a *pruzbul*, a role for which I fear I am unsuited. What are the qualifications to serve on such a bais din?

A The Shulchan Aruch (C.M. 67:18) writes that a *pruzbul* can only be written by a bais din of expert *dayanim* whose authority is accepted by the community. This is based on the Sefer Hatrumos, who rules in accordance with Shmuel that only a bais din of *gedolei hador* can make a *pruzbul*. The Sefer Hatrumos says that a bais din accepted by the community is like a bais din of *gedolei*

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O&A from the
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person has a well or a cistern in his courtyard, he must erect a sand wall ten handbreadths high around them or make a cover for them, so that a person will not fall in and die.

Similarly, it is a positive mitzvah to remove any obstacle that could pose a danger to life, and to be very careful regarding these matters, as it says in Devarim 4:9: "Beware for yourself and guard your soul." If a person leaves a dangerous obstacle and does not remove it, he negates the observance of a positive mitzvah and violates a negative mitzvah, "Do not cause blood to be spilled."⁴

These rulings are codified in the Shulchan Aruch, and based upon them, R' Yosef Elyahu Fried, a rav in Manhattan's Lower East Side over a century ago, emphatically insisted that building a sukkah on a building's fire escape platform is "against the law of the Torah and the mitzvah, and against the state, and against the character of humanity (*midas ha'adam*)."⁵

The great Galicianer posek R' Yitzchak Shmelkes was asked about a dispute between two neighbors. One had been selling and storing substantial quantities of *neift* (petroleum, kerosene, or paraffin) and other flammable substances in his shop, and the other reported this to the civil authorities, which compelled the offender to install metal fire doors in accordance with applicable safety codes.

Rav Shmelkes ruled that selling large quantities of *neift* is indeed a very dangerous practice, and consequently:

According to Torah law as well, one is obligated to take every possible measure to provide safety from fires, and it is incumbent upon one who causes damage to distance himself...Although [the fire doors] provide only a marginal increase in safety, since the doors are open most of the time, one is nevertheless obligated to do whatever it is possible to do...and therefore [the reporter] does not have the status of a *moser* regarding the iron doors.⁶

But while there are clear-cut obligations to avoid and/or rectify dangerous situations, the practical application of these obligations is less simple. As we have previously discussed on several occasions, halacha does not require that literally every possible effort, no matter how expensive or inconvenient, be made to reduce or eliminate risk:

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

4 Hilchos Rotzeiach Ushmiras Hanefesh 11:3-4.

5 Shu"t Ohel Yosef O.C. end of *siman* 14 s.v. *Vehuva*. See our discussion of sukkos built in violation of the law in Ticket Booth: An Illegal Sukkah. The Bais HaVaad Halacha Journal. Sep. 17, 2021.

6 Shu"t Bais Yitzchak C.M. beginning of *siman* 77.

it entails significant risk to life.⁷ It would seem, then, that in our context as well (the proposal to strengthen building codes in the aftermath of the Surfside condominium collapse), the halachic attitude toward expensive safety precautions will hinge on how we balance the severity of the risk against the economic cost of the precautions in question...

It should be understood that it may sometimes be impossible to completely eliminate all risk, and the expenditure of substantial resources to avoid far-fetched scenarios of risk may potentially even be prohibited under *bal tash'chis*.⁸

(Although these discussions are primarily about the limits of the prohibition against self-endangerment, it seems likely that similar limits apply to the obligation to avoid harming others.)

HALACHIC PERSPECTIVES ON BUILDING CODES

Assuming that the halachic obligations to avoid or rectify dangerous situations have been satisfied, we are still left with the question of whether there is a Torah obligation to comply with government building codes per se. While numerous authorities have discussed the application of the principles of *dina demalchusa dina* (the law of the government is the law, i.e., recognized by halacha as binding upon Jews) and *minhag* (prevailing custom, which can generate a binding obligation) in the context of *nizkei shcheinim* (the halachos regulating the conduct of neighbors vis-à-vis one another),⁹ these discussions mostly concern cases where someone objects to his neighbor's conduct, and this objection is supported by law or custom; there is much less discussion of an obligation to follow laws such as building codes in and of themselves, even in the absence of any complaints against one's conduct.

