

# S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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## FLIGHT RISK:

### Max Pressure at Boeing

Adapted from a shiur by Rav Daniel Dombroff

#### IS BOEING LIABLE FOR THE DOOMED 737 MAX?

The world's largest aircraft manufacturer was in crisis.

The 737, Boeing's workhorse aircraft, had been selling briskly since 1967. The company was working on a fourth-generation model, the 737 Max, which would increase fuel efficiency and range while reducing noise.

Meanwhile, across the Atlantic, Airbus was deep into the development of its own next-generation narrow-body aircraft, the A320neo, an impressive offering that would compete directly with the 737 Max and was rapidly amassing orders. And Airbus was nearly a year ahead.

Boeing executives were stunned to learn in 2011 that American Airlines, a Boeing loyalist that hadn't bought a new plane from Airbus since the 1980s, was planning to order hundreds of A320neos.

Airlines resist new plane designs that require expensive pilot training, preferring derivative concepts that keep familiar systems in place. And the FAA streamlines approval of such planes. But the Max's new engines tended to cause the plane's nose to rise under certain conditions, which necessitated the creation of a software program called MCAS to automatically fight this tilt—which could cause a stall—by pushing the nose down.

Feeling pressured to stop the AA defection and stanch the sales hemorrhage, Boeing sped up the release of the Max by six months. And company executives downplayed, to airlines and the FAA, the need for pilot training

on the workings of the MCAS system and how to deal with a malfunction. Boeing even induced Southwest, an airline that flies 700 737s and nothing else, to buy the Max by making the unprecedented promise of a million dollars per plane if any new pilot training in a flight simulator would be required.

Lion Air Flight 610 crashed last October with no survivors, as did Ethiopian Airlines Flight 302 in March. Both flew the 737 Max. A malfunctioning of the MCAS system, coupled with the pilots' lack of knowledge about how to override the system, is suspected in both cases. The U.S. government has taken the step, very rare in an airliner crash, of opening a criminal probe of the manufacturer.

(The above account is distilled from media reports based on insider interviews.)

These tragedies give rise to Halachic questions of liability.

#### INDIRECT FLIGHTS

Halacha distinguishes between damage inflicted directly and indirectly. While being a *Mazik* is forbidden (*Bava Batra* 22b), and that prohibition extends even to *Gerama* (indirect causation), *Bet Din* only has authority to exact payment if the damage was direct. But the perpetrator of *Gerama* damage is *Hayav B'Dine Shamayim* (*Bava Kama* 60a); i.e., he must pay his victim, and will be held to account by Heaven should he fail to do so. But this Heavenly liability only obtains where the *Gerama* damage was intentional, and no one is accusing Boeing of that. However, the *Rambam* (*Hil. Hovel U'Mazik* 6:3) rules that a person is liable for damage to goods outside the victim's property only if the damage was intentional, and R' Isser Zalman Meltzer (*Even Ha'Azal*, *ibid.*) proves that there, gross negligence is equivalent to intent. It's possible that the same can be said of *Gerama*, and gross negligence would suffice to

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Parasha & Halacha Shiur Summary by Rabbi Yehoshua Sova

### Your Best Clothes: Clothing for K'vod Shabbat

The *Midrash Rabba* in *Rut* says that Hashem has mercy over someone who must be afflicted with *Tzara'at*, and therefore the *Tzara'at* first appears on the house, then on the clothing, and finally on his own body. We see the importance of clothing, which stand between a person and affliction, as the *Gemara* refers to clothes as *Mechabduta* – that which respects a person. Similarly, if the *Kohen* in the *Bet HaMikdash* would not wear all of the required clothing his service would be invalid.

Hacham Ovadia was asked in *Yehave Da'at* (1:23) whether one is required to buy a special pair of shoes for *Shabbat*. He discusses whether shoes are considered an article of clothing and must therefore be special for *Shabbat* like one's clothes. One of the proofs he cites is the *Yerushalmi* that states that as respect to one's parents one must clothe them and give them shoes. This would imply that they are different items. It may be, however, that the *Berayta* is just detailing the various acts of *Kibbud Av Va'Em*, as we find in various places. The *Ben Ish Hai* proves from *Birkot HaShahar* in which there is a separate *Beracha* for clothing and for shoes, but concludes that perhaps the *Beracha* of *Malbish Arumim* is a special *Beracha* that one is not completely naked.

In another *Teshuva* (*Yehave Da'at*, 3:67) Hacham Ovadia was asked whether one can sell immodest clothing at his store.

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establish an obligation in the eyes of Heaven.

However, the *Halacha* follows R' Meir (*Bava Kama* 100a) that one is liable for something called *Garmi*, and according to most *Rishonim*, *Garmi* is different from *Gerama*. How the line between the two is drawn is the subject of significant debate among the *Rishonim* and lies beyond the scope of this article.

With two crashes among many thousands of flights in the brief operational history of the 737 Max, the likelihood of a crash on each flight is small, but Boeing created real risk at the outset, so this might qualify as *Garmi*.

### BYE BUY

Because the plane was sold with the understanding that less training was needed than was the case, the airlines and aircraft lessors that bought it might be able to claim this was a *Mekah Ta'ut*—a mistaken purchase—and should be invalidated.

Additionally, because Boeing misled the airlines into thinking the plane was safe to fly, it indirectly caused the crashes. This is at least *Gerama*, but it could be *Garmi*. (See *Bava Kama* 99b.)

The airlines that experienced crashes have suffered harmful reputational damage. In this there is no question of *Garmi*; this a *Gerama*.

### MURDER

There is a case in the *Gemara* (*Hullin* 16a; see also *Sanhedrin* 77a) of a person who releases a stream of water that causes a man to drown. Unless the victim is killed by the initial burst of water, says the *Gemara*, this is considered an indirect act and the perpetrator is not liable for murder. It is unclear, however, whether killing by *Garmi* could be deemed murder.

### BAGGAGE CLAIM

Boeing has no business relationship with airline passengers, who are Boeing's customer's customers (or, in the case of a leased plane, its customer's customer's customers). But an airline is a *Shomer Sachar*, a paid custodian, of its passengers' checked bags, and the airlines can argue that Boeing misled them into thinking that the bags would be well protected on its planes. Again, this is at least *Gerama*, but it could be *Garmi*.

May Hashem bring us to all our destinations *L'Hayim Ul'Simcha Ul'Shalom*.

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After explaining the severity of dressing immodestly, Hacham Ovadia

says that it is still permissible, since these clothing are available elsewhere, and the one's who dress immodestly have become accustomed to doing so (*mumar l'davar echad*), and that the clothing can technically be worn in a permitted fashion (with other clothing over them).

## EVENTS & HAPPENINGS AT THE BAIS HAVAAD



This past Thursday, the Bet HaVaad presented for a select group of businessmen: "When Hametz Means Business", a symposium on corporate *Hametz* issues, presented by Rabbi Yosef Kushner, shlit"a, *Posek* at Bet HaVaad Halacha Center, and author of 'Commerce and Issurei Hana'ah'. Business owners face *Hametz* challenges that are different from those of consumers and the Bet HaVaad is at the forefront of educating and servicing them.

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