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GENERAL ACCOUNTING:

Holding Puppet Masters of Terror Accountable

Rav Yitzchak Grossman

President Trump recently reported on the elimination of arch terrorist, Abu Bakr Baghdadi, the leader of ISIS, and the world responded with a sigh of relief. Although Baghdadi was guilty of murder, torture and assorted depravities, he was targeted in his capacity of leadership-responsible for untold cruelty and murder on a mass level. Here we will explore the underlying question of whether a funder and financier of terror can be held *halachically* liable for the actions of its proxies and agents. In modern Western law, an instigator or plotter can be held civilly and criminally liable under the general categories of aiding and abetting and participating in a conspiracy, as well as the more specific statute providing material support to terrorists; in *halachah*, we have two possible theoretical frameworks to consider: agency (*shlichus*) and indirect causation (*garmi*).

SHLICHUS

Generally, the rule that “there is no agent for a sinful matter” forecloses both criminal and civil liability for a principal for the transgressive action of his agent. One who orders his agent to commit murder is therefore not criminally liable (under terrestrial law, although it is taken for granted that he will be held responsible by Heaven), and one who instigates and plans (but does not directly participate in) a burglary is therefore not civilly liable.

Some authorities, however, assert a major exception to this principle in the case of an agent who has an established history (“*muchzak be’kach*”) of engaging in such activity. The Talmudic rationale for the inapplicability of

agency to sinful behavior is: “the words of the Master and the words of the student, to whose words shall we listen?”, which these authorities apparently understand to mean that the principal can claim that he did not really believe that the agent would obey him. This does not apply in the case of an agent with a demonstrated disregard for the “words of the Master”.

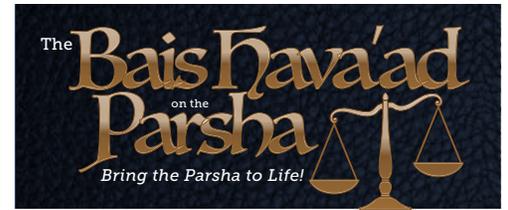
Others, however, strongly disagree, maintaining that the inapplicability of agency to sinful conduct is simply a Divine decree, and therefore absolute and independent of any expectations of the principal.

It follows that one who incites a novice terrorist to perpetrate an act of terrorism would definitely not be liable under the theory of agency, whereas the liability of one who conspires with a veteran, professional terrorist would depend on the aforementioned dispute.

GARMI

There is generally no criminal or civil liability for a crime or tort perpetrated indirectly (*grama*). A major exception is civil liability for the subcategory of indirect causation the Talmud terms *garmi*, but there is much dispute over the definition and parameters of this class. Some posit conceptual criteria, that what distinguishes *garmi* is that the damage caused is “certain”, “immediate” and “perpetrated by [the tortfeasor] himself”, while others explain the distinction pragmatically, that the liability for *garmi* is simply a rabbinic penalty imposed in situations that were particularly “common” and “frequent”. The *Terumas Ha’Deshen* therefore rules that in the case of a conspiracy to commit theft, a non-participating conspirator is not liable under the rubric of *garmi* as none of the above criteria are satisfied: the injury (in the case of a Jewish actor) is uncertain, as the would-be

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By: Rav Yosef Jacobovitz

CANDLE LIGHTING: CANDLES ONLY?

Yitzchak brought Rivka home and saw a special blessing in Rivka’s mitzvah of *hadlakas neiros*, similar to his mother, Sarah, in that it was not extinguished from shabos to shabos.

What is the minimum requirement as a fuel?

Shulchan Aruch - all oils and waxes are permitted; yet, olive oil is preferable based on *mesorah*.

Mishna Berurah - olive oil is preferable only because it kindles well. If olive oil isn’t readily available, one may use wax candles.

Rav Moshe Feinstein- the clearest flame is the most preferred.

The Steipler Gaon - used wax candles since it lit better or equal to oil.

The Baal HaTurim - Parshas Tetzave- Tetzave is the gematria of *nashim tzavei*- that they too should light with oil.

