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AUDITORY LEARNING

May a Jew Work for the IRS?

By Rabbi Yitzhak Grossman

"I'm from the government, and I'm here to help you."

Mesira—the enabling of hostile actors to seize property of, or cause harm to, Jews—is a serious Aveira. A number of Poskim have discussed the propriety of a Jew working as a tax auditor, in which capacity he may discover and then be obligated to report Jewish malfeasance, causing the perpetrator to suffer criminal or civil penalties. This article surveys the positions of the Poskim.

SHEVET HALEVI: HURMENA D'MALKA

The broadest and most fundamental argument for allowing a Jew to work as a criminal investigator for the government is advanced by Rav Shmuel Vosner, in his *Teshuvot Shevet HaLevi*.

He cites the *Gemara's* account of Ribbi Elazar b'Ribbi Shimon accepting a commission as a government investigator, in which capacity he would identify thieves, who were then executed.

Ribbi Yehoshua ben Korha objected: "Vinegar, son of wine! Until when will you turn over (moser) Hashem's nation for execution?" Ribbi Elazar responded: "I am eliminating thorns from the vineyard." Ribbi Yehoshua retorted: "Let the Owner of the vineyard (Hashem) come and eliminate His thorns."¹

Following earlier authorities, the *Shevet HaLevi* maintains that despite Ribbi Yehoshua's objection, normative *Halacha* allows working for the criminal justice system, particularly

where capital punishment is not involved.²

IGROT MOSHE: THE AUDITOR IS NOT OUT TO GET YOU

Rav Moshe Feinstein, in *Igrot Moshe*, discussing a very similar case, is also lenient, albeit for entirely different reasons. He makes no mention of the account of Ribbi Elazar (despite doing so in another *Teshuva*³). Instead, he justifies accepting the position based on the consideration that even if one won't accept it, someone else will, so accepting it causes no harm.

Additionally, R' Moshe avers, the primary goal of the IRS auditor is not to catch fraud but to verify the accuracy of the return that he is reviewing.

The taxpayer, after all, has certified that it is correct, and he presumably believes this to be the case, since he would not likely lie knowing the submission is subject to audit. The auditor, in turn, may therefore assume that it is likely the accounts are correct. When the auditor does encounter fraud, he has no choice but to report the truth.⁴

Even granting the *Igrot Moshe's* assumptions about the nature and goals of tax auditing, it is clear that his reasoning is limited to situations where these assumptions do indeed hold. He would not necessarily allow accepting a position as a criminal investigator whose primary job is to uncover and identify wrongdoing. This is particularly true where considerable skill is involved and it cannot be assumed that any other investi-

² Shut. Shevet HaLevi, 2:58. Cf. Shut. HaRashba, cited in Bet Yosef, Hoshen Mishpat end of Siman 388; Shut. Maharam Shik, H.M. siman 50; Shut. Darche Shalom (Leiter) Siman 46; Shut. Me'orot Nasan (Leiter) Siman 61; R. Asher Weiss, Mesirah Le'Shiltonot Al Mi Sh'Hashud Be'Hit'ollelut Be'Yeladim, Yeshurun Vol. 15 pp. 656-60.

³ Shut. Igrot Moshe, Orah Hayim, Helek 5 at the very end of Siman 9.

⁴ Shut. Igrot Moshe, Hoshen Mishpat, Helek 1 Siman 92.

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By Rav Mordechai Lebhav

TEFILLIN OF RABBENU TAM: LAWS & CONCEPTS

One of the most famous disagreements in Halacha is that of Rashi and Rabbenu Tam about the order of the *Parashiyot* in the *Tefillin*. This is already an older disagreement, cited in the Rambam's *Teshuvot* (there are lengthy discussions as to what the other *Rishonim* hold).

According to Rashi they are placed in the order in which they are mentioned in the Torah: *Kadesh, VeHaya Ki Yeviacha, Shema, VeHaya Im Shamo'a*. Whereas according to Rabbenu Tam they are placed with the *VeHaya's* in the center, so: *Kadesh, VeHaya Ki Yeviacha, VaHaya Im Shamo'a* and *Shema*.

