

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

Family, Business, & Jewish Life Through the Prism of Halacha



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## THE GAME OF RISK:

*How much can we take? The Halachot related to avoiding danger*

We are all aware of the Torah imperative to avoid even the smallest chance of danger regardless of the financial or physical cost or even if it involves the violation of a Mitzvah. Yet, we intuitively understand that the Torah allows us to drive in a car even though, in 2006, 1.42 people died for every 100 million miles driven. An analysis of some of the rationales for why this is permitted will help us understand how Poskim evaluate other less obvious situations to decide whether the Torah wants us to ignore or avoid a specific risk.

Note: The goal of this article is to present some factors involved in this type of decision, and the article is not intended to serve as a source for a Halachic ruling. Rulings on these types of questions must be addressed by a Posek.

There appear to be a number of possible reasons to permit an act that appears to have some element of risk:

Although the Halacha requires that one be concerned with even a tiny chance of danger, there may be some risks that are so remote that we may ignore them even as they relate to Sakana - danger. An extreme example of this is that Hattam Sofer<sup>1</sup> says that (as it relates

to *Pikuah Nefesh* – life danger) one need not be concerned about occurrences which happen once in a thousand years. Hattam Sofer's guideline is obviously meant as a hyperbole, and the exact level at which something is considered truly remote as relates to Sakana requires further clarification.

In deciding whether an act meets the aforementioned criteria of being "too risky", one must be careful to properly identify the "act", as follows. For example, while there is reason to believe that eating too much salt raises one's blood pressure, drinking too many flavored soft drinks leads to diabetes, and basking too much in the sun may lead to skin cancer, that doesn't mean that it is forbidden to ever consume salt or sugar or walk outdoors. In each of these cases, it is a dangerous "act" when one has more than a specific amount of the otherwise-safe item, and therefore one cannot classify salt as being dangerous and forbidden.

Even when the item is considered truly dangerous, the Gemara<sup>2</sup> tells us that if people commonly ignore the danger inherent in a others are permitted (דשו ביה רבים), specific act to follow suit and rely on Hashem's protection. At the same time, as people become more concerned with that particular danger, the previously-permitted act may become forbidden. A full discussion of this principle, Hashem protects the) שומר פתאים ה' known as innocent), is beyond the scope of this article, but the following words of Rav Shlomo Zalman Auerbach<sup>3</sup> are instructive

*"Regarding how to classify a life-threat, and what is the limit, I greatly debated this matter, and it seems that anything that*

common.

2. Gemara, Shabbat 192b, Yevamot 12b, Avoda Zara 30b and elsewhere.

3. Minhat Shelomo II:37

(continued on back)



By Rabbi Moshe Medresh

### TEFILLAT ARVIT: LAWS & CONCEPTS *Doing Yaakov's Tefilla Right*

*"And [Yaakov] reached the place, and slept there, as the sun set..."* The Gemara in Berachot brings a debate whether the Tefillot were instituted by the Avot or correspond the Korbanot. This verse, according to the Gemara, implies that Yaakov instituted Tefilla.

The Gemara discusses the time of Arvit and Mincha. According to Hachamim, Mincha can be prayed until sunset and Arvit from then on, and according to Ribbi Yehuda the cutoff is P'lag HaMincha (1¼ Halachic hours before sunset). Tosafot explain that the P'lag HaMincha time corresponds to the bringing of the Ketoret.

The Gemara concludes that one may choose to follow either the opinion of Hachamim or that of Ribbi Yehuda. However, the Shulchan Aruch says that one can't choose conflicting opinions, as per the Rishonim in Berachot (although in Bet Yosef, Maran seems to be more lenient).

Accordingly, if one prayed Mincha

spotlight

Currency Conversion

(continued on back)

The exact value of various currencies mentioned in the Talmud is a source of debate amongst the Poskim. The 200 Zekukin Kessef mentioned in standard Ashkenazi Ketubot is a prime example. The Bet HaVaad's Even Ha'Ezer Habura, recently examined all the various opinions and their precise value in terms of silver weight.

