

THE BAIS HAVAAD HALACHA JOURNAL

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

VOLUME 5785 • ISSUE XXXIII • PARSHAS KORACH



CODE OF ARMS: WEAPONS IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

In recent years, there appears to have been an increase in the number of Orthodox Jews that carry firearms for protection, especially at times of tension in the U.S. or war in Eretz Yisrael R"l. In this article, we explore Torah perspectives on bearing arms for self-defense.

WEAPONS: ORNAMENTS OR DISGRACE?

There is a dispute in the Mishnah whether one who bears arms in a *reshus harabim* (public domain) on Shabbos is liable to bring a *chatas* (sin offering). R' Eliezer maintains that weapons are ornaments for the bearer, so he is not liable,¹ while the

Chachamim say that he is, because [Weapons] are nothing but a disgrace, as it is written (about the era of *Moshiach*): "And they shall beat their swords into plowshares and their spears into pruning shears; nation shall not lift up a sword against nation, neither shall they learn war anymore."

In a *breisa* cited in the Gemara, R' Eliezer defends his position: Although weapons are currently ornamental, they will nevertheless be eliminated in the era of *Moshiach* because they will become unnecessary, so they will no longer

(continued on page 2)

explicit position of the Magen Avraham (siman 301 s.k. 27). Melech Shlomo is uncertain about this. Rabeinu Prachiah ben Nisim interprets R' Eliezer to permit bearing arms even lechat'chilah, but he understands that the Mishnah actually records two different dissenting views: one that merely forbids the practice, and one that maintains that it engenders chatas liability. Cf. Machatzis Hashekel Ibid.; R' David Lau, Tiltul Klei Neshkek BeShabbos.

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



PARSHAS KORACH

REDEMPTIVE REBATE

Excerpted and adapted from a *shiur*
by Dayan Yehoshua Grunwald

*And those that are to be redeemed—from
one month shall you redeem according to
the valuation, five silver shkalim...*

Bemidbar 18:16

The mitzvah of pidyon haben requires that a kohein redeem the firstborn son of a yisrael for five silver shekels. Is the kohein permitted—or obligated—to return the money given him by the father?

The Shulchan Aruch (Y.D. 305:8) says that a kohein should not return pidyon haben money routinely, because that will drive many people to use him for pidyon haben, and other kohanim will lose out. R' Yaakov Emden (cited in Pis'chei Teshuvah Y.D. 305:12) argues that today a kohein *must* return the money, because the lineage of the kohein may be tainted.

The Chasam Sofer (Y.D. 291) disagrees with Rav Emden and does not require that the money be returned. The Chazon Ish (Shvi'is 5:12) explains that due to *chazakah*, kohanim today are considered authentic. The proof of this is that they make a *bracha* when reciting *birkas kohanim* and when performing pidyon haben.

(continued on page 2)

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

Long Time No Sue

Q Can someone sue in bais din for an injury after the time limit set by the state's statute of limitations has elapsed?

A Statutes of limitations are designed to encourage timely pursuit of legal claims and to protect defendants from the indefinite threat of litigation. For example, in a slip-and-fall case, the plaintiff typically has between two and six years to sue, depending on the state.

The only specific mention of a time limit in halacha for monetary claims is for a widow collecting her ksubah, where after 25 years pass, the debt is deemed forgiven (Ksubos 104a and E.H. 101:1).

(continued on page 2)

(continued from page 1)

have even an ornamental function, just as “a candle in the afternoon” has no function.

The Gemara proceeds with an alternative explanation of R’ Eliezer’s view: He holds that even in the era of *Moshiach*, weapons will not be eliminated, in line with the view of Shmuel that “the only difference between this world and the era of *Moshiach* is subjugation of the exiles.” According to this view, society will not change, and wars will continue to be waged.

The Gemara concludes by adducing a source in Tehillim for R’ Eliezer’s position that weapons are considered ornaments: “Gird your sword upon your thigh, O mighty one, your majesty and your splendor.”^{2,3}

We have, then, a fundamental *machlokes* about the Torah’s attitude toward weapons: R’ Eliezer considers them ornaments—at least in the pre-*Moshiach* world—but the Chachamim consider them a disgrace, presumably something to avoid unless absolutely necessary.

MUKTZEH

Some *poskim* maintain that a firearm is *muktzeh* on Shabbos as a *kli shemelachto le’issur* (a utensil whose function is prohibited on Shabbos), because its primary function is to be fired, but the Shmiras Shabbos Kehilchasah, citing R’ Shlomo Zalman Auerbach, says:

It seems that carrying a rifle or pistol in order to cause fear is actually considered *tzorech gufo* (moving it for the purpose of using it, for a permitted function, which

is allowed with a *kli shemelachto le’issur*). And it seems that outside of wartime, most of their use is only to intimidate.⁴

R’ Shlomo Zalman seems to be saying that a firearm is actually a *kli shemelachto le’heteir*, because its primary function in peacetime is deterrence rather than shooting.