One of the few authorities who does discuss this latter question is R' Osher Weiss.¹⁰ As we have previously noted, while he maintains that there is indeed a religious imperative to obey such laws, since *dina demalchusa dina* and obedience to the law is the "will of the Torah," he adds that

There is a fundamental difference between the laws of the Torah (both Biblical and Rabbinic) and temporal law. The former are absolute, with no room for compromises, whereas the latter are situational. It is presumably not forbidden by the Torah to jaywalk in the middle of the night, when

7 Hurricane Housing: When A Storm Is the Norm. The Bais HaVaad Halacha Journal; Value Judgment: What's a Life Worth? The Bais HaVaad Halacha Journal. Sep. 17, 2020.

8 Risk Factors: Can You Be Too Safe? The Bais HaVaad Halacha Journal. Jul. 15, 2021.

9 See Bais Yitzchak *ibid.* os 3; Shu"t Maharalbach *siman* 44 p. 32b s.v. *Haprat hasheini*; Shu"t Igros Moshe C.M. *cheilek* 2 beginning of *siman* 62. Cf. Shu"t Maharil ibn Leiv *cheilek* 1 *klal* 14 end of *siman* 82; Bach C.M. *siman* 155 os 56 (cited in *Knesses Hagedolah* *ibid.* Hagahos Tur os 62; Shu"t Emunas Shmuel *siman* 51 s.v. *Vekal vachomer*; and *Minchas Pitim* *ibid.* *se'if* 38); Shu"t Maharsham *cheilek* 1 *siman* 178; Chazon Ish Bava Basra *siman* 13 os 12; Piskei Din Bedinei Mamonos Uvevirur Yuchasin MiBais Din Yerushalayim Ledinei Mamonos Ulevivur Yuchasin, Vol. 10 p. 455; Bikurei Aviv – Nir Aviv p. 62.

10 Shu"t Minchas Osher *cheilek* 2 *siman* 123 pp. 420-22.

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hador, as it too has the power to extract money (see Shulchan Aruch C.M. 2). But the Rama cites the view that any *bais din* can write a *pruzbul*, sourced in *Rishonim* that don't rule like Shmuel.

The Shach (67:5) quotes the Mabit (1:81) that only the greatest *bais din* in a city has the power to write a *pruzbul*. The Shach apparently holds this to be the halacha even for Ashkenazim. But the Kitzur Shulchan Aruch and the Shulehan Aruch HaRav write that any *bais din* of *b'nei Torah* is sufficient, and R' Chaim Kanievsky writes in *Derech Emutah* that that is the prevalent custom among Ashkenazim. Still, there were some *gedolim* (including the Chazon Ish, Rav Dushinsky, and Rav Elyashiv) that reportedly conducted themselves strictly and went only to the most esteemed *bais din* in town.

It would seem that Sefardim do require a *bais din* that includes one of the *gedolei hador*, but R' Ovadia Yosef (Yabia Omer 3:6) rules that one may rely on the view that it is sufficient to send a signed letter to such a *bais din*, or to declare before witnesses that one hands over his debts via *pruzbul* to such a *bais din*, even if it is far away.

It is clear that there is no nearby vehicular traffic and not the remotest possibility of danger (and there are no observers present who may learn dangerous habits). Further, it is likely that even the legislators did not intend to forbid jaywalking in such circumstances, but the law is simply unable to formally take into account such distinctions.

Rav Weiss concludes that in such cases, we follow the legislative intent, and one is not obligated to obey the letter of the law where there is no danger whatsoever.¹¹

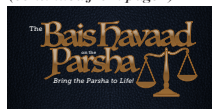
So according to Rav Weiss, as long as there exists some genuine, rational concern for danger, the law must be obeyed (presumably even if the danger is below the threshold that would trigger the Torah's own obligations of avoidance or rectification), but if there is "not the remotest possibility of danger,"

11 Ticket Booth: An Illegal Sukkah.



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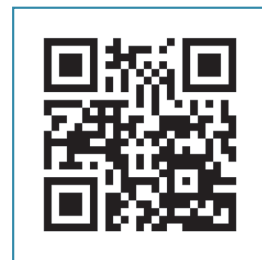


However, we must then explain why the Rambam says that an *ir miklat* cannot become an *ir hanidachas*. The reason may be that *ir miklat* is subject to *eglah arufah* because the *levi'im* that live there have rights to the city. But with regard to *ir hanidachas*, one must also consider the rights of those who could potentially live

there, who could argue that we cannot destroy the city if they did not worship *avodah zarah*.

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