

THE BAIS HAVAAD HALACHA JOURNAL

Family, Business, and Jewish Life through the Prism of Halacha

VOLUME 5784 • ISSUE XLIV • PARSHAS VA'ES'CHANAN • SHABBOS NACHAMU

A PUBLICATION OF THE
BAIS HAVAAD HALACHA CENTER
290 River Avenue, Lakewood NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org
info@baishavaad.org
Lakewood • Midwest • Brooklyn • South Florida

לע"נ הרב יוסף ישראל
ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of
HaRav Yosef Grossman zt"l



KILLER DEAL: MAY MURDERERS BE RELEASED IN A PRISONER SWAP?

Adapted from the writings of Dayan Yitzhak Grossman

AP News reports:

The United States and Russia completed their biggest prisoner swap in post-Soviet history on Thursday, with Moscow releasing journalist Evan Gershkovich and fellow American Paul Whelan, along with dissidents including Vladimir Kara-Murza, in a multinational deal that set two dozen people free, the White House said...

But the welcome news was still sure to spark concerns over the imbalance of the deal—with Russia freeing journalists, dissidents, and others convicted in a highly politicized court system in exchange for people the West regards as rightfully charged—and whether it gives foreign actors seeking leverage over the U.S. an incentive to take prisoners...¹

Vadim Krasikov, the Russian at the center of Thursday's mass prisoner swap, has long topped the Kremlin's list for an exchange... Krasikov was convicted for the Aug. 23, 2019

killing of Zelimkhan "Tornike" Khangoshvili, a 40-year-old Georgian citizen who had fought Russian troops in Chechnya and later claimed asylum in Germany.

Khangoshvili was gunned down from behind near Kleiner Tiergarten, a central Berlin park, with a silenced handgun. Witnesses saw the gunman throw a bike, a gun, and a dark wig into the Spree River nearby. Police arrested him before he could escape on an electric scooter...The decision to free Krasikov wasn't made lightly, the German government said.

Chancellor Olaf Scholz's spokesperson, Steffen Hebestreit, said in a statement that the release of people held "wrongfully" in Russia and a German held in Belarus could only be achieved by deporting Russians "with an intelligence background" held in Europe, such as Krasikov.

"The freedom, physical well-being and—in some cases—ultimately the life of innocent people imprisoned in Russia and unjustly held political prisoners stood against the state's interest in the enforcement of the prison

(continued on page 2)



PARSHAS VA'ES'CHANAN THE GREAT BEYOND

Excerpted and adapted from a shiur
by Dayan David Grossman

You shall do what is fair and good in the eyes of
Hashem...

Dvarim 6:18

Rashi says this is the source for acting *lifnim mishuras hadin* (beyond the letter of the law). Tosfos (Bava Metzia 24b s.v. *Lifnim*) says there are three categories of *lifnim mishuras hadin*, each with a different source:

1. One who finds a wallet in a large marketplace is exempt from the mitzvah of *hashavas aveidah* (ibid.), but he must return it under "ve'asisa hayashar vehatov" because he incurs no financial loss by doing so.¹
2. The Gemara (Bava Metzia 30b) implies that a *talmid chacham* should go *lifnim mishuras hadin* and perform the mitzvah of *te'inah* (loading an animal), even though he is exempt from it because *eino lefi chvodo* (it is beneath his dignity). The Gemara derives this from *hama'aseh asher ya'asun* (Shmos 18:20). Tosfos explains that this type of *lifnim mishuras hadin* applies where others do have to perform the mitzvah, but this person has a specific exemption, in which case the mitzvah applies even if it will cause financial loss.
3. The Gemara (Bava Metzia 83a) discusses workers that broke barrels in transport, and

(continued on page 2)

¹ See also the Ramban, who describes this category of *lifnim mishuras hadin* as being one where a new halacha is created that did not otherwise apply. For this reason, one is not obligated to suffer a financial loss. The Ramban says Chazal placed the rule of *bar metzra* (a neighbor's right of first refusal) in this category.

Drink Offering

Q A complimentary gift card for a nonkosher online winery was inserted into an order that I received. May I use it to have a gift of wine sent to the home of my non-Jewish employee?

A Wine manufactured by a non-Jew is *stam yeinam*, which is treated *mideRabanan* like *yayin nesech* and is forbidden. Most nonkosher items may be used in ways other than eating or drinking, but no *hana'ah* (benefit) may be derived from *yayin nesech* (Y.D. 123:1).

