

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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



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## KILLER BE KILLED:

### Should One Refuse To Save a Murderer?

Adapted from the writings of Rav Shmuel  
Honigwachs

*The Pittsburgh nurse speaks.  
I am The Jewish Nurse.*

*Yes, that Jewish Nurse. The same one that people are talking about in the Pittsburgh shooting that left 11 dead. The trauma nurse in the ER that cared for Robert Bowers who yelled, "Death to all Jews," as he was wheeled into the hospital. The Jewish nurse who ran into a room to save his life.*

So begins an online post from one Ari Mahler. Why did he do it?

*Love. That's why I did it.*

Bizarre motives aside, the question needs to be addressed: Should one save the life of a murderer?

This issue arose nearly a decade ago in northern Florida, where a Jew named Martin Grossman was facing execution for the 1984 murder of Peggy Park, a Florida wildlife officer who had caught Grossman violating his probation by possessing a gun.

Askanim interceded to save his life. One even got a letter written to the governor by a Catholic archbishop in the name of the Pope, attesting that Grossman was a true *ba'al teshuva*.

The activists' efforts, ultimately unsuccessful, were certainly well intentioned. Were they correct?

The Gemara (Nida 61a) records the following story:

*There were certain Galileans about whom it was rumored that they had committed a murder. They came before Rabbi Tarfon and said, "Hide us, sir!" Rabbi Tarfon replied:*

*"What shall we do? If I don't hide you, they will see you. Shall I then hide you? But the Sages have said that although one may not accept lashon hara, one must fear that it may be true. (Rashi: And maybe you did kill and it is forbidden to save you.) So you go and hide yourselves."*

Tosfos quotes the Sh'iltos D'Rav Achai Gaon, who explains, contra Rashi, that Rabbi Tarfon's concern was that by harboring a fugitive from the king's justice, he would be chancing his own execution.

From the Sh'iltos it would emerge that absent a risk to oneself, one should save a rumored murderer.

The Chafetz Chaim (Vol.1, *Klal* 6, *Mekor Mayim* Chayim 28) asks that Rashi here appears to contradict his own words in *Gittin* 47a, where he says that one would be permitted to save someone despite rumors afoot about him. He resolves the contradiction in two ways:

1. Rumors of murder must be heeded because of the potential harm that could result were a murderer to remain at large.
2. Rabbi Tarfon didn't need to involve himself because he judged that the fugitives were capable of hiding themselves. Had this not been an option, he would indeed have hidden them.

The Chafetz Chaim prefers his second answer, from which it emerges that one must indeed save a rumored murderer.

My friend and colleague Rav Moshe Yoselovsky adduced proof to the concept behind the Chafetz Chaim's first answer from a *Radbaz* in *Hilchos Sanhedrin* 14:8.

The Rambam there discusses the case of a defendant who was sentenced to death by Bais Din but absconded before the verdict could be implemented. He rules that if the charge was murder, any person may pursue the convict and kill

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Summary of Parasha & Halacha Shiur on P. Va'era, by  
Rabbi Ariel Ovadia

### One & Only: Praying to Hashem near Avoda Zara

The *Pasuk* says, that when the *Barad* (hailstones) hit Mitzrayim, Paroah called Moshe and begged him to remove this harsh plague. Moshe answered that he will pray to *Hashem* when he leaves the city. Rashi explains that Moshe couldn't pray in the city because it was full of idols.

The *Terumat HaDeshen* discusses a traveler who is faced with a choice: either to pray *Minha* on the road where there are many distractions, or to pull over at an inn which is full of idols. He cites this *Midrash* and rules that should preferably not pray in a place with idolatry unless there are too many distractions on the road. *Maran* and the *Rama* cite this *L'Halacha*. (Many *Poskim* are lenient when it is just symbols and not idols.)

If it is an actual house of idol-worship, one can not only not pray in it, one may not enter it whatsoever (*Avoda Zara* 12).

Therefore, the *Poskim* forbid entering a church to look at its art and architecture.

Hacham Ovadia  
Hedaya and  
others also

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## spotlight

*Bais HaVaad and the  
Credit Union Saga*

When *Poskim* published a *Kol Korei* regarding credit unions and ribbis, the *Bais HaVaad* was deluged with calls. There was much confusion and lack of clarity on the topic. In response, the *Bais HaVaad* published *State of the Union: May One Join PenFed or First Atlantic?*, an halachic analysis and background of the topic.