1 Responsa Hattam Sofer Y.D. 338. At first glance, one might think that the driving example given in the previous text qualifies for the literal words of Hattam Sofer because even if a person drove 500 miles a week, it would, on average, take him more than 2,800 years before he would be killed in a car accident, which appears to be more than "once in a thousand years". However, Hattam Sofer actually means to say that not even once in a thousand years does anyone on Earth give all appearances of being dead, and then actually turn out to be alive. Accordingly, the appropriate statistic to compare to Hattam Sofer is that in 2006 there were rahmana litzlan a total of 42,642 driving related fatalities in the USA, which means that more than 115 people were killed each day – which of course doesn't qualify for the literal words of Hattam Sofer. However, as noted in the coming text, Hattam Sofer is clearly overstating the cutoff level at which the Safek Sakanah – risk of danger – is considered too

# GENERAL HALACHA

FOR YOU AND ME:

## The immigration dilemma through the prism of Halacha

By Dayan Yitzhak Grossman

With the recent Democratic takeover of Congress, the immigration controversy is once again heading toward a boil. While it is obviously impossible to find directly controlling precedents in the *Halachic* literature to such a complex and multifaceted issue, with its legal, moral, political and social components, this article introduces various *Halachic* discussions that can at least serve as background for thinking about the question.

### ECONOMIC COMPETITION

The normative *Halachah* is that residents of a city cannot object to business or professional competition by other residents of their city, but may object to such competition by non-residents.<sup>1</sup> Many medieval Ashkenazic authorities rule that this objection is only to one who wishes to remain a non-resident and compete locally, but anyone is absolutely entitled to settle locally and then compete: “it is obvious that a person may go and reside anywhere that he wishes, and the residents of the city cannot bar him [from moving in] – for have the first ones acquired it via *Hazakah*?<sup>2</sup> “It is certain that anyone may leave his city to reside in another city and they cannot bar him from coming to reside amongst them with the claim that he injures their livelihoods, for the land was not given exclusively to them.”<sup>3</sup>

Others, however, apparently disagree, and maintain that one wishing to settle in a city must obtain permission from its current residents.<sup>4</sup>

### COMMUNAL PROPERTY

The *Hemdat Shelomo* suggests that even according to the former view that the current residents may not bar newcomers from settling among them, they may still have the

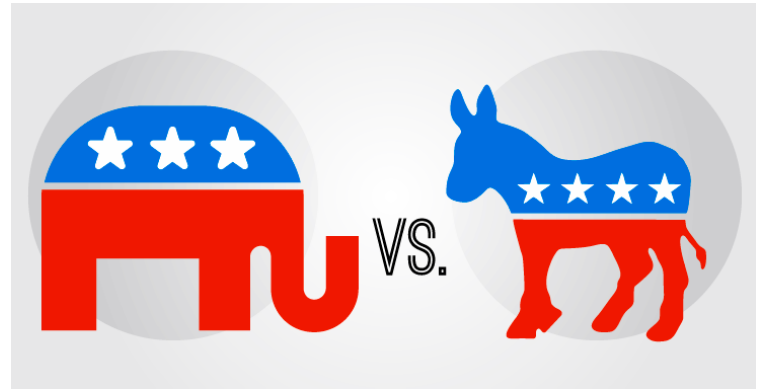
right to deny them access to local communal property, such as synagogues, baths and cemeteries, as such property is owned by the current residents in partnership (and therefore under their control). He is uncertain of this, however, and concedes that it is a novel point, not acknowledged by any earlier authorities.<sup>5</sup>

### HEZKAT HAYISHUV / HEREM HAYISHUV

A related discussion, apparently beginning in medieval Ashkenaz but extending for centuries afterward, concerns the *Hezkat HaYishuv* (roughly, right of residence and concomitant right to deny others residence) and *Herem HaYishuv* (anathema against settling without permission).<sup>6</sup> Some *Rishonim* explain that while the current residents have no inherent right to block others from settling among them, they may nevertheless accomplish this goal via the institution of a (communal) *Herem*, and some explain further that such a *Herem* does not generally have any force against the newcomers themselves, but merely bans the members of the local community from dealing with them.<sup>7</sup> [The *Mordechi* explains that the necessity for such anathemas is a consequence of the aforementioned permissive opinion that in the absence of any such enactments, anyone is free to reside wherever he wishes.]

### CLOSING THE DOOR IN HIS FACE

In a famous and controversial ruling, the *Maharik* explains that even the authorities who insist on the right to freely reside anywhere one wishes merely mean that the current residents cannot invoke the power of *Bet Din* to keep newcomers out, but they are certainly permitted to enlist the power of the govern-



ment or to utilize any other means to do so “and no one will dispute this but the perverse and crooked who does not know and does not understand and is not competent to rule”.<sup>8</sup> The *Bet Yosef* finds this endorsement of the exercise of naked power unacceptable, and declares that in spite of the *Maharik*'s deprecation of any dissenters, “I cannot, because of this, refrain from writing my opinion, as it is the work of Heaven, and there is no favoritism in the matter.”<sup>9</sup>

### THE LAND IS THE KING'S

Many *Rishonim* root the principle of *Dina D'Malchuta Dina* (“the law of the king is the law” - i.e., recognized by *Halacha*) in the king's ownership of his sovereign territory: “the land is his, and he can tell them, ‘if you do not do as I command, I will expel you from the land’”.<sup>10</sup> Some even explicitly make the analogy to ordinary ownership of private property: “the land is his, and even a commoner who has land, this is his right under the law, that no one shall benefit from his land without his consent and according to his regulations”.<sup>11</sup> But while most *Poskim* agree that *Dina D'Malchuta Dina* applies to modern democracies, there is some doubt as to whether this particular rationale does.<sup>12</sup>

8 *Maharik ibid.*, cited by *Bet Yosef, ibid.*, *Mehudash 2*.