Rav Shmuel Kamenetzky- based on above,

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GENERAL HALACHA

Hack Attack and Halacha

Rabbi Yitzchak Grossman

THE HALACHAH OF HACKING

With each passing election, the spectre of cyber-crime looms larger and larger. This is in addition to computer hacking carried out in the corporate arena. A number of years ago, a shadowy group of computer hackers styling themselves the "Guardians of Peace", believed to be agents of the North Korean government, breached the security of internal computer systems of Sony Pictures Entertainment, accessed a trove of confidential and sensitive material, including personally identifiable information about the company's employees and their dependents (including social security numbers, bank and credit card information, compensation details, and HIPAA protected health information) and email between the company's employees, and disseminated this information publicly, causing embarrassment and inconvenience to many individuals, and considerable financial harm to the company. While it is self-evident that such conduct is morally wrong, we consider here the question of the application of traditional *halachic* categories and precedent to this quintessentially modern scenario.

THE CHEREM OF RABBEINU GERSHOM

There is a medieval tradition, generally attributed to *Rabbeinu Gershom Me'or Ha'Golah*, of a *cherem* [ban / anathema] against reading (or opening) a letter addressed to another. Some *poskim* take for granted that the *cherem* applies to eavesdropping and the interception of electronic communications as well, although others adopt a narrow, literal reading of the *cherem*, and limit its applicability to its explicit subject, written correspondence.

RELATED PROHIBITIONS



The *acharonim* have additionally noted various *halachic* problems with reading others' mail, either as rationales for the ban or as independent considerations:

The utilization of another's property without permission is forbidden.

"Thou shalt love thy neighbor as thyself" - "that which is hateful to you, do not do unto your friend".

"Thou shalt not go up and down as a tale-bearer among thy people".

Geneivas da'as is prohibited. [The phrase generally refers to deception, i.e., the *planting* of a *false* idea in the mind of another, whereas our situation appears to be the exact opposite: the *extraction* of a *true* idea from the mind of another; I do not understand the analogy.]

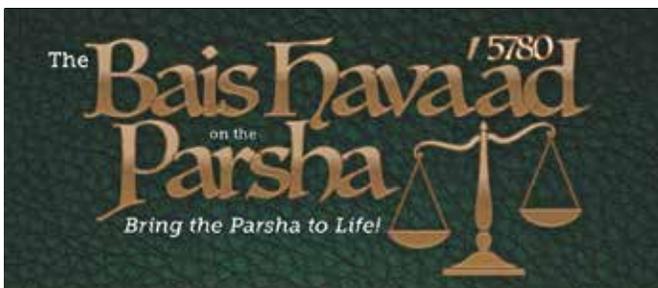
It is prohibited to cause harm to another, even indirectly (*grama be'nezikin asur*), and reading others' correspondence usually causes harm, whether financial or otherwise

Most of these concerns obviously apply to hacking in general (and to our situation in particular) and are indeed so applied by contemporary *poskim*. The question of the applicability of the prohibition against unsanctioned utilization of another's property is an interesting one: R. Avraham Sherman (discussing eavesdropping on a telephone call) apparently understands it as applying to the intangible entity of information and should therefore certainly apply it to hacking, but R.

Chaim Shlomo Rosenthal (discussing a similar case, the listening to a recording of a telephone call without the participants' permission) is unsure whether the prohibition applies to such situations. It can be argued that unauthorized electronic access of a computer system is tantamount to unauthorized physical access of that system, and is therefore prohibited by the prohibition against unauthorized utilization of another's (tangible) property, but this is a non-trivial assertion.

HEZEK RE'YAH

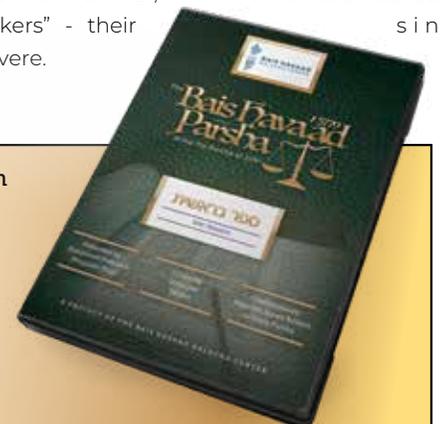
One is forbidden to look from his window at his neighbor's yard "in order that he should not damage him with his looking" and even where there is no concern for "damage of the eye" (i.e., *ayin ha'ra*), it is nevertheless prohibited to look at the affairs of another when conducted in his home and property (i.e., where there is an expectation of privacy), "for perhaps he does not desire that they should know his actions and affairs" Although the scope of this prohibition obviously requires elucidation, it presumably extends to the forbidding of the unauthorized accessing and public dissemination of private information, and has indeed been invoked to this effect by contemporary *poskim*. We conclude with the uncompromising position of R. Yaakov Avraham Cohen: "Those who break into computer codes or into any protected data store or similar, who are called "hackers" - their sin is severe.