# GENERAL HALACHA

## EFFORT AND AIR:

### The Halachic Status of Intellectual Property Ownership

By: Dayan Dovid Grossman, shlita



It is easy to understand why robbing a bank is forbidden by the Torah. Stealing money, food or merchandise are also obvious crimes. The item is in the owner's possession, and the thief removes it for himself.

The question of theft becomes less clear when discussing stealing ideas or copying information. One could (mistakenly) argue that you are not actually taking anything from the producer. The CD or book remains intact even after you have copied it. How then, is it considered theft? Is it possible to steal information?

The creator of the intellectual property spent time, effort and money to produce the book or CD or digital file. Although it may not have a physical form, it is still considered a piece of property, and it is forbidden to use it without permission.

#### OWNING THE EFFORT

A standard example which many *Poskim* use to decide this *Halacha* is "Oni hamenakef b'rosh hazayis." The Gemara discusses the *ani* who climbs up a tree and risks his life to cut

down olives from an ownerless tree. If a second person takes the fallen olives, this is considered *gezel*. Although the olives are ownerless as they fall down to the ground, the *ani* has put tremendous effort into cutting down the olives, and the second person is committing a rabbinic *issur* of *gezel*.

According to the classic understanding of ownership, the olives on the ground are ownerless, because the *ani* did not make a *kinyan* on them yet. Therefore, *midoraisa*, it would not be *gezel* to take the olives from the ground. However, since the *ani* has climbed up the tree and exerted so much effort, our Rabbonim say that these olives are off limits, and it would be *gezel midivreihem* to take them.

There is a similar Gemara in Gittin, which discusses someone who invested a lot of effort to produce something. He may not have created it outright, but he put in the effort, or took the risk to procure it, and this gives him ownership. This applies to a person who "binafsho yavoh lachmo," he risked his life to make a living. For example, the worker who climbs a tree or goes onto a scaffold in order to earn sustenance for his family. If a second person comes along and capitalizes on that effort, he is transgressing the rabbinic *issur* of theft.

The concept of *gezel midivreihem* is also applied to intellectual property. It is forbidden to make a copy of published works, for example books, CD's or software programs. A person who capitalizes on another person's extreme effort is considered a thief, according to the *issur* of *gezel midivreihem*, with a rabbinic classification of *gezel*.

#### TAKING RESPONSIBILITY FOR AIR

Rav Shimon Shkop, in a shiur on Mesachot Bava Kama cites another example to explain this *Halacha*. The Gemara discusses many different types of *mazikim*, with varying levels

of responsibility to reimburse for the damage they cause.

One of the three *mazikim* is the *bor*, a person who digs a pit or puts out an obstacle. If someone falls into the pit and is damaged, or their animal is damaged, then the *baal habor* is responsible. The *baal habor* is the one who dug a pit *birshus harabbim*, in the common thoroughfare, and he has an obligation to pay for the damage.

The Gemara goes on to explain that the damage inflicted on the animal in the pit is caused by the *hevel*, the dense air that is produced inside the pit. The pit is not owned by a person, it's on public property. The damaging air of the pit is not owned either. Air is considered *davar sheain bo mamish*, it has no physical presence. And yet, the Torah assigns accountability to the one who dug the pit, he is the *baal habor*. He is responsible to pay for the animal who was killed by his pit.

Rav Shimon Shkop explains that we can understand from this Gemara that the Torah does apply ownership to a person who creates something, even if it has no physical presence. One can have ownership over the *hevel*, the air in a pit, to the point where he is responsible to pay if it damages an animal.

Therefore, intellectual property is also considered under ownership, even if it may not have a tangible form. A person can have possession of intellectual property, and it is forbidden to copy it without permission.

Based on these two examples from the Gemara, we can now understand why intellectual property theft is against *Halacha*.

A separate issue to consider is *dina dimalchusah dina*. In the United States, a copyright provides the creator of an original work with exclusive rights to its use and distribution. Therefore, it is against the law of the country, and by extension, the Torah, to copy the information.

# MATTERS OF INTEREST

## Avissar Family Ribbit Awareness Initiative:

### Ribbit and Heter Iska II



#### HETER ISKA II

There are two basic types of *heter iska* that are written today; one is a *chatzi milveh chatzi pikadon* (half loan half investment) and the other is a *kulo pikadon* (all investment). As a rule, money for which the recipient takes responsibility, is considered a loan, while money he is not responsible for is viewed as an investment.

