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 ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
 HaRav Yosef Grossman zt"l

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POLL PAYOFF: WHAT DOES IT TAKE TO UNDO AN ELECTION?

Adapted from the writings of Dayan Yitzhak Grossman

ALL'S WELL THAT ENDS WELL

Last week's article on electoral corruption discussed a community election that had become the subject of explosive charges of rampant vote buying, in which the Chasam Sofer had ruled that insofar as the vote buying was incontrovertibly established, the election was void.¹ R' Yitzchok Zilberstein discusses a similar case (where the fact of the vote buying was apparently established), but he arrives at a more nuanced conclusion: If the winners of the election were not qualified, or even if they were, but there were other candidates who were more qualified, and the winners were elected as a result of the bribing of voters, then the election is indeed invalid, but if the winners

were the most qualified candidates, then the election is valid despite the bribery.²

This distinction is somewhat puzzling: It is unclear how we are to determine which of the candidates is the most qualified; after all, if this were subject to objective determination, there would have been no need for the election in the first place!

As we alluded in the previous article, however, R' Eliezer Gordon of Telz also assumes that it is possible to objectively determine the "best" candidate independently of the opinion of the voters. He explains that where "experts" (*beki'im*) assess that the option preferred by

² R' Yitzchok Zilberstein, responsa at the end of Aleinu L'shabeiach (Bemidbar) teshuvah 7, Rav Zilberstein does not mention the Chasam Sofer's responsum, and he was presumably unaware of it.

¹ Shu"t Chasam Sofer C.M. siman 160.



PARSHAS VAYISHLACH

PRAYER PRIORITIES

Excerpted and adapted from a shiur by
 HaRav Chaim Weg

Please save me from my brother, from
 Eisav...

Bereishis 32:12

The Gemara (Brachos 26b) derives from the *pasuk* of "Vayifga bamakom" in *Parshas Vayeitzei* (Bereishis 28:11) that Yaakov instituted the daily *tefilah* of Ma'ariv. In this *pasuk* in *Parshas Vayishlach*, Yaakov engages in *tefilah b'eis tzarah* (prayer in a time of crisis) and asks Hashem to save him. These two forms of *tefilah* parallel the Rambam's description of two *mitzvos d'Oraisa* of *tefilah*: daily *tefilah*, which the Rambam derives from the *pasuk* of "Va'avadetem es Hashem Elokeichem" (Shemos 23:25), and crying out to Hashem in times of distress, which the Rambam lists (*Mitzvah* 59) together with blowing the trumpets.

The Ramban (*Hasagah* 5) disagrees with the Rambam and considers daily *tefilah* a *mitzvah d'Rabanan*, though he seems to agree that *tefilah* during times of distress is a *d'Oraisa* obligation.

The Shulchan Aruch (O.C. 106:2) rules that women are obligated in the *mitzvah* of *tefilah* (i.e., *Shmoneh Esrei*) because it is not a time-bound *mitzvah*. (According to the

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Packaged Pachyderm

Q I ordered an elephant-skin talis bag from a Jewish dealer in South Africa for \$800, which I paid in full by credit card. Usually, this dealer sends his goods to American customers via travelers returning to the U.S. after a vacation in South Africa. Due to the pandemic, there are few tourists, so after several months of waiting for him to find a ride for my talis bag I grew impatient and asked him to ship it to me. Upon arrival in the U.S., the package was confiscated by federal authorities because it was not accompanied by the required documentation that the elephant had died naturally and not been killed for its skin.

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Q&A from the
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a minority of partners is in the best interest of the partnership, we follow that option regardless of the preference of the majority of the partners. This only applies, however, where *bais din* happened to consult the experts. Generally, though, *bais din* assumes that the preference of the majority of the partners is in the best interest of the partnership and it is unnecessary to consult experts, "since [the partners] are not worse than other experts . . . and there are no experts in the matter greater than the partners themselves."³

THE CONTAGION OF CORRUPTION

R' Shlomo Yehuda Tabak discusses the case of a local community council (*"zayin tovei ha'ir"*) that was voting on whether to impose a tax on wine. A would-be tax farmer who hoped to profit from the tax was concerned that a particular member of the council would oppose it because he himself had wine for sale, and the imposition of a tax would be bad for his business. To prevent the man from opposing the measure and possibly persuading his fellow councillors to do the same, he bribed him to support it. (Why a council member with such a conflict of interest was not required to recuse himself from the matter is not explained.) The council subsequently voted unanimously to impose the tax.

