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ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
HaRav Yosef Grossman zt"l

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SDEI BASE HABA'AL: IS A RUNNER LIABLE FOR INJURING THE CATCHER WHILE SLIDING INTO HOME?

Adapted from the writings of Dayan Yitzhak Grossman

VINnews reports:

Recently, two sincere, *ehrlicheh* Jews had a friendly dispute to resolve. While playing baseball, one of the men was dashing across home plate and collided with the other man, the catcher.

One of the men, a doctor, broke his leg and was not able to work for two weeks. He estimated his loss at \$15,000, and wanted to know if he was permitted to sue the other man, whose liability happened to be covered by an insurance company.

They brought their *shaila* to Rabbi Betzalel Y. Rudinsky *shlit"l* of Forshay, the popular and renowned Rosh Yeshiva of Yeshivas Ohr Reuven in Wesley Hills and Rav of Kahal Ahavas Yitzchok.

Among other factors, the Rav invoked a

psak issued by Rabeinu Tam, who ruled that if two people are jousting for sport (which was not uncommon in his days),¹ there is no *chiyuv mazik*, because *savar v'kibel*—the participants accept the potential injury as a risk, and essentially they are *mochel* the damage.

Rabbi Rudinsky advised the doctor to be *mevater* and added that Hashem has many ways to compensate his loss.²

There are obviously numerous halachic issues involved in this case; in this article, we focus on the jousting precedent cited by Rav Rudinsky.

The Mishnah states:

The adults would grab the children's

¹ Regarding the practice of jousting among medieval Jews, see *As the Christians Do...* Bein Din Ledin, Nov. 9, 2010; *Jewish Sword and Buckler Fighters*, Patreon ["Dimicator"], Mar. 9, 2018.

² Baruch Green, *Collision at Home Plate: Life-changing Lesson from a Top Rosh Yeshiva*, VINnews, <https://vinnews.com/2023/12/06/collision-at-home-plate-life-changing-lesson-from-a-top-rosh-yeshiva/>



PARSHAS MIKEITZ

MEET AND GREET

Excerpted and adapted from a shiur by
Dayan Yaakov Rappaport

The Shulchan Aruch (Y.D. 148:5) says that on the holiday of an idol (*yom eidam*),¹ one may neither send a gift to nor accept one from someone who celebrates it. If someone being offered a gift is concerned about *eivah*, he may accept it and later dispose of it.² The Shulchan Aruch also says (Y.D. 148:8) that if the giver celebrates the holiday only due to the influence of the culture and not as a believer, one may send him a gift.

The Shulchan Aruch says (Y.D. 148:9) one may not go out of his way to greet an idolater on his holiday, but he may offer a greeting if he encounters him on the

¹ The Rama (O.C. 156:) writes that one may form a partnership with a Christian, because believing in Christianity does not constitute *ovodah zarah*. But the Noda Eihudah explains that the Rama holds that Christianity is in fact *ovodah zarah*, and what he meant is that although a business partnership could result in a dispute in which the partner will swear by his god, the Jew does not violate an *issur* thereby, because a non-Jew is not prohibited from swearing with *shifur* (by the true God and also by a false god).

² The Rama (Y.D. 148:12) offers additional leniencies in cases of *eivah*, especially because some *Rishonim* maintain that today's idolaters are not considered *ovdei avodah zarah*.

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lulavim from the hands of the children and eat the children's *esrogim*.³

This translation of the Mishnah follows Rashi, who explains that the adults would grab the lulavim from, and eat the *esrogim*

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Mom and Pop

Q When davening for a sick person, why is he referred to as the son of his mother? When davening for other needs, e.g., that a soldier be protected, should I use his mother's name as well? What should I do if I don't know it?

A Although Hashem knows all, *tfilah* should be clear, so the patient should be identified, by naming a parent (Aruch Hashulchan O.C. 119:1).

As to the source for using the mother's name, many cite the Gemara that says to use a patient's mother's name when reciting certain therapeutic incantations (Shabbos 66b),

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of, the children, “and this does not entail theft...because they are accustomed to do so out of joy.”

Tosfos cites Rashi’s explanation of the Mishnah and proceeds to derive therefrom the “rowdy celebration exemption,” that there is no liability for damage caused by rowdy behavior if it is a customary form of celebration in a particular social context:

We may learn from here that those young men who ride horses [to entertain] the groom, and they battle each other, and one tears another’s garment or damages his horse—they are exempt from liability, because they are accustomed to do so [in celebration of] the joy of the groom.⁴

The Or Zarua attributes this inference from the Mishnah to Rabeinu Simcha,⁵ I am unaware of a source attributing the inference or the halachic position to Rabeinu Tam.

The Agudah cites this position of Tosfos, and adds:

And so have I occasionally ruled regarding young men who play in the shul courtyard on Shabbosos and strike each other, provided they do not do so intentionally.⁶

It is unclear if this position is universally accepted. After citing Rashi’s understanding of the Mishnah and extrapolating to the case of the young men at the wedding, Tosfos cites an alternate interpretation of the Mishnah, from which the rowdy celebration exemption cannot be inferred, and the Rosh endorses this latter explanation over that of Rashi.⁷ Some *Acharonim* accordingly understand that the Rosh does not accept the exemption,⁸ but others maintain that despite his rejection of the interpretation of the Mishnah invoked by Tosfos as the basis for the principle, he nevertheless accepts the principle itself.⁹ In any event, the consensus of halachic authorities accepts the exemption as normative.¹⁰

⁴ Tosfos *ibid.* s.v. *Miyah.*

⁵ The printed edition of the Or Zarua (5622/862—Hilchos Sukkah Velulav *siman* 315 p. 137 column 2) has Rabeinu Shimshon, as does the *Mordechai Sukkah remez* 5743. The Yam Shel Shemo Bava Kama perek 5 *siman* 10 cites the Or Zarua as citing Rabeinu Simcha.