9 *Bet Yosef (Bedek HaBayit) ibid. Shut. Mabit 3:31* has a lengthy rebuttal of the *Maharik*'s position, although he begins his critique with the deferential disclaimer that “ve'en meshivin et ha'ari ahare moto, ve'im kol zeh ...” *Shut. Maharashdam, Hoshen Mishpat, Siman 407*, on the other hand, does defer to the *Maharik*, even though he, too, finds his position difficult: “ve'af al pi she'lechorah nireh davar tamu'ah me'od, mikol makom mi yavo ahar ha'melech et asher kevar asahu ...” Cf. *Pithei Teshuvah ibid. s.k. 17* and *Hazon Ish, Bava Kama, Siman 23 s.k. 37-38*, among the considerable literature discussing the position of the *Maharik*.

10 *Ran, Nedarim 28a*.

11 *Piske HaRosh ibid. 4:11. Or Zarua, Bava Kama, Siman 447* takes this analogy so far as to explain that the principle of *Dina D'Malchuta Dina* is really a self-evident consequence of the king's ownership of his sovereign territory, and the *Hidush* of the principle is merely that “the entire land is the king's”!

12 See *Shut. Pe'at Sadecha, Siman 165; Kitve HaGa'on Rav Yosef Eliyahu Henkin, Helek 2 p. 175 os 10; Sefer HaMa'or (Preil) Siman 25 p. 99*; *Darke Hoshen (Silman – second edition, 5762) Helek 1 p. 362*.

1 *Bava Batra 21b; Shulhan Aruch, Hoshen Mishpat 156:5*.

2 *Shut. HaRosh (Mechon Yerushalayim)*, additional responsa *Siman 36 p. 482*, cited by the *Tur Hoshen Mishpat at the end of Siman 156*.

3 *Bet Yosef ibid.*, citing *Hazeh HaTenufa, Siman 15*.

4 *Rashi, Rambam and Rav Avigdor Cohen*, as understood by *Shut. Maharik, Shores 191* (second column “Ve'od bar min dein u'bar min dein ...”), cited in *Darke Moshe ibid.*

5 *Shut. Hemdat Shelomo, Orach Hayim, Siman 7 ot 5*, cited in *Pithei Teshuvah ibid. S.K. 16*.

6 See *Or Zarua 1:115*; *Mordechi, Bava Batra, Remez 517*; *Bet Yosef ibid.*; *Rema at the end of Siman 156*.

7  
The extant primary sources are frustratingly fragmented and incomplete, and contemporary scholars have struggled to piece together the context, rationales and parameters of these two concepts. See, e.g., *Simon Schwarzfuchs, “Hishtalsheluto Shel Herem HaYishuv – Re'iyah Mi'Zavit Aheret”*.



# MATTERS OF INTEREST

*Avissar Family Ribbit Awareness Initiative: Who is the Borrower?*

*Who is considered to be a borrower, and lending to a non-Jew with interest*



## WHO IS CONSIDERED A BORROWER?

Any time a Jew lends money to another Jew the laws of Ribbit will apply. The title “borrower” in Halacha is applied anytime a Jew borrows money or consumable commodities from another Jew. Furthermore, one who purchases merchandise on credit is also considered a borrower, and the seller – a lender. Similarly, after workers complete a project or a repair, the employer is considered a borrower and the employees – lenders, since the job ended and the wage payment is outstanding. When such titles are conferred, laws of Ribbit will apply in some form.

## RIBBIT FROM A NON-JEW, PART I

The Pasuk in Parashat Ki Tetze says: “You shall not take Ribbit from your brother, whether in the form of money or produce, or any other form” (Devarim 23:20). The follow-

ing Pasuk allows to charge a non-Jew Ribbit. There are various approaches among the Rishonim regarding taking Ribbit from a non-Jew. The Rambam (Sefer HaMitzvot, Assin 198, and Hilchot Malveh 5:1) takes this verse to mean that there is a positive commandment to lend to a non-Jew with interest. The Ra'avad and Ramban, however, disagree with this approach and say that the Pasuk is merely allowing us to collect Ribbit from a non-Jew, but not in any way commanding us to do so. In their opinion the verse should be understood as a prohibition to charge a Jew interest in a positive-commandment form.

