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MORAL HAZARD: WHEN RISKY BEHAVIOR IS PERMITTED

Adapted from the writings of Dayan Yitzhak Grossman

The Jewish Telegraph Agency (JTA) reports:

Sam Salz's first taste of NCAA Division I football came during a kickoff—known in football as a “special teams” play.

For most football players, kickoffs are in fact routine. But if anything about the play was special, it was Salz's presence on the field.

The 5-foot-6, 160-pound wide receiver for Texas A&M is not only Jewish—itsself a rarity in the ranks of college football—but is believed to be the only Orthodox athlete on a DI team. And in taking the field Saturday evening after the end of Shabbat, Salz became what is likely the first Orthodox Jew to appear in a DI game.

Like most Orthodox Jews, Salz observes Shabbat and abstains from work—which includes a wide range of activities, from using electricity to traveling in a motor vehicle—on Saturday, which is also college football's usual game day. So in more than two years on the team, Salz, a senior, hasn't been able to suit up once.

But Shabbat ends earlier in November (it concludes at nightfall), and for once, the team's schedule was aligned in Salz's favor. Saturday's

game between Texas A&M and New Mexico State began at 6:45 p.m. local time, approximately 40 minutes after the stars came out.

“From the bottom of my heart I would just like to thank G-d and everyone who believes in me,” Salz wrote on X. “The moment felt so crazy I totally forgot that it was the first official snap of football I've played in my life.”...

Salz knew Shabbat would be a challenge coming in and chose jersey No. 39 in honor of the 39 kinds of work traditionally forbidden on the day of rest...

Still, he persisted. For games on Saturday nights, Salz told The Athletic he would walk to the stadium, finish Shabbat with Torah study and a meal, and then suit up and join the team in the second half of the game...¹

While the reporting on Salz and the challenges posed to his football career by his religious observance focuses on Shabbos, playing contact sports entails another potential halachic problem:

(continued on page 2)

¹Jacob Curvis. Sam Salz is likely the first Orthodox Jew to appear in a Division I college football game. Jewish Telegraph Agency. <https://www.jta.org/2024/11/18/sports/sam-salz-is-likely-the-first-orthodox-jew-to-appear-in-a-division-i-college-football-game>.

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PARSHAS TOLDOS

FORTHRIGHT FALSEHOOD

Excerpted and adapted from a *shiur*
by Dayan Yitzhak Grossman

And Yaakov said to his father: “It is I, Eisav
your firstborn...”

Bereishis 27:19

Yaakov Avinu engaged in deception multiple times to obtain what was rightfully his. Is such behavior permitted?

The Gemara (Brachos 5b) indicates that Rav Huna suffered a financial loss because he did not give his sharecropper what he deserved, despite the fact that the sharecropper had acted dishonestly with him. But this would appear to contradict another Gemara (Megillah 13b) that says Yaakov told Rachel he was allowed to engage in deception against those, like Lavan, that attempt to deceive him, in order to get what he is owed.

The Mordechai distinguishes between the cases: One may seize a specific object that was taken from him, but he may not, in response to being cheated, seize anything else. The Ben Ish Chai limits the Mordechai's license to seizing the item in public; if that is not possible, then surreptitious retrieval is permitted. The Sho'eil Umeishiv agrees, though he is unsure whether seizing money in the amount owed is the equivalent of recovering the stolen object.

The Rashba, by contrast, argues forcefully that lying is absolutely forbidden even to

(continued on page 2)

Q&A from the
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Declared Interest

Q My friend loaned me money and incurred expenses in withdrawing it and getting it to me. May I buy him a small gift to show my appreciation for his efforts?

A The *de'Oreisa* prohibition against *ribbis* (interest) applies only if the lender made the loan with the stipulation that payment beyond than the principal is required. But the Chachamim prohibited gifts or compensation even if the lender didn't require it, and that includes a gift given in appreciation of the loan. The Shulchan Aruch (Y.D. 160:6) says that if a borrower repays a loan and subsequently sends a gift in appreciation of the lender tying up his funds, it is forbidden as *avak ribbis* (Rabbinic *ribbis*).