In a *chatzi milveh chatzi pikadon* agreement, responsibility for losses is split evenly between the two parties; half is considered a loan and

the other half an investment. In the event that profits were made, each partner would receive half the profits. However, since the managing partner would prefer not to swear, the investor would receive the presumed profit amount.

The *kulo pikadon iska* is a complete investment where all profits would go to the investor, and would therefore be fully responsible. Here too, the manager would be required to verify his profits by swearing, unless the presumed profits are paid. There

are distinct advantages to each contract based on the specific circumstances and a *rav* should be contacted in each situation.

Even after a *heter iska* is drawn up and the investment partnership is in place, there is still a potential *ribbis* concern. Since in an *iska* agreement there is still a borrower-lender relationship on one half of the money, the borrower may not work for the investor *pro-bono*, and must receive some compensation for his work. In cases where the compensation

amount was agreed upon *at the time* the *iska* was drawn up, a small amount of money would suffice as compensation.

There are two compensation methods that may be used in an *iska* agreement. Some *heter iskas* state that one dollar has been advanced to the managing partner (borrower) for compensation for his work on behalf of the investor. When using such an *iska*, one dollar must actually be given to the borrower and cannot be forgiven. Other *heter iskas*

call for allowing the manager a slightly higher percentage of profit than usual, while still being responsible for only half of the loss. The higher amount of profit that really should belong to the investor (since he took responsibility in case of loss) is given to the manager as his compensation. When such an agreement is made, the presumed interest does not change, only the amount of actual interest does. The one dollar payment would also not be necessary.

# HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kasher Halacha Yomis

## Laws related to Zimmun



### If one knows that he will need to leave the meal early, and he does not want to have to wait for a zimmun, what should he do?

The obligation of *zimun* is only if three or more men are *koveya* (establish) themselves to eat together. This means that the men deliberately sit down to eat together, or they finish eating together. However, if one sits down with two that already began eating (i.e. he was not present at the beginning of the meal) and he finishes eating early (i.e. he is not present at the end of the meal), he is not obligated in *zimun* because he was never *koveya* himself to be part of the group.

Igros Moshe (O.C. I:56) writes that even if one sits down together with a group, if he says explicitly that he does not intend to join together with the others, then likewise there is no *keviyus* and therefore no obligation to wait for a *zimun*. Nevertheless, it is considered proper if possible for all three to finish together so they can form a *zimun*, since one should try to form a *zimun* whenever possible.

### If three men ate together, and one of the men needs to leave before the end of the

### meal, what should he do?

Shulchan Aruch (OC 200:1) writes that if two men want to end their meal and *bentch*, but the third still wants to continue eating, the third member must temporarily stop his meal and participate in the *zimun*. After the leader finishes the first *bracha* of *bentching*, if the third man wishes to continue his meal, he may do so. However, if only one man wants to end his meal, and the other two wish to continue eating, they are not obligated to accommodate him. The rule is that one must accommodate two, but two need not accommodate one. However, they are permitted and it is even praiseworthy for them to pause their meal and answer the *zimun*. The Mishnah Berurah (200:5) writes that if the one who needs to leave will suffer a financial loss if he waits, he can *bentch* without a *zimun*. But it would be more appropriate for the others to pause and answer.

### If two men ate bread and a third only had a drink of juice can they join together for a zimmun?

Shulchan Aruch (OC 197:2) writes that one may form a *zimun* even if one of the participants only drank a *revi'is* (approx. 3.3 ounces) of juice or any other beverage except for water. Since one who drinks a *revi'is* of juice within the time span of *k'dei shetiyas revi'is* (time it takes to drink a *revi'is*, i.e. a few seconds) is required to recite a *bracha acharona*, he may join together with those who are *benching* and form a *zimun*. The one who drank should listen to the leader recite the first *bracha* and answer *amein*. Afterward, he should say the appropriate *bracha acharona* for his drink.

The Beur Halachah (197:2) writes that even if the third participant only drank a majority of a *revi'is* (i.e. 1.7 ounces) of juice, he may also join in the *zimun*, because of a *sfek sfeika* (double doubt). Some opinions hold that to join a *zimun* the third participant need not be obligated in a *bracha acharona*, and some opinions hold that one becomes obligated in a *bracha acharona* if they drink a majority of a *revi'is*. Though we do not follow either of these opinions by themselves, one may rely on this combination to join a *zimun*.