The *Tur* writes that a G-d fearing Jew should wear both pairs but have in mind to only fulfill the *Mitzvah* with whichever *Tefillin* are the right ones, so as to not transgress *Bal Tosif*—adding on the *Mitzvot*. *Maran* adds that only if you are known and famous to be a pious Jew (*Hassid*), so it should not seem like haughtiness (*Yohara*). This was the general custom in previous

spotlight

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The Medical Halacha Center of the Bet HaVaad now to launch weekly shiurim presented by our Poskim where they explore a specific topic in depth. The inaugural shiur is scheduled to be delivered by Senior Posek, Rabbi Eliezer Gewirtzman, shlit"u, and will be available through our office, upon request.

¹ Bava Metzria 83b.

GENERAL HALACHA

Recovering Nazi Bounty

By Dayan Shlomo Cohen



The US Government recently publicized efforts it is taking to facilitate the return of a painting stolen by the Nazis in WWII to its original Jewish heirs. Over the years, the US Senate has attempted to pass laws making it easier for the victims of plundering by the Nazi's to regain their stolen property, and this raises a fundamental question for *Batei Din* throughout America.

In Jewish law, the buyer of moveable property, be it a painting, a car or a *Kiddush* cup, that turns out to be stolen, is protected (*Hoshen Mishpat* 353:3).

As long as the buyer did not purchase the property in question from someone who was known to be a thief, our Sages made a special enactment (*Takanat HaShuk*) to protect him.

Before this *Takana* was made, the opinion of the *Shulhan Aruch* is that the buyer of stolen property that the owner has given up hope of getting back, must return the monetary value of that property to the owner, and it is he, the buyer, who must then find the thief, or whoever sold him the property and reclaim his loss from them.

The *Rama* disagrees, arguing that the buyer does not have to return even the monetary value to the owner, as long as the owner gave up hope of getting his property back before it was sold. If the property was first sold, and only subsequently the owner gave up hope of getting it back, the property itself must be returned to the original owner.

Our Sages, worried about the dangers to free trade – of buyers hesitating to purchase merchandise that may subsequently turn out to be stolen – enacted that anyone who buys merchandise which is subsequently proven

to be stolen is not required to return the merchandise or its value to its owner until he, the buyer, is refunded by the owner the sum paid by him to the thief (or whoever he bought it from). It is then the responsibility of the owner to reclaim his money from the thief.

Our Sages added that this *Takana* would only apply where the buyer did not buy from a known thief. If he did, he is offered no protection by this *Takana*.

However, the *Rama* rules (*Hoshen Mishpat* 356:7) that if the law of the land (*Dina D'Malchuta*) requires the buyer to return the stolen property itself, without being reimbursed, then this prevails.

Therefore, it would seem that based on the passing of a law, in the case of a Jewish buyer of artwork which turns out to have been plundered from a fellow Jew by the Nazis, even if the buyer did not buy the painting from the Nazis themselves but from a reputable source, the painting itself must be returned without reimbursement (if that is the effect of this bill), even though according to *Halacha*, the buyer does not have to do so.

Let's examine if this really is the case:

The *Shulhan Aruch* rules that the principle of *Dina D'Malchuta Dina* applies to laws that apply between a citizen and the administration alone, but not to dealings between two Jews. This would include, for example, all tax laws and all criminal cases, as the state is a party to the prosecution, but would exclude civil disputes, such as disagreement between two neighbors or business men, as the government is not a party at all.

The *Rama* brings the opinion that *Dina D'Malchuta* also applies to disputes between two Jews, where the administration is not involved (*Hoshen Mishpat* 369:8).

However, the *Hazon Ish* ruled (*Likutim* 16) that since the law in almost all civilized countries allows two citizens to solve their civil disputes in arbitration according to whatever rules they wish, any two Jews who have a dispute to which the government is not a party, are obligated, even according to the opinion of the *Rama*, to solve it according to Torah law, and not according to *Dina D'Malchuta*.

The exception to this rule will be where the law has become accepted practice amongst all, and is now the accepted custom in the market place. In such a case, it overrides the *Halacha*. [An example of this is severance pay, which – while having no source in Jewish law – is awarded by *Bet Din*, as such is the accepted custom.]