The Gemara (Avodah Zarah 63b; Shulchan Aruch Y.D. 132:4; see Shach) discusses an employer allowing his non-Jewish employees to buy themselves wine on his account. It says

(continued on page 2)

Q&A from the
**BAIS HAVAAD
HALACHA HOTLINE**
1.888.485.VAAD(8223)
ask@baishavaad.org

¹ Eric Tucker, Dasha Litvinova, and Matthew Lee, US and Russia complete biggest prisoner swap in post-Soviet history, freeing Gershkovich and Whelan, AP News, <https://apnews.com/article/russia-gershkovich-whelan-d803e266cb4e60135ec5d668d684529f>.

(continued from page 1)

sentence of a convicted criminal," Hebestreit said.

"Our obligation to protect German citizens and solidarity with the U.S. were important motivations," he added.²

In this article, we discuss some Torah perspectives on freeing a convicted murderer as part of a prisoner exchange.

The Torah commands:

You shall not accept ransom for the life of a murderer who is worthy of death, for he shall surely be put to death. You shall not accept ransom for one who fled to his *ir miklat* (City of Refuge) to return to dwell in the land, before the death of the kohen. You shall not bring guilt upon the land in which you are, for the blood will bring guilt upon the Land; the Land will not have atonement for the blood that was spilled in it, except through the blood of the one who spilled it. You shall not contaminate the Land in which you dwell, in whose midst I rest, for I am Hashem Who rests among the Bnei Yisrael.³

The Rambam explains:

And the *bais din* is warned not to accept ransom from the murderer. Even if he gave all the money in the world, and even if the *go'el hadam* (redeemer of the blood) wished to exempt him. For the soul of the murder victim is not the property of the *go'el hadam*, but the property of Hakadosh Baruch Hu, as it says, "You shall not accept ransom for the life of a murderer." And there is nothing the Torah forbids more strictly than murder, as it says, "You shall not bring guilt upon the land...for the blood will bring guilt upon the Land..."⁴

R' Itamar Wahrhaftig considers whether the freeing of convicted murderers for political considerations violates the prohibition of "You shall not accept ransom for the life of a murderer who is worthy of death," perhaps even in jurisdictions where a murderer is merely jailed and not executed:

The *pasuk* there concludes: "You shall not bring guilt upon the land...the Land will not have atonement for the blood that was spilled in it, except through the blood of the one who spilled it. You shall not contaminate the Land..." Perhaps punishment lessens the contamination of the Land.⁵

The Sefer Hachinuch, however, declares that the prohibition against accepting ransom for the life of a murderer applies only while the *Bais Hamikdash* stands, "because now, in this era, we do not practice capital punishment."⁶ Moreover,

even if, per Rav Wahrhaftig's suggestion, the prohibition would apply to murderers sentenced to punishments other than death, it is not clear whether it would extend to jurisdictions outside Eretz Yisrael, given the rationale of avoiding the contamination of the Land, because "the Land" may refer specifically to Eretz Yisrael. Indeed, R' Shlomo Korach, former *rav* of the Sepharadi community of Bnei Brak, discussing a murderer convicted in a Yemeni (Arab) court, inclines to the view that the prohibition would not apply to a non-Jewish court outside Eretz Yisrael.⁷ Rav Korach's *talmid* R' Netanel Me'oded, Chief Rabbi of the Sepharadi Community of Hong Kong, suggests that the prohibition may theoretically apply even outside Eretz Yisrael, but he nevertheless agrees with the basic position of his *rebbe* that it is limited to Jewish courts operating according to halacha.⁸ Another perspective on the importance of carrying out the Torah's sentence upon a killer is found in the Mishnah:

[The inadvertent killer] may not leave the *ir miklat* for any reason: not to testify regarding a mitzvah, nor to testify about a monetary case, nor to testify about a capital case. Even if the Jewish People needs him, and even if he is the commander-in-chief of the Jewish army like Yoav ben Tzruyah, he may never leave, as it says, "that he fled there"—there shall be his dwelling place, there shall be his death, there shall be his burial.⁹

The Rambam codifies this rule as follows:

The exiled [inadvertent killer] never leaves his *ir miklat*. Even for a mitzvah matter or for testimony, whether testimony about a monetary case or testimony about a capital case. Even to save a life by his testimony, or to save from an idolater, or from a river, or from a fire, or from a collapsed building. And even if the entire Jewish People requires his salvation, like Yoav ben Tzruyah, he never leaves until the death of the Kohen *Gadol*. And if he leaves, he has released himself for death, as we explained.¹⁰

The *Acharonim* are puzzled by this halacha: Since saving human life is of extreme importance, to the extent that almost all mitzvos must be violated in order to save even a single life, why is the obligation to remain in the *ir miklat* not overridden to save the entire Jewish People? Some understand that this rule is actually for the protection of the killer himself, lest he be killed by the *go'el hadam* upon leaving the *ir miklat*,¹¹ and some accordingly suggest that the Mishnah may just mean that the killer is not *compelled* to leave the *ir miklat* to save lives, but perhaps we do not object to him doing so of his own volition.¹² Others explain that there are no indispensable men, and the salvation of Klal Yisrael

O&A from the
BAIS HAVAAD
HALACHA HOTLINE
1.888.485.VAAD(8223)
ask@baishavaad.org

(continued from page 1)

that if the employer paid the vendor in advance, he would be considered the purchaser of the *yayin nesech*, and that is forbidden. But if the purchase was made on credit, then the employees are the purchasers, and the employer may step in later to pay the bill.



