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ASK NOT: MAY A MITZVAH BE DELEGATED TO A SHLIACH?

Adapted from the writings of Dayan Yitzhak Grossman

JNS reports:

The Silver Spring Jewish Center has sued Montgomery County, Md., on Thursday over a new firearms ordinance that restricts congregants and volunteers from carrying guns in houses of worship and other designated "places of public assembly."

The Orthodox synagogue and Rabbi J. Menashe Shapiro, a student at the Georgetown University Law Center, filed the federal lawsuit against the county, County Executive Marc Elrich, Police Chief Marc Yamada, and State's Attorney John McCarthy.

The lawsuit challenges Expedited Bill 23-26, which prohibits carrying firearms "in or within 100 yards of a place of public assembly," including houses of worship, schools, parks, libraries, hospitals, and government buildings. The measure allows paid security personnel to carry firearms but bars volunteers and private individuals from doing so, according to the complaint.¹

From the complaint:

For both practical and halachic (Jewish Law) reasons, SSJC relies primarily on volunteer

members of the synagogue for its Security Team. Practically, the Security Team, as members of the synagogue, are naturally familiar with the layout of the synagogue and are known to the other members. The synagogue's rabbi believes that, in the event of an incident, Security Team members are better equipped to respond than hired security or even the police...

Halachically, reliance on volunteer members of the community, rather than outsourcing the religious obligation to others, is preferred under Jewish law. See Babylonian Talmud, Tractate Kidushin 41a; see also, e.g., Shulchan Aruch, Orach Chayim 250:1.

Talmudic and later religious sources command Jews to proactively provide their own security and the security of other Jews. See Shulchan Aruch, Choshen Mishpat 425:1.

It is the belief of observant Jews generally, and Plaintiffs' sincerely held religious beliefs specifically, that the entire corpus of Jewish law is binding. See Maimonides, The Thirteen Principles of Jewish Faith (c. 1168) (listing "the belief in the immutability of the Torah" as a foundational belief).

Therefore, laws such as the Ban that prevent

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www.baishavaad.org

info@baishavaad.org

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PARSHAS KI SEITZEI

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Excerpted and adapted from a *shiur* by HaRav Yechiel Biberfeld

An Amoni or Moavi shall not enter the congregation of Hashem, even their tenth generation shall not enter the congregation of Hashem, to eternity, because of the fact that they did not greet you with bread and water on the road when you were leaving Mitzrayim...

Dvarim 23:4-5

This *pasuk* implies that bread baked by non-Jews is permitted, but Chazal later enacted a prohibition on *pas akum* (Avodah Zarah 35b). Some *Rishonim*, including the Rosh, maintain that it is entirely permitted today, either because we come from places where the *gzeirah* was never accepted, or because a later *bais din* repealed it. The Rambam and others hold that the *gzeirah* included only bread baked by nonprofessionals (*pas ba'al habayis*), but bakery bread (*pas palter*) is permitted if no *pas Yisrael* is available, due to the critical role of bread in the human diet.

The Shulchan Aruch (Y.D. 112:1) follows the Rambam et al., while the Rama takes the compromise position that *pas palter* is permitted even if *pas Yisrael* is available, but *pas ba'al habayis* remains forbidden. A third approach, followed by some communities, has it that even *pas palter* is forbidden, even where *pas Yisrael* is unavailable.¹ According to the Shach, Ashkenazim follow the Rama and allow *pas palter* (see Igros Moshe Y.D. 2:33). Even according to the Shulchan Aruch, *pas palter* is permitted if it is of higher quality than the available *pas Yisrael*, or if it is of a different type, just as where *pas Yisrael* is

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¹ See the continuation of the Shulchan Aruch in siman 112, which indicates this multiple times; see also Darchei Teshuvah (Y.D. 112:25) in the name of the Yeshu'a Yaakov.

Jews from defending themselves—including outsourcing self-defense obligations to hired

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¹Jessica Russak-Hoffman, Orthodox synagogue sues Maryland county over firearms restrictions near houses of worship.
CF Fox News; WTOG News; ABC Baltimore WMAR (republished by the New Civil Liberties Alliance here).

Q&A from the
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Midnight Mercy

Q Why do we say *Vehu Rachum* before Ma'ariv? And why is it omitted on Shabbos and Yom Tov?

A The Tur (O.C. 237) gives the primary reason: Shacharis and Mincha each correspond to a *korban tamid*, which provides atonement, but Ma'ariv has no *tamid* of its own, so Chazal instituted *Vehu Rachum* as a plea for *kaporah* before the nighttime *Shmoneh Esrei*. The Kolbo (cited in Bais Yosef *ibid.*) says it is omitted on Shabbos and Yom Tov because on weekdays, even though there was no *tamid* at night, there was *tamid*-related activity, as its fats and limbs were burned then. But this was not done on Shabbos or Yom Tov.