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HAIRCUTS AND CARPOOL

RIBBIS HAIRCUTS

Two bachurim rotate cutting each other's hair. However, one gets a simple haircut ("over the top"), and the other requires a styled haircut (scissor/tapered cut).

Would repaying the simple haircut with a fancy haircut be considered a ribbis issue (if there was a significant difference in barber-shop prices)?

As stated above (see "Cutting the Grass"), there would be no issue cutting each other's hair, unless they had formulated the agreement as conditional ("I'll cut your hair if you cut mine"). Hence, the simplest way to avoid this shailah is to clearly specify that it is being



done as a favor.

However, since it is rather easy to formulate such an agreement as conditional, care should be taken that it be avoided.

URNS AT CARPOOL

Many families are involved in carpool arrangements in some form or another. At times the routes are similar, yet at times the routes differ significantly in length and congestion.

Is there any issue with driving the longer, congested route in exchange for the other person driving the shorter route?

As stated in the previous cases, one should avoid formulating these agreements as conditional and binding, rather they should be formulated in ways which clearly indicate that they are being performed as favors by all parties involved.

The same would apply to carpool arrangements in which one driver agrees to do carpool on more days per week than the other driver. As long as there was no conditional agreement it would be permitted.

Driving similar routes is permitted in any case, even if they are slightly different in length.

OU DAILY LIVING

Weekly Questions

SNOW REMOVAL



I have a snow removal service that cleans out my office parking lot. I don't tell them when to come. They come when they want. Are they permitted to come on Shabbos?

We have seen in a previous Halacha Yomis that shoveling snow might not be a Melacha (forbidden activity on Shabbos), and provided that there is an *eiruv*, there are leniencies to have a non-Jew shovel your walkway. However, in the case of a parking lot, even if it is in the *eiruv*, it is not practical to clear the snow with a shovel. Asking a non-Jew to clear the parking lot is equivalent to asking him to plow, which is a violation of *Amira L'akum* (the prohibition of asking a non-Jew to do a Melacha on Shabbos). Although there is a leniency

in cases involving public danger, that would not apply to an office parking lot on Shabbos. If the parking lot is within the *Techum* (walking distance on Shabbos) of a Jewish neighborhood, even if a non-Jew came on his own to clear your parking lot you would be obligated to send him away. There is a concern that Jews might see the work done on Shabbos and assume that non-Jews were asked to do this. This is forbidden due to *Maris Ayin* (giving the impression that one is violating the *Halacha*). Therefore, if one hires a snow removal company, they must tell them in advance that if it snows on Shabbos, they may not plow until after Shabbos.

In all situations, if the snow is in an area

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where people may walk on Shabbos (such as the driveway or parking lot of a shul) and the snow may be slippery, it is permissible to arrange for a non-Jew to remove the snow, even with a snow plow. As noted previously, *Amira L'akum* is permitted to avoid a public danger.

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one would need *hataras nedarim* to change their *minhag* from olive oil to candles. However, if one does not have a particular *minhag*, it is not necessary to use specifically olive oil.

WHEN ONE CANNOT LIGHT [I.E. A HOSPITAL]

Electric bulbs: Rav Chaim Ozer Grodzensky- an incandescent bulb is a regular flame.

Rav Henkin agrees.

Rav Shlomo Zalman Auerbach distinguishes between a battery operated device [i.e. a flashlight] where the entire energy source is present and ignited prior to shabos. A wall based ac current has only a small por-

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criminal, even if he has an established criminal history, may nevertheless repent and refrain from perpetrating the crime; it does not immediately follow the conspiracy, but occurs later; and it is not a common occurrence. All of these considerations seem to apply equally to terrorist conspiracies, except for the first, with respect to non-Jewish terrorists.

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