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ב"ר משה גרוסמן זצ"ל

Dedicated in loving memory of HaRav Yosef Grossman *zt"l*

DOUBLE DEALING: THE DAY CARE DRUG DEN

Adapted from the writings of Dayan Yitzhak Grossman

The Associated Press reports:

> A woman who owned a New York City day care center where a toddler died after ingesting fentanyl has been sentenced to 45 years in prison after pleading guilty to federal drug charges.
>
> Grei Mendez, 37, dropped her head into her crossed arms in anguish as Judge Jed S. Rakoff announced the sentence that triggered sobs among Mendez's family and the mother whose 22-month-old child, Nicholas Feliz-Dominici, died in September 2023.
>
> Rakoff had previously given the same sentence to Mendez's husband, Felix Herrera-Garcia, after he pleaded guilty to drug charges and causing bodily harm related to the death. The couple each faced a mandatory minimum of 20 years in prison and a maximum of life for their crimes.
>
> Mendez had pleaded guilty to drug charges including conspiracy to distribute narcotics resulting in death…When the poisoning occurred on Sept. 15, 2023, Feliz-Dominici was rushed to a nearby hospital, where he died. Three other children exposed to the fentanyl at the day care survived after medics administered the overdose-reversing drug Narcan.
>
> Police found a brick of fentanyl stored on top of playmats for the children, along with equipment often used to package drugs, as well as packages of fentanyl beneath a trap door in a play area…
>
> Prosecutors urged a lengthy sentence, saying she ignored "clear warning signs" that the babies were becoming seriously ill and took no action to call for lifesaving medical intervention.
>
> "And after tragedy struck, she lied to law enforcement and destroyed evidence in an effort to protect herself and her co-conspirators from their culpability in the death of one baby and poisoning of three others," they wrote.
>
> In a release, Acting U.S. Attorney Matthew Podolsky said Mendez put babies as young as 8 months old "in harm's way as they slept, played, and ate in a room where over 11 kilograms of fentanyl was hidden underneath their feet."[1]

It should go without saying that this story is

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[1] Larry Neumeister. Owner of NYC day care where toddler fatally ingested fentanyl gets 45 years in prison. AP News. https://apnews.com/article/day-care-fentanyl-death-new-york-bronx-d0c4d1d3e922ffd443f1cae7c9fe504d.

The Bais Hava'ad on the Parsha
Bring the Parsha to Life!

PARSHAS KI SISA

TEA TIME

Excerpted and adapted from a *shiur* by Dayan Yosef Jacobovits

And the Bnei Yisrael shall observe the Shabbos, to make the Shabbos an eternal covenant for their generations…

Shmos 31:16

The Mishnah Brurah (O.C. 289:2) says that many people customarily recite this *pasuk* and the following one as part of the Shabbos daytime kiddush. Others recite "*Zachor…*" (Shmos 20) as well. The Mishnah Brurah cautions against saying only "*Al kein beirach…,*" because one should not say only part of a *pasuk*, but the Aruch Hashulchan (O.C. 289) defends that minhag, saying that the passage is only recited to introduce kiddush rather than as a reading of the *pasuk*. Regardless, reciting these *psukim* is not a requirement.

Although wine (or grape juice) is generally used for kiddush on Shabbos day, one may also use *chamar medinah* ("wine of the province," i.e., an important drink in a given time and place). R' Moshe Feinstein says it should be a drink one would serve a prominent guest. In Europe, beer was often used as *chamar*

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Midor Ledor

Q If a mezuzah was taken down for checking or to paint the house, may it be moved to a different door?

A According to some *poskim* (Teshuvos Vehanhagos 1:649), a mezuzah in a doorway that is obligated to have one *mideOreisa* should not be transferred to a doorway that is only *chayav mideRabanan* (see Y.D. 286:7 and Shach). This is similar to the restriction on transferring tzitzis from one garment to another (Mishnah Brurah 15:1).

The same applies to transferring a mezuzah from a doorway that certainly requires one to another with

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unbearably tragic, and that any decent society would have to somehow hold the daycare operators/drug dealers accountable for their role in the toddler's death. In this article, however, we consider the narrow question of liability under halacha in similar cases.