The Tur gives a second reason for saying *Vehu Rachum*: In earlier generations, there was a practice to
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guards—burden the expression of their faith. Accordingly, such laws burden Plaintiffs' sincere beliefs and practices.

The Gemara says:

Mishnah: A man can marry (*mekadeish*) personally or through his *shliach* (agent). A woman can become married personally or through her agent...

Gemara: Now, if a man can marry through his agent, is it necessary to state that he can marry personally?

Rav Yosef said: It is teaching us that mitzvah *bo yoser mibishlucho* (it is a greater mitzvah to do it personally than through an agent), as we find that Rav Safra would personally singe the head of an animal to prepare it for Shabbos, and Rava would personally salt the *shibuta* fish.

There are some that say there is also a *prohibition* involved in marrying through an agent, as Rav Yehudah said in the name of Rav. For Rav Yehudah said in the name of Rav: It is forbidden for a man to marry a woman until he sees her, lest he will see something unseemly in her after marriage and she will become repulsive to him—and the Merciful One says, "you shall love your fellow as yourself."

And according to this view, when Rav Yosef's teaching (that it is only *preferable* to marry personally) was stated, it was stated in reference to the second part of the Mishnah: A woman can become married personally or through her agent. It is regarding this clause that the question was asked: Now, if a woman can become married through her agent, is it necessary to say that she can accept marriage personally? To this Rav Yosef replied: It is a greater mitzvah for her to accept marriage personally then through her agent...But there is no *prohibition* for her to accept marriage through an agent (as a woman is permitted to marry a man sight unseen).²

Some authorities, including the Yad Hamelech (R' Elazar Landau, grandson of R' Yechezkel Landau, the Noda Bihuda)³ and R' Shlomo Kluger,⁴ limit the principle of mitzvah *bo yoser mibishlucho* to the two specific mitzvos to which it is applied here, marriage and Shabbos preparation. But many authorities, including the Magein Avraham (R' Avraham Abeleh Gombiner),⁵ extend it to all mitzvos.⁶

With regard to the mitzvah to safeguard human life,⁷ the Yad Hamelech explicitly excludes *ma'akeh* (the mitzvah to build a fence around a roof to prevent falls) from the rule that mitzvah *bo yoser mibishlucho*, and the Amudei Eish (R' Yisrael Eisenstein) assumes that R' Shlomo Kluger agrees.⁸ But the Amudei Eish

attempts to prove otherwise from an anecdote in the Gemara:

Rav Yehudah came and found Rav Nachman building a fence. Rav Yehudah said to him: Does the master not agree with what Rav Huna bar Idi said in the name of Shmuel that once a man is appointed a leader of the community, he is forbidden to engage in labor before three or more people? He said to him: I am making only a small portion of a fence...⁹

The Amudei Eish understands that Rav Yehudah did not know that Rav Nachman was building a *ma'akeh*, so he challenged the propriety of his doing labor in public. Rav Nachman answered that he was justified because he was building a *ma'akeh*, which is a mitzvah.

And if we assume like the Yad Hamelech and the Shnos Chaim that in making a *ma'akeh* there is no mitzvah *bo yoser mibishlucho* whatsoever, why did Rav Nachman permit himself to make it personally, given that it is prohibited to do labor before three people?¹⁰

How imperative is mitzvah *bo yoser mibishlucho*? As the Tvuos Shor (R' Alexander Sender Shor) and the Megillas Sefer (R' Binyamin Kazish) note, it is clear from the Gemara that it is not strictly forbidden to delegate a mitzvah to a *shliach*, but there is a mitzvah to perform it oneself.¹¹ Rashi explains the rule: "When his body is engaged in mitzvos, he receives more reward."¹² The Megillas Sefer explains that it is actually self-evident that one who does it himself receives more reward, and the entire point of mitzvah *bo yoser mibishlucho* is that it is merely a matter of mitzvah; it is not *forbidden* to delegate it to a *shliach*.

The Or Zarua rules that "Where a father knows how to circumcise, it is prohibited for him to allow someone else to circumcise before him."¹³ The Shach, too, rules that a father who is able "is not permitted (*aino rashai*)" to have someone else do it and is "obligated (*chayav*)" to do it personally. Those who are able but delegate, he says, "violate (*mevatlim*) a mitzvas *asei*."¹⁴ The Tvuos Shor and Megillas Sefer object that this contradicts the clear implication of our Gemara that delegating a mitzvah to a *shliach* is not forbidden. The Tvuos Shor answers:

Certainly where we say that it is a mitzvah, it is presumably prohibited to violate it, for he has no right to say "I do not wish to perform a mitzvah." But the ramification of the distinction in Kidushin between a mitzvah and an *issur* is with respect to one who is involved in a different mitzvah, because he is then exempt from that mitzvah... But if we say "lest she become repulsive to

⁹Kidushin 70a.

