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## WATCHING (LIKE) A HAWK: MUST SNOWMOBILERS AVOID CHOPPING CHOPPERS?

*Adapted from the writings of Dayan Yitzhak Grossman*

AP News reports:

Jeff Smith was whizzing along on a snowmobile one evening a few years back when something dark appeared in front of him. He hit his brakes, but he couldn't avoid clipping the tail of a Black Hawk helicopter parked on the trail.

The March 2019 crash almost cost Smith his life and is now the subject of a federal lawsuit by the Massachusetts lawyer. He is demanding \$9.5 million in damages from the government, money he says is needed to cover his medical expenses and lost wages, as well as hold the military responsible for the crash...

Smith's lawyers in the yearslong court case argue that the crew of the Black Hawk helicopter that flew down from New York's Fort Drum for night training was

negligent for parking a camouflaged 64-foot aircraft on a rarely used airfield also used by snowmobilers...Smith argues that the crew didn't do enough to protect him, including failing to warn snowmobilers of the helicopter's presence on the trail, leaving the 14,500-pound aircraft unattended for a brief time and failing to illuminate it. The helicopter landed on an air strip approved by the Federal Aviation Administration, and the crew members testified that trainings are often conducted in similar locations. But Smith, who said he had snowmobiled on the trail more than 100 times, said the last time an aircraft used it was decades ago when he was a child—and never a military aircraft...

[The government] attempted to cast blame on Smith for the accident, claiming he was driving his sled more than 65 mph at the time of the crash and that he had taken both

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BAIS HAVAAD HALACHA CENTER  
290 River Avenue, Lakewood NJ 08701  
1.888.485.VAAD (8223)  
www.baishavaad.org  
info@baishavaad.org  
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HaRav Yosef Grossman zt"l

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PARSHAS SHMINI

TREIFEH GELT?

*Excerpted and adapted from a shiur  
by Rav Shraga Kallus*

*And they shall remain an abomination to you;  
you shall not eat of their flesh and you shall  
abominate their carcass.*

Vayikra 11:11

The Gemara (Psachim 23a) derives from "yihyu (they shall remain)" that one may not engage in commerce with nonkosher foods. Tosfos clarifies that only animals that people commonly eat are included in the prohibition, not horses or donkeys. Likewise, selling fur is permitted because it isn't food, and R' Moshe Feinstein writes that one may sell nonkosher dog food.

The Mishnah (Shvi'is 7:4) allows the sale of nonkosher food for profit in the case of *nizdamein*, where it was acquired inadvertently; for example, an animal received as an inheritance or gift, or one that became a *neveilah* due to a *shechitah* mishap.

The Rama (Y.D. 117:1) says an employer may not purchase nonkosher food to feed his workers, but the Shach allows it, because the employer derives no direct benefit from the arrangement. This would permit delivering

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prescription drugs and drank two beers before his ride...<sup>1</sup>

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1. Michael Casey, A man who crashed a snowmobile into a parked Black Hawk helicopter is suing the government for \$9.5M. AP News. <https://apnews.com/article/black-hawk-helicopter-crash-massachusetts-lawsuit-28c6ec0e4252d475c384e8de49a60a04>.

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HALACHA HOTLINE  
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ask@baishavaad.org

### Cash Advance

**Q** I collected funds on Purim for an orphan's wedding, but the wedding is several months hence. May I borrow the money in the meantime?

**A** The Shulchan Aruch (Y.D. 259:1) rules that one who sets aside money for tzedakah may use it for himself and pay it back later. Once the money reaches the hands of the gabbai tzedakah—who acts as a representative for the *aniyim* for whom it is intended when he receives it—it may not be borrowed, unless the loan would benefit the *aniyim*. An example of such benefit would be if the gabbai could solicit larger donations if he informed prospective donors that

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The question of the government's liability for injuries experienced by Smith, and conversely, Smith's liability for damage to the helicopter, is obviously highly dependent on the precise details of the case. In this article, we discuss the basic halachic principles governing such a case where both parties are Jews.