### If two men ate bread and a third joined them for dessert can they join together to form a zimmun?

Yes, the third member may join to form a *zimun*, provided that he ate enough cake, fruit, or any other food, such that he became obligated in a *bracha acharona*. This means he needs to eat a *kezayis* (half the volume of an egg) of food, within a time span of *k'dei achilas pras* (approximately 3 minutes). Even if the men who ate bread already finished their dessert, so long as they potentially could still eat more, (e.g. they did not yet wash their hands for *bentching* [*mayim acharonim*]), a third man may eat a *kezayis* and join them to form a *zimun*. Moreover, it is considered meritorious for the two who ate bread to offer food to a third person so that they can create a *zimun* even though they themselves finished eating.

HAVE A QUESTION?

HALACHIC GUIDANCE  
*in all*  
MEDICAL MATTERS



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(continued from front pg.)

him by any means at his disposal.

Radbaz explains the reason that this law applies exclusively to murderers: A murderer on the lam is a threat to public safety.

According to this, one should not save a murderer, at least not a definite one.

If after we save him he will be imprisoned for life and no longer pose a threat to society, perhaps the Radbaz would agree that he be saved.

Sefer Chasidim (Ed. Margalios, 683), citing Mishlei 28:17, writes: "If a murderer runs to you, do not receive him, whether Jew or gentile, as in the incident of Rabbi Tarfon in Nida."

That the Sefer Chasidim doesn't qualify the ruling—for example, to apply only where one's own life is threatened by the king—makes it clear that he is in accord with Rashi, that it is forbidden to save even a rumored murderer.

The Chavos Ya'ir discusses the case of two teenage boys who got in a fight and one killed the

other. He fled the country, but a short time later he was sentenced to death in his new location for theft. *Askanim* intervened on his behalf, but others argued that a relative who is the *go'el hadam*, the redeemer of the blood, of the dead boy would be permitted to kill him, so why should anyone else seek to save him?

The Chavos Ya'ir rejects that argument, but he concludes that when we see someone who is liable to death facing an unnatural death, we should assume that this is Hashem's will and not try to stop it. He cites the Rashi in Nida, and he understands Tosfos not to disagree. (Maharik, quoted by Chafetz Chaim (ibid. 30), understands Tosfos as arguing with Rashi.)

It emerges from the Chavos Ya'ir that one should save even a known murderer from a natural death, but not even a rumored murderer from an unnatural one.

May Hashem protect Klal Yisrael from all who mean us ill.

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bid entering a church to vote.

The *Poskim* debate whether a mosque is

also a *Bet Avoda Zara*. The *Ran* is strict and the *Rambam* is lenient. Based on the *Rambam*, Hacham Ovadia permitted praying in *Ma'arat HaMachpela*. The *Poskim* also forbid entering reform and conservative temples,

unless there is a social hall that serves for general functions.

The *Poskim* debate whether one can convert a house that used to serve as an idol house into a *Bet Keneset*. The *Magen Avraham* (O.H. 154) permits, while the *Mishna Berura* and others are strict. The *Igrot Moshe* is lenient if a large expense was incurred or if the building was altered significantly.

# The Daf in Halacha

Bring the Daf to Life!

מסכת חולין

## This Week's Topics

RAY YOSEF FUND

POSEK AT THE BAIS HAVAAD

RAY YEHOSHUA GRUNWALD

DAYAN, BAIS HAVAAD LAKEWOOD

RAY ELIEZER COHEN

ROV OF BAIS MEDRASH TIFERES ELIEZER

RAY YOSEF GREENWALD

DAYAN, BAIS HAVAAD YERUSHALAYIM

- דף ל"ח NEARLY DEAD
- דף ל"ט THINKING BACK
- דף מ' OFFERINGS TO TZADDIKIM
- דף מ"א DAILY KAPPAROS
- דף מ"ב TREIFOS BASICS: PART 1
- דף מ"ג DO SCABS HEAL TREIFUS?
- דף מ"ד I'LL TAKE IT: ACCEPTING GIFTS

## EVENTS AT THE BET HAVAAD

Bais HaVaad Multiple Participation at The Business Halacha Summit in Chicago

Business leaders and Poskim gathered last week for the annual Business Halacha Summit in Chicago. This prestigious event leading into the Midwest Agudah Convention, addressed the most pressing challenges facing today's halachic business world with practical solutions and halachic perspectives.

The Bais HaVaad's Rabbi Dovid Grossman, shlit"a, was one of the featured speakers at the event, speaking multiple times over shabos, with presentations on Hilchos Shabbos: The Ins and Outs of Making Your Business 'Shabbos Compliant'; Hilchos Ribbis: Unraveling the Complexities; and then again on Shabos.



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