The Klausenberger Rebbe initially assumes that a firearm is a *kli shemelachto le’issur*⁵ and cites various *Acharonim* who categorize swords that way.⁶ But he ultimately concludes that “in our times, when most of those who bear arms do so only to impose fear, and on the contrary, they are prohibited from using them,” a weapon may be characterized as a *kli shemelachto le’issur uleheteir*, which has the same status as a *kli shemelachto le’heteir*.⁷

HOTZA’AH

The Or Zarua rules that when there is fear and rumor of impending enemy attack, it is permitted to carry weapons on Shabbos “to guard and to make a commotion in the city” in order to forestall the attack, because “we are not meticulous in situations of *pikuach nefesh*.”⁸

Over the past century, many *poskim* have considered the permissibility of carrying weapons on Shabbos in various circumstances of necessity and danger;⁹ analysis of their rulings and the numerous questions involved is beyond the scope of this article.

⁴ Shmiras Shabbos Kehilchasah (new edition) Ch. 20 n. 29 p. 298.

⁵ Shu”t Divrei Yatziv O.C. cheilek 1 siman 148 as 1.

⁶ Shu”t Zera Emess cheilek 3 siman 26 s.v. Teshuvah; Mishneh Lechem (R’ Yaakov Emden, second edition of Lechem Mishneh) Shabbos ibid.

⁷ Divrei Yatziv ibid. end of os 4.

⁸ Or Zarua ibid. This ruling is codified by the Rama in O.C. 329:6.

⁹ Shu”t Zeicher Simcha (R’ Simcha Bamberger) siman 35; Shu”t Chelkas Yaakov O.C. siman 96; Divrei Yatziv ibid.; R’ Avraham Avidan, Tiltul Dvarim Chiyuni/Im Lelo Einuv, Teshuvot Vol. 4 from p. 227; R’ Be’eim Hachain, Tiltul Batzava, ibid. from p. 234 (the latter two sources are cited by Rav Lau in n. 20 of his article); Rav Lau ibid.

² Tehillim 45:4.

³ Shabbos 63a. See Shu”t Igros Moshe O.C. cheilek 4 siman 81.

(continued from page 1)



A second reason the kohein should not return the money (even if he is permitted to do so) comes from the Mahari Bruna (122), who writes that the kohanim receive

matnos kehunah as an honor, and returning the money would signify a lack of *chashivus* for the kohein. (For the same reason, he says the kohein should sit when receiving the money.)

A third reason, from R’ Moshe

Sternbuch, is that it is a great *sgulah* for the child if the kohein retains the money, so even if the kohein wishes to return it, the father may be well advised to decline the offer.

O&A from the
BAIS HAVAAD
HALACHA HOTLINE

1.888.485.VAAD(8223)
ask@baishavaad.org

(continued from page 1)

The Shulchan Aruch (C.M. 98:1) clearly rules that a loan can be collected many years later—even after the lender has despaired of repayment—without suggesting that torts or injury claims should be treated differently, implying that they too can be claimed indefinitely.



RAV ARYEH
FINKEL

But two halachic concepts may influence the application of the statute of limitations on one’s halachic right to sue: *dina demalchusa dina* (the law of the government is the law) and *minhag* (custom).

The principle of *dina demalchusa dina* is that halacha recognizes state law in financial matters, but the rule is complex and nuanced. A basic rule of thumb is that laws not directly concerning the government are not recognized as halacha. That would presumably apply here, allowing the claim to be made at any time (see Pis’chei Choshen *Halva’ah* 1:29 in footnote).

In certain situations, civil laws create an implied agreement that affects the halachic outcome of a case, based on the concept of *minhag*. For example, rules outlined in the Uniform Commercial Code may be enforceable in *bais din* in many business cases, because it is assumed that businessmen conduct their affairs according to those rules (see Shu”t Chasam Sofer C.M. 96). This principle is applicable to business dealings, but applying it to injury and damage claims would be inapposite, as such obligations arise from unintentional events rather than mutual agreements. In those cases, the parties involved did not agree to have their halachic affairs governed by state law, so the statute of limitations has little to no impact on one’s right to sue in *bais din*.

An exception is if one is suing for legally actionable though halachically unfounded damages that are enforceable in *bais din* based on *minhag*. In such cases, the claim *would* be subject to the statute of limitations, because it is entirely secular in nature (see Kovetz Bais Hillel 5759:1 p. 24).

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



Elevate your Inbox.

SILVER
FAMILY
THERAPY
AGENCY
Care

BHHJ SPONSORS

Mr. Leo Eckstein

Retirement Plan Specialist
New York, NY

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