### WATCH YOUR STEP

The Mishnah states:

If one places a *kad* (a container) in the public domain, and another person comes and stumbles on it and breaks it, he (the pedestrian) is not liable. And if he was damaged by it, the owner of the *chavis* (barrel) is liable for his damage.<sup>2</sup>

The Gemara cites four approaches to these rulings:

Why is he not liable for breaking it? He should have watched where he was going!

- A member of the yeshiva of Rav said in the name of Rav: The Mishnah is speaking of a case where the owner of the pitcher filled the entire public domain with pitchers.
- Shmuel says: They taught this in a case where it was dark.
- R' Yochanan says: In a corner (where he couldn't see the utensil before rounding the corner).
- R' Aba said to Rav Ashi: This is what they say in the West (Eretz Yisrael) in the name of R' Ula: Because it is not the way of people to study the roads.<sup>3</sup>

According to the first three approaches, a person in motion is required to look out for obstacles; according to the fourth, there is no such burden.<sup>4</sup> Normative halacha follows the latter view.<sup>5</sup>

The Gemara proceeds, however, to set forth an exception:

There was such an incident in Neharde'a, and Shmuel obligated the pedestrian to pay. It happened also in Pumbedisa, and Rava obligated him...

Rav Papa said: Rava's ruling was issued in a case where the barrel was near the corner of a public olive press. Because the barrel's owners acted with permission in placing their barrels there, the pedestrian is required to watch where he's going.

Rav Papa's principle is that if an object is placed in the public domain with permission, all agree that pedestrians are obligated to look out for it, so they are liable for any damage they cause, and the object's owner is exempt from any damage

it does to pedestrians,<sup>6</sup> except in the dark.<sup>7</sup>

### PERMISSION

The distinction between acting with and without permission appears throughout tort law in the Mishnah and Gemara,<sup>8</sup> but there is a fundamental ambiguity: Does it hinge on halachic sanction for the conduct in question, or whether it is in line with social convention? In our context, Rashi seems to espouse the latter interpretation:

For such was their custom: When the olive press was full of people, those who would come there would place their utensils in the public domain and wait until the others left.

R' Tzvi Yehudah Ben-Yaakov, a *dayan* in Eretz Yisrael, suggests that Rashi means that the *custom* to place the utensils in the public domain somehow engenders the *right* to do so, and it is ultimately this right that matters.<sup>9</sup>

### A DRIVER

Contemporary *talmidei* chachamim disagree whether the principle that it is not the way of people to study the roads extends to vehicle operators. Rav Ben-Yaakov maintains that it does not extend to the driver of a car or even to the rider of a bicycle,<sup>10</sup> but others assume it applies to both.<sup>11</sup>

### LARGE OBJECTS

Additionally, there is some debate whether the principle is limited to small items like pitchers, or it extends even to larger ones like cars and bicycles.<sup>12</sup>

### OTHER LIMITATIONS OF PERMISSION

On the other hand, R' Yeshua Ratabi, a *dayan* in Eretz Yisrael, has suggested other limitations based upon various *Rishonim* and *Acharonim*, including restricting it to public rather than individual needs (*takanas rabim*), to specific fixed locations, and to objects that are left for brief periods—as opposed to scenarios that do not involve a fixed location and objects that are commonly left for a day or two.<sup>13</sup>

### CONCLUSION

The government's liability for the damage its helicopter caused would hinge upon these considerations:

1. The normative principle that it is not the way of people to study the roads implies that the government would be liable unless it had "permission" to park the helicopter on the trail, which, as above, is subject to

6 Nizkei Mamon 13:6; Shulchan Aruch C.M. 412:2. Cf. Kesef Mishneh ibid. and Bais Yosef ibid.

7 Hilchos Nizkei Mamon and Shulchan Aruch ibid. See Magid Mishneh ibid.; Kesef Mishneh ibid.; Piri Ha'adamah ibid.; Mekorei Halakam Bam LeRashash ibid.; R' Yeshuah Ratabi, *Rechev Shepaga Betik Tzitzim*, 23 Tamuz, 5790 (Jul. 15, 2020) (ss. 3).