¹⁰Amudei Eish ibid.

¹¹Shu"t Maharach Or Zarua siman 128 is perhaps the earliest source to explicitly limit the principle of mitzvah *bo yoser mibishlucho* to certain mitzvos, but according to his criterion for applicability, the principle may indeed extend to the mitzvah of *ma'akeh*. A more detailed analysis of his position is beyond the scope of this article.

¹²Megillas Sefer (Rav Kazish) Eisin 48 p. 39a s.v. *Sham* (amrinan bepelek bais deKidushin).

¹³Rashi ibid. s.v. Mitzvah *bo yoser mibishlucho*.

¹⁴Or Zarua (end of Hilchos Milah siman 107 as 5).

Cf. Darchei Moshe Y.D. siman 264 s.k. 1; Simlah Chadashah/Tvuos Shor siman 28 s.k. 14; Kreisi Upleisi ibid. Pleisi s.k. 3; Ketzos Nachoshim ibid. s.k. 2; Chochmas Adam, Binas Adam Sha'ar Issur Veheter siman 7 (as 10).

¹⁵Shach C.M. siman 382 s.k. 4.

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administer *malkus* nightly to atone for the day's aveiros. *Vehu Rachum* accompanied the *malkus*, because when *bais din* administered *malkus* to a sinner, *Vehu Rachum* (among other *psukim*) was recited (Makos 22b), to ask that the *malkus* atone for the *aveirah*. *Vehu Rachum* is omitted on Shabbos and Yom Tov because *malkus* was not administered then (Tur 267).

Some explain based on the Zohar (Parshas Trumah 130; see Kaf Hachaim ibid. 5) that certain destructive forces gain strength at night, and reciting *Vehu Rachum* causes them to subside. But on Shabbos and Yom Tov these forces have no power.



RAV ARYEH FINKEL

him," then even if he is involved in another mitzvah, it is prohibited to abandon this one, for the reason given there. Therefore, the Or Zarua wrote well that it is prohibited, and that is where he is not involved in another mitzvah. But if he is involved in another mitzvah, it is a great principle that one who is involved in a mitzvah is exempt from another mitzvah (*oseik bemitzvah patur mimitzvah*), and a fortiori when it is possible to fulfill this one via someone else.

The Chida explains similarly that when the Or Zarua and the Shach¹⁵ use the word "*asur*," they do not really mean that it is prohibited, only that one who does so violates a mitzvah that is incumbent upon him.

And this is certainly something that is not proper and a sorry task,¹⁶ to violate a mitzvah that is incumbent upon him. If so, when the Gemara says "mitzvah *bo*," it is certain that if he does not fulfill a mitzvah that is incumbent upon him, he is prevented from fulfilling the mitzvah, and it is not appropriate to do so—but this is not truly in the category of *issur*...¹⁷

The Chida notes in conclusion that he subsequently saw the approach of the Tvuos Shor, which he acknowledges as superior to his own.

In our next article, we shall *iy"H* consider an entirely different halachic argument for relying on community volunteers rather than outside professionals to provide security.

¹⁵The Shach does not actually use the word "*asur*," though the Or Zarua does.

¹⁶Kohellish 113.

¹⁷Birkel Yosef E.H. siman 36 as 2 s.v. *Utrmhas harav* Megillas Sefer.

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unavailable.²

The Shach (112:9) says that during *Aseres Yemei Teshuvah* one must be careful ("tzarich *lizaher*") not to eat *pas palter*, and the Minchas Yaakov says this applies

even if the *pas palter* is of better quality than the available *pas Yisrael*. Moreover, the Mishnah Brurah (242:6) says it is proper to be careful ("*nachon lizaher*") to eat only *pas Yisrael* on Shabbos due to *kvod* Shabbos. But R' Shmuel Felder rules that *pas palter* products that one prefers over their *pas Yisrael* equivalents (e.g., Stella D'oro cookies, for some) are permitted

on Shabbos, because a) Shabbos is less stringent than *Aseres Yemei Teshuvah* in this regard, and b) some *Acharonim* are lenient regarding *pas palter* on Shabbos other than for *lechem mishneh*.³

³ See Sha'ar HaTziyon 242:18.

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² Shulchan Aruch Y.D. 112:5; Aruch Hashulchan 112:16.