The Abarbanel also takes issue with the Rambam's view, arguing that if the Torah considers taking interest to be an evil act, why does the Torah permit doing so from anyone? Why is it different than the prohibitions not to kill

or steal, which apply to all of mankind? At the very least, the Torah shouldn't command us to take interest!

The Abarbanel resolves this by explaining that although the Torah prohibits accepting interest from a Jew, it is not something that is considered inherently evil. In fact, it is a great kindness to lend money, even with interest, as it gives the borrower the opportunity to make an investment and perhaps a livelihood. According to the Abarbanel, the Torah only prohibits a Jew to take interest from another Jew, because it is considered a brotherly act to forego such charges. The Torah requires us to treat a fellow Jew as one would treat one's brother, which is with a greater degree of kindness.



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(continued from front pg.)

prompts people to flee for their life is considered to be a life-threat... But if most people do not fear it, it is not considered to be a life-threat. An example for this is the measles vaccine, although one should technically rush to have it administered, since most people do not feel a pressing urge to do so, one may take their time, although presently one is keeping themselves in a state of danger..."

Binyan Tzion<sup>4</sup> says that the stringency associated with danger only applies if the person is already ill or in some other situation which might lead to death, but it doesn't restrict a person from entering a situation where danger may develop in the future.

Shem Aryeh<sup>5</sup> understands that one may do those things which are required for "normal living" and need not be concerned with possible danger. It is noteworthy that within this opin-

4 Binyan Tzion 137 (See Ahiezer I:23)

5 Shem Aryeh Y.D. 27.

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after P'lag HaMinha then they should wait until after sunset before

praying Arvit. The Mishna Berurah says that one must choose an opinion to follow on all days (and not just that they shouldn't conflict on a specific day...). If one is in pressing need he may choose conflicting opinions – but not on the same day.

However, there are many synagogues that pray Minha and Arvit in conflicting "time

ion, the Tzitz Eliezer cites a disagreement as to whether it is limited to people entering the situation for business purposes or if it applies to all people.

Summary:

There are many experiences in life which carry with them a certain element of risk but are permitted according to Halacha. Using the example of food, we determine whether a specific food is "safe" based on a number of factors: What the chances are that consuming the food will lead to danger, how much of the food must be consumed before reaching the dangerous level, and whether consumption of such foods is considered safe by the average consumer. [Later authorities suggest two other factors that may play a role in this decision.] Clearly the answer to this question will be different depending on how much of the given food the person is considering eating, and on what is considered safe in the locale and times that the person lives in.

zones". This Minhag is discussed in the Poskim and the reason they give is that it can become very hard to gather people at other times for both prayers and because it is a rabbinic and not Biblical matter, there is room to be lenient. There is also room to rely on the Rambam who writes that one can pray Arvit early on Motzai Shabbat because it is not on the same level of obligation as Minha and Shaharit (Ein Medakdekin BiZmana – we are not particular about its timing).

On Friday afternoon, the Magen Avraham writes that all agree that one can pray Ar-

# The Daf in Halacha

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מסכת מנחות

## This Week's Topics

RAV ARYEH FINKEL

- דף צ"ח Long Live the Government
- דף צ"ט Torah Study: A Life Pursuit
- דף ק' Unusual Means of Consumption
- דף ק"א Chopped & Diced: Issurei Hana'a and Tum'as Ochlin
- דף ק"ב Condemned to Fire
- דף ק"ג Dedicating Korbanos Today
- דף ק"ד Measuring Liquids vs. Solids

vit early, because all of the parts of the Korban which correspond to Arvit (the Eivarim and Pedarim – limbs and fats) of Friday's Korban must be brought before Shabbat.

## EVENTS AT THE BET HAVAAD

### The Bet HaVaad Medical Halacha Center to be Featured in the Press

Almost immediately upon launching our new hotline, the administration of the Medical Halacha Center received requests to be interviewed.

One newspaper asked, "Why was the Medical Halacha Center and the hotline founded specifically under the auspices of the Bet HaVaad?" Here is the response from the Menahel, Rabbi Yehoshua Greenspan.

"The Bet HaVaad's mission is to focus on areas of Halacha that are more 'specialized' and which require a mastery of a specific subject that may not be as common as other areas of Halacha. These subjects require constant research and constantly keeping updated on new innovations in the field, in order to answer contemporary Halacha questions. The Medical Halacha Hotline is actually the first stage of a broader plan to provide Halachic guidance on a number of such 'specialty' topics that are not widely mastered."



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