It is important to point out that even in cases where *Dina D'Malchuta* does apply, that does not mean that the case may be judged in a secular court, but that *Bet Din* will rule according to the law of the land.

The ramifications of this *Halacha* are that where a Jewish art collector is taken to *Bet Din* by the Jewish owner of the painting, from whom it was plundered by the Nazis, even after the introduction of the new law, *Bet Din* will rule that the owner must reimburse the art collector the sum he paid for the picture.

All the above applies to a case where the property was stolen. Where it was extorted, for example, where a valuable painting was given to the Nazis in exchange for an exit visa, the *Halacha* is different, and will be dealt with in a separate article.

The above is also only applicable in the case of moveable property that was stolen. Where real estate was stolen the *Halacha* is different, too.

Where the plundered property is found in the possession of a non-Jew, the *Halacha* would also be different, as the non Jew is obligated by the law of the land in all cases, and the *Halachic* question this raises is whether or not a Jew can claim from a non Jew compensation that is not due to him according to Torah law.

Where the plundered property is found in the possession of a Jew who does not accept the authority of *Bet Din* too, the *Halacha* will be different, as in such a case there is another fundamental question as to whether a Jew can take from another Jew a payment which is not due according to Torah law.

To conclude, it should be mentioned that it could be argued that all buyers of Judaica, especially in Europe, are not protected by our Sages' *Takana*, as they should have taken into account that the property may have been plundered by the Nazis from a Jew, even where the seller is a reputable dealer.

A great Rabbi was once offered a walking stick, reputed to have belonged to Rabbi Akiiva Eiger ז"ל, but he refused to accept the gift saying, [quote] "it's probably stolen property".

EVENTS AT BET HAVAAD

Rav Yakov Semiaticki and the Even Ha'Ezer Habura

In the course of operating an active Bet Din, the Poskim of the Bet HaVaad took

note that there exists a dearth of knowledge in the very important and pertinent field of Even Haezer, among many community Rabbanim.

To this end, Rav Yakov Semiaticki shlit"u, a renowned authority, with years of experience in Batei Din in Eretz Yisrael, formed an Even Haezer Habura for the study of practical Halachot related to Even Ha'Ezer, targeting

Rabbanim.

Every week, the Haburah is convened and a Shiur is given by one of the members of the group, which explores various topics in depth, in systematic order. This week featured a Shiur on the obligation to maintain a Ketubba and the various Halachic remedies in a case where the Ketubba is lost.

MATTERS OF INTEREST

Avissar Family Ribbit Awareness Initiative: Introduction

People will encounter many common ribbit problems without ever realizing that they exist. Some may be questions of ribbit d'Oraita which must be returned. Other times they can be derabbanan which one should be machmir (stringent) to return. In all cases they must be avoided. Chazal are very stringent about any form of ribbit, and



elaborate on the punishment, chas veshalom, of one who is lax in this mitzvah.

It is a lot easier to achieve the status of a "borrower" than one may think. Aside from actual loans, owing money to a friend for minutes used on his phone or for soda at the canteen, can also create a lender-borrower relation-

ship. Having someone buy light bulbs from the store on your behalf and telling him to keep the change when you repay him, may be a ribbis issue. Hence these halachot can apply more frequently than expected.

HALACHOT OF DAILY LIVING

Bal Tashchit: Do Not Waste - Part I

Topics From The Gerald & Karin Feldhamer OU Kosher Halacha Yomis

Q: I heard that it is not Bal Tashchit to throw things away if it is not worth my time to reuse them. Bal Tashchit of time outweighs Bal Tashchit of wasting items. For example, at the end of a meal, may a caterer throw everything away, or must he salvage those items that can be saved (e.g. mustard, pickles) which could be very time-consuming?