(continued on page 2)

(continued from page 1)

the voluntary assumption of risk to life and health. R' Moshe Feinstein addresses this issue in a famous *teshuvah* on the permissibility of engaging in "the game of throwing balls":

I was asked by someone whether it is permitted to earn a living from the game of throwing balls (*mis'chak zrikas hakadurim*)...for there is a risk, as one in several thousand have experienced danger. I responded that in my humble opinion, we may permit this...

R' Moshe's basis for leniency is the following *breisa* cited by the Gemara:

The *pasuk* says: "And for it he risks his life." Why did this worker climb a high ramp, or suspend himself from a tree, placing himself in mortal danger? Was it not for his wage?²

R' Moshe infers:

It is evident that it is permitted to earn a living even where there is a remote risk of danger, and it follows that it is permitted even where there is a similarly remote risk that he will kill others—for why is this different from the risk that he himself will be killed? After all, killing oneself is also included in the prohibition of "You shall not murder,"³ but it is still permitted in the case of a remote risk like this when necessary to earn a living. If so, even where there is a risk to others, it is permitted in a case like this, where the risk is remote. Also, if we do not say so, then the owner of the tree would not be allowed to hire him.

But it is certainly reasonable that this is only when the other person too engages in this willingly, for one certainly has no right to impose even a remote risk like this upon someone else who either didn't know or didn't wish to assume even this remote risk.

After a while they showed me that in Noda Bihudah *tinyana* Y.D. *siman* 10, he also ruled this way about earning a living from trapping animals—look there—and I was pleased.⁴

(R' Moshe does not specify which "game of throwing balls," in which danger befalls only one in several thousand, he is discussing. But with respect to football in particular, research subsequent to his *teshuvah*⁵ suggests that the risk of concussion and consequential chronic traumatic encephalopathy (CTE), a potentially serious neurodegenerative disease, among football players at all levels, may actually be quite high.)⁶

The *teshuvah* of the Noda Bihudah (R' Yechezkel Landau) is indeed the seminal discussion of voluntarily assuming risk for the sake of earning a living:

A man to whom Hashem has awarded an

expansive inheritance, and he has villages and forests—where in the forests, every forest beast stirs⁷—is it permitted for him to go himself to shoot with a firearm to hunt game,⁸ or is it prohibited for a Jew to do such a thing?⁹

Rav Landau initially discusses several potentially applicable prohibitions, including those against causing pain to animals (*tza'ar ba'dalei chaim*) and wanton destruction (*bal tash'chis*), and concludes that they are not applicable here. But he then proceeds to prohibit recreational hunting due to the danger involved, in addition to ethical impropriety:

For all those who engage in this must enter forests and place themselves in situations of great danger, in a place of bands of wild animals, and the Torah says: "But you shall greatly beware for your souls."¹⁰ Whom do we have greater and more skilled in hunting than Eisav—about whom the Torah testifies: "And Eisav became one who knows hunting"¹¹—and go and see what he said about himself: "Look, I am going to die."¹² And the *pasuk* does not depart from its literal meaning,¹³ that he was in danger every day among the bands of wild animals, and this is how the Ramban explained it.¹⁴ And now, how can a Jewish man enter into a place of bands of savage wild animals?

Even in such circumstances, one who is poor and does this for his livelihood—this the Torah permits, like all seafaring merchants who travel across the sea, for with respect to anything necessary for one's livelihood, there is no choice. The Torah says: "...And for it he risks his life," and Chazal said: "Why did this worker climb a high ramp, or suspend himself from a tree, placing himself in mortal danger? Was it not for his wage?" But someone whose primary motivation is not his livelihood, but out of the desire of his heart he goes to a place of bands of wild animals and places himself in danger, violates "But you shall greatly beware." And this is the language of the Ramban in *perek* 12 of Hilchos *Rotzeiach* halacha 6: "It is forbidden for a person to pass under a wall that is leaning or over a shaky bridge, or to enter a ruin." Similarly, it is forbidden to enter all other places that are dangerous for these or other reasons.¹⁴

The distinction explicit in Rav Landau's *teshuvah* and implicit in R' Moshe's between dangerous activities done for recreational purposes and those done in order to earn a living is also articulated by other authorities. The Shem Aryeh concludes an extensive discussion of voluntary assumption of risk

² Tehillim 104:20.