The Gemara says:

> The Mishnah stated: If one brought his produce into a homeowner's courtyard without permission and...the homeowner's animal was damaged through the produce, the owner of the produce is liable to pay for the damage.
>
> Rav said: They taught this only where the animal slipped on the produce and was injured. But if it ate too much produce and died, he is exempt. What is the reason? It should not have eaten.
>
> Rav Sheishess said: I say that Rav said this teaching while drifting into sleep. (Otherwise, he couldn't have erred.) For it was taught in a *breisa:* One who places poison before his fellow's animal, and the animal eats it and dies, he is exempt under the laws of man (i.e., bais din cannot exact payment) but liable under the laws of Heaven. We may infer from this *breisa* that it is only when one places *poison* before the animal that he is exempt under the laws of man, because an animal does not usually eat poison. But with produce, which an animal *does* usually eat, he is liable even under the laws of man. According to Rav, why is this so? Let us say that the animal should not have eaten it!
>
> They say: The halacha is actually the same even in the case of produce: He is exempt under the laws of man, because the animal shouldn't have eaten. And this is what the *breisa* is telling us by using the case of poison: that *even* in the case of poison, which an animal doesn't usually eat, he is liable under the laws of Heaven.
>
> Or, if you prefer, say: When referring to poison, too, the *breisa* means *afrazta,* a fruit that is poisonous to animals (but an animal would eat it).[2]

As we have previously discussed,[3] Tosfos understands Rav's declaration that the animal "should not have eaten it" to mean that becausee the animal deliberately brought upon itself the thing that damaged it, the person who placed the poison cannot be held liable.[4] But the Rosh apparently understands Rav to mean that an animal is not likely to eat something harmful to it, so the person who placed the poison needn't have anticipated that the animal would eat it. It is rather the responsibility of the owner, if present, to prevent his animal from eating it.[5]

In our case, while I am not familiar with fentanyl, human babies certainly do play with and eat things that are harmful to them, so according to the Rosh, Rav's principle that it should not have eaten it would not apply. According to Tosfos, the principle might extend to our case, because the toddler might perhaps be viewed as having deliberately brought upon himself the thing that damaged him. But it is possible that even according to Tosfos it would not apply in our case: As we noted in our previous discussion, the *Acharonim* point out that the Torah does hold the digger of a pit liable for damage caused to a victim that falls into it, despite the fact that the pit's victim, too, brings upon itself the thing that damages it. What is the difference between eating something harmful and falling into a pit? R' Mendel Shafran makes this distinction:

> When the victim's action that triggered the harm is one that is generally performed as a matter of routine, without conscious thought, such as walking...we do not exempt the tortfeasor from liability on the grounds that the victim is considered to have brought the harm upon itself; the only time this exemption applies is when the victim's action is the product of deliberate intent and a conscious decision, such as eating.[6]

According to Rav Shafran, if a 22-month-old child deliberately put the fentanyl into his mouth, Rav's principle that it should not have eaten it would seem to apply, because although such a child is obviously not capable of deliberate intent and conscious decision-making, he is capable of at least an animal's level of intent. But if the child somehow ingested the fentanyl without intent, in the course of playing in a contaminated area, Rav's principle would not apply, just as it does not apply to falling into a pit.

Even if Rav's principle *does* apply in our case, there is additional basis to hold the day care operators liable for harm caused by their negligence: The continuation of the above Gemara carves out an important exception to Rav's principle that negligence is not grounds for liability if the victim shouldn't have eaten:

> Come, learn a proof against Rav from a *breisa*: If one brought his ox into a homeowner's courtyard without permission, and it ate wheat and developed diarrhea and died, the homeowner is exempt. If he brought it in with permission, the homeowner is liable. But according to Rav, why? It should not have eaten!
>
> Rava said: Are you comparing with permission to without permission? If the ox entered with permission, the homeowner accepted responsibility to guard it as a *shomer* (custodian), so he is liable even if the ox choked itself!

Rava teaches that one who accepts responsibility for an ox is liable for the harm it causes itself by eating something injurious, Rav's principle notwithstanding. So the day care operators in our case might be liable for the harm suffered by their charges despite the fact that they "should not have eaten."