8 See, e.g., Bava Kama 30a, 32a, and 47a-48b.

9 Mishpatecha LeYaakov ibid.

10 Mishpatecha LeYaakov ibid. and vol. 10 *siman* 36 end of os 4.

11 *Pegiah Bemar'eh Bemakom She'ein Regilus Lachanos*, Din-She'al Es HaRav, Torah Umedinah Halacha Lema'aseh-Chiyuv Nizkei Hata'avurah Vechukeha Al Pi Torah, Chai Roi's Rav Ratabi ibid. (os 1) extends the principle to the driver of a car, at least in the case of a collision with an object that is low to the ground.

12 Mishpatecha LeYaakov cheilek 4 ibid.; R' Yimon Zamir, *Nezek LeChaver Beta'us Bederech Harabim—Hemsheich Hadiyun*, Kollel Dayanus Psagot-She'al Es HaRav; Eretz Chemdah, Halacha Paukai, *Gilyon* 59.

13 Rav Ratabi ibid. os 2.

2 Bava Kama 27a.

3 Ibid. 27b.

4 Cf. Shu"t Maharshah *siman* 96; Kovetz Teshuvos Chasam Sofer *siman* 18 (cited here); Mishpatecha LeYaakov vol. 4 *siman* 22 os 1 (also available as *Din Udvarim Be'inyan Nizkei Mamon Bis'Unas Drachim*, *Mispar Siduri* 846).

5 Rambam Hilchos Nizkei Mamon 13:5; Shulchan Aruch C.M. 412:1. Some *Rishonim* rule in accordance with Shmuel and R' Yochanan—see *Mishpatecha LeYaakov* ibid.

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or cooking nonkosher food (other than *basar bechalav*, the cooking of which is an *issur*

*de'Oreisa*) for pay, because the benefit is indirect.

The Rama writes that the *issur* doesn't include foods that are *asur mideRabanan*, like *pas akum* or

*chalav akum*. But R' Akiva Eiger notes that nonkosher wine may not be sold, because some hold that one may not derive benefit from *stam yeinam*.

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the *tzedakah* account's balance is low (Arachin 6b; Taz Y.D. 259:1). Alternatively, a *gabbai* who knows that the funds will be available for him to borrow might be incentivized to collect more (Bais Yosef Y.D. *ibid.*).



RAV ARYEH  
FINKEL

Money that a donor sends electronically to a *gabbai's* *personal* account via Zelle, Venmo, or the like may be borrowed by the *gabbai* in all cases, because the funds aren't yet owned by the *aniyim* if legally they belong to the *gabbai*. Cash that is collected is subject to the above rule even if it is subsequently deposited into the *gabbai's* personal account, because it immediately, upon collection, belongs to the *aniyim*.

The Chamudei Daniel (cited by the Pis'chei Teshuvah *ibid.* 4) says that the Shulchan Aruch's rule is flexible: If the *minhag* is that the *gabbai'im* may borrow the money, it is permitted, because the donors and the *aniyim* accept the practice. The Chazon Ish rules accordingly (cited in *Derech Emunah* Hil. *Matnos Aniyim* 8 footnote 123).

Even in cases where a *gabbai* may borrow *tzedakah* funds, it is permitted only if he will be able to repay immediately if the need arises for the funds to be disbursed (Taz *ibid.* 2).

two possible interpretations.

2. Even if the government did have permission, it may nevertheless be liable because the accident occurred in the dark, and some have suggested additional limitations on the permission dispensation.
3. On the other hand, even if the government did not have permission, drivers may be unlike pedestrians and always responsible to look out for obstacles.
4. Similarly, the principle may not cover collisions with large objects like a Black Hawk helicopter, although its size may be counterbalanced by its camouflage.

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