³ Bereishis 27:5.

⁴ Dvarim 4:35. The simple meaning of this phrase in context is an admonition to avoid the spiritual danger of idolatry rather than physical danger. Cf. Pirkei Avos 3:8; Brachos 32b; and Rambam Hilchos *Rotzeiach* 11:4.

⁵ Bereishis 25:27.

⁶ Ibid. *pasuk* 32.

⁷ Yevaros 24a and elsewhere. See here, here, and here.

⁸ Ramban Bereishis 25:34. This is also the understanding of the Ibn Ezra and Rashbam *ibid.* *pasuk* 32, although various Midrashim and other *Rishonim*, including Rashi, understand the *pasuk* differently.

⁹ Shu"t Noda Bihudah *tinyana* Y.D. *siman* 10.

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(continued from page 1)

In certain cases, a lender may stipulate in advance that the borrower compensate him for the expense and effort involved in obtaining the funds, because *ribbis* is payment for the use of money, not for expenses incurred by the lender (see Maharam Schick Y.D. 158 on credit unions and Minchas Yitzchak 5:109 on *gemachs*). But this is permitted only if the arrangement is made beforehand, clarifying that the charge does not represent interest. In your case, because no such stipulation was made, you cannot give a gift to the lender even to acknowledge his efforts, as it would be viewed as a reward for the loan itself along with the expenses incurred.

You may, however, verbally express gratitude for the lender's efforts and expenses. Generally, *ribbis dvarim* (verbal *ribbis*) is forbidden; the Shulchan Aruch (*ibid.* 11) says a borrower may not greet the lender upon encountering him if that hadn't been his practice prior to the loan. For this reason, a borrower may not say "thank you" upon receiving the loan (see Igros Moshe Y.D. 1:80). Although some authorities do allow a simple thank-you as a polite gesture (see Minchas Shlomo 1:27), profuse expressions of gratitude are forbidden. But because your lender incurred expenses to provide the funds, you may thank him profusely if you make it clear that you are thanking him for the effort he expended and not for the loan itself (see Mishnas Ribbis 4:20).



RAV ARYEH
FINKEL

thus:

To depart to the great sea to travel, i.e., to travel the world to see novel things and so on...it is appropriate to avoid this, and this should be done only for the sake of sustenance or business. Similarly, it is certainly appropriate to avoid travel in deserts and placing oneself in other situations of danger where there is no necessity and compulsion to do so. But regarding that which is the custom of the world, there is no concern for danger.^{15,16}

¹⁵ Shu"t Shem Aryeh (O.C.) end of *siman* 27 p. 78.

¹⁶ We have previously discussed the general topic of risk in halacha in: Hurricane Housing: When a Storm Is the Norm. Sep. 20, 2018; Value Judgment: What's a Life Worth? Sep. 17, 2020; Risk Factors: Can You Be Too Safe? Jul. 15, 2021; Pool Rules and Road Codes: Safety in Halacha. Sep. 2, 2022.

(continued from page 1)



retrieve one's stolen property. Perhaps he would explain Yaakov's statement in Megillah as referring to a "white lie," but an absolute lie would be forbidden. The Mishpatecha LeYaakov, a

contemporary work, discusses the case of an employee who says that after he completed his job, his employer falsely claimed that they had agreed on a lower hourly rate than they had. He rules that if an employee is being swindled by his employer in this manner,

he may inflate his hours to receive the payment he is owed. He argues that the Rashba's stringent approach applies only in *bais din*, but outside of *bais din*, one may lie in such a case.

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