⁶ Agudah *ibid.*

⁷ *Piskei HaRosh* *ibid.* perek 4 *siman* 4, and cf. *Mordechai* *ibid.*

⁸ Bais David (R’ Yosef Dovid of Salonika) C.M. (*Nitzkei Mamon*) *siman* 148; *Bur HaGra* C.M. *siman* 378 as 25.

⁹ *Knesses Hagedolah* *ibid.* *hagahos* Tur as 12; *Mishkenos Haro'im ma'araches* os nun as 19. Cf. *Bach* C.M. end of *siman* 378 and *Shu"t HaBach* (*yeshanos*) end of *siman* 62...*Vehachai mashma mitoch divrei ha'Ashri* *azman*.

¹⁰ See the sources cited throughout this article.

Later German authorities, as well as various *Acharonim*, apply the exemption to other cases,¹¹ the most famous of which is the following:

All food that the young men snatch from each other, even without permission, due to the joy of Purim...this does not entail theft or robbery, and they should not be summoned to *bais din*, and we are not concerned about this, as long as they do not behave improperly according to the municipal leadership (*shivah tuvei ha'ir*).¹²

Of course, the various applications of the exemption to particular scenarios are not absolute but dependent on cultural mores. Thus, although the Rama (R’ Moshe Isserles) codifies the Purim rule,¹³ the *Shulchan Aruch* (R’ Yosef Karo) does not, declaring that “for us who are not accustomed to do so, there is no difference between Purim and the rest of the year in this regard.”¹⁴

Some *Acharonim* limit the exemption to property damage, as opposed to personal injury,¹⁵ but others do not make this distinction.¹⁶ R’ Yoel Sirkes (the Bach) endorses the latter view but insists that the principle is limited to cases of “small” damage (to person or property).¹⁷ It is unclear whether anyone disagrees with this limitation of the Bach.

In a collision between runner and catcher at home plate, according to the *Acharonim* who exclude personal injury from the rowdy celebration exemption, the exemption would clearly not apply to liability for a broken leg. But according to the Bach, the exemption’s applicability hinges upon whether a broken leg is classified as small or large damage. The case that the Bach characterizes as large is the apparently-irreversible blinding of one of the victim’s eyes, and his example of small damage is the wounding of a limb that will heal. On the

¹¹ *Trumas Hadashen cheilek* 2 (*psakim uchesavim*) *siman* 210 (see Rama to *Shulchan Aruch* O.C. 695:2, and see *Knesses Hagedolah* *ibid.* *hagahos* Bais Yosef s.v. *Veru'isi beSefer Hamapah*; *Hagahos* R’ Akiva Eiger to 695:2); *Shu"t* Mayim Chaim (Messas) O.C. *siman* 216.

¹² End of the *teshuvos* of R’ Yehudah (Mahari) Mintz (*siman* 16, p. 36); *Trumas Hadashen cheilek* 1 *siman* 110.

¹³ *Shulchan Aruch* O.C. 696:8.

¹⁴ Bais Yosef *ibid.* *siman* 695.

¹⁵ *Knesses Hagedolah* *siman* 695 *hagahos* Bais Yosef s.v. *Veru'isi beSefer Hamapah*. This was the opinion of the Bach’s correspondent in *Shu"t* HaBach *ibid.* as well (see following note).

¹⁶ *Shu"t* HaBach *ibid.* s.v. *Urmah shekasava de'Ein Iefatro*; *Magein Avraham* *ibid.* s.k. 7. *Mishnah Brurah* *siman* 695 s.k. 14 cites the position of the Bach without further comment.

¹⁷ *Shu"t* HaBach *ibid.*

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and they extend this to prayer.

Others cite the Zohar (Lech Lecha) on the *pasuk* (Tehillim 86:16) where Dovid Hamelech asks Hashem “And save the son of your handmaid.” The Zohar deduces from here that a patient’s mother is referenced in *tfilah*. (This source would extend the principle to davening for matters other than recovery from illness.)



RAV ARYEH FINKEL

Various reasons are offered, but most *Acharonim* seem to follow the Maharshal’s (*Shabbos* *ibid.*) explanation that the mother is the more clearly identified parent.

If the mother’s name is not known, various solutions are advanced. Some say to use the father’s name (see *Aruch Hashulchan* *ibid.*), some to use only the patient’s own name, and others to use his first and last name (*Orchos Rabeinu, Tfilah* 75). Still others say to use the patient’s own name *ben/bas* Chavah, because Chavah was called “the mother of all the living” (*Yalkut Yosef, Bikur Cholim* 1:20).

Some say that when davening for a person who was adopted as a child, the name of the adoptive mother can be used (*Orchos Rabeinu* *ibid.* 74).

one hand, it can be argued that a broken leg that will mend is not as serious an injury as the permanent loss of an eye, and it may be technically accurate to describe a broken leg as the wounding of a limb that will heal. But on the other hand, it seems implausible to characterize an injury as serious as a broken leg as small damage, particularly if the injury will cause the victim a \$15,000 loss.

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street. My even allow him to say “happy holidays.”

The *Shulchan Aruch* says (Y.D. 147:2) that one may say the name of the holiday, but he should pronounce it

a bit differently from the way believers do (e.g., “Kreitzmach”) so as not to accord it respect.

R’ Moshe Feinstein (*Igros Moshe* E.H. 2:13) writes that it is best not hold a bar mitzvah celebration or wedding on the holiday due

to *mar'is ayin*. He also says (Y.D. 3:85) that schools should not give the day off, even though it would allow parents who also have the day off to spend time with their children.

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