A: A similar question is discussed in *Sefer Hitorerut Teshuva*. He writes that it is forbidden to waste food even if it will require time and effort to salvage it. He reasons that since *Bal Tashchit* is a prohibition, salvaging the food should not be viewed as a waste of time. By salvaging food from being thrown out, one is serving Hashem and this cannot be considered a waste of time. However, Rav Zilberstein (*Tzohar* 1: pg. 52) favors the position of the Haya Adam who rules that avoiding *Bal Tashchit* of time takes precedent to avoiding *Bal Tashchit* of objects, because time is more

valuable. The Haya Adam (11:32) writes that if one wishes to upgrade the *Tzitzit* strings on their *Tallit*, and they find it too time consuming to unravel the old strings, they may cut them off, even though this will make the strings unusable. The Haya Adam explains that since *Bal Tashchit* on items other than fruit trees is only a Rabbinic prohibition, it is permitted if the alternative would be an excessive waste of time.



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gator would be equally likely to discover a particular crime.

TESHUVOT V'HANHAGOT: A DISTINCTION AMONG COUNTRIES

The *Teshuvot V'Hanhagot*, discussing a case similar to that of R' Moshe, also does not cite the account of Ribbi Elazar.

He is reluctant to allow a Jew to accept a position as a tax auditor, unless any Jewish tax evaders that he is likely to catch will presumably be nonobservant. In that case he is lenient, because if they are not keeping the Torah, they should certainly be following the laws of the land like any other citizen, and there is no need to abet their attempt to flout those laws.

Additional considerations that the *Teshuvot V'Hanhagot* invokes are: a) the financial straits of the candidate for the job, and b) the fact that if he accepts it he will be in a position to help his fellow Jews by warning them before auditing them.

He says that the principle of *Dina D'malchuta Dina* does not apply where the tax system is corrupt and capricious:

"It depends greatly on 'protektzia' (connections) and officials... and in such circumstances we do not say *Dina D'malchuta Dina* even

with regard to non-Jews."⁵

MISHNE HALACHOT: IRS AUDITORS WILL DESCEND INTO GEHINNOM

The *Mishne Halachot* considers IRS auditors who cause Jews to suffer at the hands of the legal system to be textbook *Mosrim*, who have no share in the World to Come, and will descend into *Gehinnom* and be judged there for generations upon generations, where their bodies and souls will be destroyed.

He rejects the argument made by the *Igrot Moshe* that the filer of the improper return would have been caught anyway, on a number of grounds: first, the other auditor may not have been as astute as he; second, the other auditor may not have selected that particular return for review, since the auditors do not review all returns; third, even if we assume that the perpetrator would have been caught regardless, this does not absolve the one who actually causes the harm of responsibility as a *Moser*.

The *Mishne Halachot* does cite the story of Ribbi Elazar, but he appears to rule in accordance with Ribbi Yehoshua ben Korha.⁶

5 Shut. Teshuvot Ve'Hanhagot, Helek 3 Siman 476.

6 Shut. Mishne Halachot, Mador HaTeshuvot, Mahadura Kama, Helek 6, 313:2.



מסכת מנחות

This Week's Topics

RAV ARYEH FINKEL

- דף פ"ד Using Shmitta Oil
- דף פ"ה Moshe vs. Pharaoh
- דף פ"ו Spending on Mitzvos: When & How
- דף פ"ז To Be Exact: How Exact are Measurements & Shiurim?
- דף פ"ח What is the Hatavas HaNeiros?
- דף פ"ט Menorah Oil: How Much?
- דף צ' Libation Liability: Who Brings the Nesachim?

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generations.

However, in our days, Hacham Ovadia Yosef

in one of his first Teshuvot writes that one may wear Rabbenu Tam's Tefillin, as the *Hida* writes in *Birke Yosef* that had become the custom in his days [Some say that only if one wears them together it is a problem of haughtiness (*Kav Naki*).] Rav Elyashiv also said that

in our days it has become common practice. One should at least try to wear them once in his life.

[The *Kav Naki* (Rav Kalifa B. Malka) counts even more possibilities of *Tefillin*, and devises a way to wear all of the types of *Tefillin* throughout the year, reserving *Rabbenu Tam's Tefillin* for the day after *Yom Kippur*.] As to an unmarried Yeshiva student, Hacham Ben Tziyon writes that he shouldn't wear, but

Hacham Ovadia argues, provided that he will have pure thoughts.

According to the *Mekubalim* both *Tefillin* are true and thus they should be worn at the same time, if they fit. However, most wear Rashi first and Rabbenu Tam second.



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Halachic Awareness & Education



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