This argument hinges, however, on whether the Torah's framework of custodial liability, which typically applies to custodians of animals and other property, extends to custodians of people. Some *Rishonim* assume that the liability of a *sho'eil* (borrower) applies to one who "borrows" a human being. That is, if Reuven works for Shimon for free and is injured in the course of his work, Shimon is liable as a *sho'eil*,[7] and that would presumably extend to other types of custodial liability as well. But others maintain that the borrower of a human being is not a *sho'eil*.[8] This point is the subject of debate among *Acharonim* as well; a more detailed discussion of the topic is beyond the scope of this article.[9]

2 Bava Kama 47b.

3 Pay per Click: Are Virus Senders Liable? Jun. 3, 2021.

4 Tosfos ibid. s.v. *Havah lah shelo sochal*.

5 Piskei HaRosh ibid. *siman* 3. Cf. Sma C.M. *siman* 393 *s.k.* 4; Shimru Mishpat (Zafrani) *cheilek* 1 pp. 396-97.

6 Cited in Kisos Levais Dovid *cheilek* 2 *siman* 134 p. 355.

7 R' Meir (Maharam) of Rutenberg, cited in Mordechai Bava Metzia *siman* 367; Mordechai ibid. *siman* 359 (in a *hagahah*) and Hagahos Mordechai ibid. *siman* 461.

8 Shu"t HaRosh *klal* 79 *siman* 4 end of s.v. *Teshuvah: Yeira'eh li kedivrei almanas* Shimon. Cf. Rama to Shulchan Aruch C.M. 176:48; Sma ibid. *s.k.* 90 and *siman* 188 *s.k.* 11.

9 See Shu"t Urim Gedolim (Mechon Mishnas R' Aharon, 5763) *siman* 40/*limud* 214 p. 382 s.v. *Amnam adayin yeish letzadeid*; Shu"t Kehunas Olam *siman* 17 s.v. *Ivra*; Nesivos Hamishpat *siman* 176 *Biurim s.k.* 60; Sefer Yehoshua *Psakim Uchsavim siman* 472; Shu"t Sho'eil Umeishiv *Tinyana cheilek* 2 *siman* 30; Shu"t Be'er Moshe (Danishevsky) C.M. *siman* 11 end of s.v. *Ve'al pi ma shekasavti*; Teshuvos R' Eliezer (Gordon) *siman* 2 *anaf* 2 os 1 from s.v. *Vehinei* beBava Kama.

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RAV ARYEH FINKEL

a questionable obligation, e.g., a room small enough that its requirement to have a mezuzah is debated by the *poskim*.

Other authorities distinguish between mezuzah and tzitzis, and this leniency may be relied upon (Sefer Agurah Be'ahalecha 39:38).

There is often another reason to avoid relocating mezuzos: If the mezuzah is returned to its original location within a few hours, a new *bracha* is not recited (Teshuvos Vehanhagos 2:551), because there was no *hesech hada'as* (diversion of attention). To avoid *bracha she'einah tzricha* (an unnecessary *bracha*) when a mezuzah is reaffixed quickly, it is advisable to return it to its original spot (Agurah Be'ahalecha ibid. 37).

While mezuzos are being checked, it is best to put up temporary substitutes, as the mitzvah is constant. But this is not obligatory if they will only be gone for the time reasonably necessary for checking (Agurah Be'ahalecha ibid. 35).

While a home is being painted, one may live in it without mezuzos to protect them from damage (Igros Moshe Y.D. 1:183 and Agurah Be'ahalecha 2:31).

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medinah, though coffee and tea are more commonly used that way in the U.S. today. One who uses these drinks must be careful to drink the proper *shiur* (the majority of a *revi'is*) immediately following the *bracha*; some allow up to a minute.

Liquor may also be used, though most *poskim* hold that one must be careful to drink the proper *shiur* and ensure that the cup holds a *revi'is.* Iced coffee may also be used today according to many, because it has become quite popular as a special drink. But most *poskim* hold that iced tea and soda do not qualify as *chamar medinah.*