RAV ARYEH FINKEL

When a company issues a gift card, it legally owes the cardholder what the card promises. Whatever merchandise will later be bought with the card is effectively prepaid. So in your case, you are the purchaser, even though the wine never enters your possession. It is also forbidden for you to give the card to the employee as a gift.

But that's only if the gift card is issued in your name (or to your email address), in which case you own the issuer's debt. If the card has no addressee, and it is activated by entering on the issuer's website a code printed on the card, then the gift is available to anyone who legitimately obtains the code. In that case, you may give the card to your employee as a gift, because you have no involvement in the purchase.

does not truly hinge on the military leadership of any individual.¹³ But the straightforward reading of the Mishnah is that the obligation to remain in the *ir miklat* is simply an absolute imperative upon the killer,¹⁴ and it applies even when lives are at stake.¹⁵ This may be indicative of the importance the Torah ascribes to ensuring that a killer, even an inadvertent one, suffers the proper punishment, or experiences the proper atonement, for his sin.

R' Michael Vigoda adduces the halacha that a killer may not leave the *ir miklat* even to save Klal Yisrael (according to its simple interpretation as an inherent and absolute prohibition and not merely as a safeguard against the killer being killed by the *go'el hadam*) as an argument in favor of the position that a murderer should not be released as part of a prisoner exchange, even when doing so would accomplish the mitzvah of *pidyon shvuyim* (redemption of captives).¹⁶

²Putin called him a patriot. But who is Vadim Krasikov, a Russian released in the mass prisoner swap? AP News. <https://apnews.com/article/russia-us-prisoner-swap-gershkovich-krasikov-a48a143c9e6336738745e559adac1af>. Cf. here.

³Bermidbar 35:31-34.

⁴Hilchos Rotzeiach 1:4. Cf. ibid. 4:9-19.

⁵R' Itamar Wahrhaftig, *Ge'ulas Dam Bizmaneinu*, Hama'ayan Tishrei 5784 fn. 31 (citing Rav Wahrhaftig's article in *Techumin* 6 (5746) p. 305).

⁶Sefer Hachinuch mitzvah 412.

⁷Teshuvah Kahalacha siman 45.

⁸Mizrach Shemesh cheilek 1 siman 8 pp. 52-61.

⁹Mishnah Makos 27.

¹⁰Hilchos Rotzeiach 7:8.

¹¹Or Sameich ibid. (and see Meshech Chochmah Shmos 4:19). Cf. Einayim Lamishpat Makos ibid. pp. 76-77 (beginning of os 5).

¹²Aruch Hashulchan C.M. 425:57, but cf. Einayim Lamishpat ibid. p. 77 sv. Uchemoch.

¹³R' Asher Weiss, Parshas Shmos; Ha'rim Tzarich Lehistakein Kedei Lehatzil Chaveiro and Histakus Lehotzilei Chaveiro Uvedin Chayei Shvach Behatzlakos Ne'fashos.

¹⁴See Tiferes Yisrael ibid. Bo'az os 2. Cf. Chelshak Shlomo to Makos ibid.

¹⁵Einayim Lamishpat ibid. sv. Vni"l.

¹⁶R' Michael Vigoda, *Pidyon Shvuyim Vegufos Temuras Shichzur Mechablim*.

(continued from page 1)



says that Rabbah bar bar Chanah, their employer, should not demand compensation and should even pay their wages. As the source, it cites the *pasuk*,

"Iema'an teileich bederech tovim" (Mishlei 2:20). Tosfos explains that this category includes cases where there is a financial loss and no one else in this situation would be obligated to suffer the loss. In such a case, *ve'asisa hayashar vehatov*

and *hama'aseh asher ya'asun* do not apply, but one should still pay because of "Iema'an teileich bederech tovim."

SILVER
FAMILY
THERAPY
AGENCY
Care

BHHJ SPONSORS

Mr. Aryeh Pomerantz

To become a corporate sponsor of the BHHJ or disseminate in memory/zechus of a loved one, email info@baishavaad.org.

Elevate your Inbox.

Scan here to receive the weekly email version of the Halacha Journal or sign up at www.baishavaad.org/subscribe