Rav Tabak nullifies the election due to the bribery. He cites a ruling of the *poskim* that even for an institution that is empowered to reach decisions by majority rule, the institution's full membership must be present to constitute a quorum, and even a unanimous decision of less than the full membership is not valid. If even a single member is not present, we have to allow for the possibility that had he been there, he might have persuaded a sufficient

number of his colleagues to vote differently than they did in his absence to reverse the outcome. The same certainly applies in our case, where one of the members—though present—was bribed, and particularly so since the briber was obviously afraid of precisely that outcome!

Rav Tabak adds that even where the custom is that the body's full membership is not required for a quorum, the corruption of a single member still invalidates the body's decision, even if it is a unanimous one. The custom to relax the requirement of the participation of the body's full membership is clearly based upon the practical consideration that such a strict requirement would hamstring the body's ability to operate effectively, since it can be difficult to assemble the entire membership. Corruption, however, was presumably not anticipated by those who established the custom, and the requirement of universal participation therefore remains in place with respect to *honest* participation.⁴

It is unclear whether Rav Tabak's absolute intolerance of vote buying would extend from his case of a ruling body to a vote of the general public. Would a vote of the population of an entire city or country really be invalidated due to the bribery of a single voter? Perhaps the argument from practicality would yield the opposite conclusion here: that the insistence upon the ideal of perfect integrity among a voting population of significant size is unrealistic, and so as long as the corrupt voters are not numerous enough to affect the election result, the election remains valid. This is apparently the position of the Chasam Sofer, who implies that he is only discarding the results of the vote because it is conceivable that those results would have been different in the absence of vote buying.

³ Teshuvos R' Eliezer Gordon teshuvah 4 os 4.

⁴ Shu"t Teshuras Shai Tinyana siman 56.

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Magein Avraham, this ruling follows the Rambam that daily *tefilah* is a mitzvah *d'Oraisa* but no specific

time is Biblically necessary. The Magein Avraham therefore holds that women must only say a short *tefilah* with a *bakashah* (request) daily but are exempt from the *mitzvah d'Rabanan* of a full

Shmoneh Esrei.

The Ramban would hold that Chazal instituted *tefilah* (i.e., *Shmoneh Esrei*) as time-bound (Shacharis in the morning, Minchah in the afternoon, and Ma'ariv at night), but women are obligated (despite usually being exempt from time-bound mitzvos) because they, too, must daven to Hashem for mercy (see Brachos 20b). The Mishnah Brurah in fact rules, based on the Ramban, that women are obligated to

recite the full *Shmoneh Esrei* of Shacharis and Minchah. Nevertheless, the Chafetz Chaim is reported (by his son in Sichos HeChafetz Chaim, Vol. 1, 27) to have told his wife she was exempt from Shacharis and Minchah while she was busy fulfilling the mitzvah of raising her young children.



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I would like my money back, but the seller, who would be out the cost of the bag, has refused. Am I entitled to a refund?

At first blush it would seem that you are. In order to transfer ownership of property, a valid *kinyan* (mode of acquisition) must be made (Choshen Mishpat 189), and it would appear that the only *kinyan* that could have taken place here is *kinyan kesef* (acquisition by money) with the credit card payment. But *kesef* does not effectuate the *kinyan* of personal property (*mitaltelin*, i.e., movable items; see Choshen Mishpat 198:1), so the bag's ownership was never transferred to you, and it was the seller's bag—not yours—that was confiscated, entitling you to a full refund.



HARAV CHAIM WEG

But it may not be so simple. The Shulchan Aruch (C.M. 201) rules that any action that merchants customarily perform to consummate a deal, e.g., shaking hands, is halachically effective; this is known as *kinyan situmta*. It is very possible that a credit card payment has this status. But there is much debate whether *kesef* can be used as a *kinyan situmta* where it is not valid as a *kinyan kesef* (Pis'chei Choshen, *Kinyanim* 10:3,7). Also, depending on the specifics of your conversation with him, it is possible that your agreement to have the seller mail the product to you constituted acceptance of responsibility on your part (See Nesivos 340:11-12).

Due to these considerations, *bais din* would not be able to demand that the seller reverse the charges. However, it would be proper for him to refund a significant portion of your payment. Also, given that under civil law the buyer is entitled to a full refund if the goods are not received, it is very likely permissible for you to dispute the charge with the bank.

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