

TORAH & HORAHAH



Noach 5777

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Dear Reader,

In this week's parashah, Parashas Noach, we learn of the terrible power of human creation, and of the great tragedy of this power being used for the bad. We learn this from the Generation of the Dispersion.

The Torah describes the Generation of the Dispersion as a generation of building and creation, a generation that sought to create a city and a tower, and to make a name for itself. The end of the generation is known: The people were scattered across the world, their power neutralized by their dispersion.

From the punishment meted out to the generation, we can derive that the primary

This week's article discusses the prohibition of *hamas* and the Talmudic *hamsan* – somebody who unlawfully forces another to part with his property in exchange for payment. What are the parameters for this prohibition? What kind of pressure must one apply to a potential seller in order to transgress the prohibition? How is this related to the prohibition of *lo tachmod*, and can one transgress by merely coveting, even if the item is not taken? These questions, among others, are discussed in this week's article.

This week's Q & A addresses the timely question (for Chicago dwellers) of supporting a sports team and players.

“The Earth is Filled with Hamas” – The Prohibition of Hamas and Related Issues

The Torah writes that the flood was visited upon the generation of Noah because of the people's wickedness. The verse singles out the crime of *hamas* as the iniquity for which the Hashem decided to wipe away the corrupt civilization from the earth: “So God said to Noah: I am going to put an end to all people, for the earth is filled with *hamas* because of them; and, behold, I will destroy them with the earth” (Bereishis 6:13).

Although the word *hamas* can be interpreted in a variety of ways, Chazal write that the direct meaning is crime against others' property. The Gemara cites the flood as proof of the severity of the crime of theft: in spite of the general wickedness of the generation, which also reached lows in lewdness and promiscuity, their final sentence was meted out on account of theft (Sanhedrin 108a).

Later authorities use the word *hamas*, with some license, in reference to a range of property offenses that involve vice and corruption.

For example, Sefer Hassidim (893) writes that it is prohibited for a group of vendors to form a cartel, and to artificially raise prices ➤➤

flaw of the people was in the power of speech. After Hashem blew the breath of life within man, Onkelos translates that he became a ruach memalela – a ‘speaking spirit.’ The capacity of speech is the essence of human power.

Given the power of speech, man is charged with the mission of returning his speech to his Creator, directing it upwards in praise, thanks, and prayer for needs.

The power of speech is the power of forging a relationship with Hashem, and of seeing that relationship in all parts of life: For all of our experiences and pleasures, we recite a blessing to Hashem. By means of speech He is with us always.

The Generation of the Dispersion took the power of speech, and misused it for the opposite purpose. Rather than turn to Hashem in prayer, they turned to Hashem in war; rather than ask for their needs, they deemed themselves, self-sufficient,

for their personal gain (at the expense of buyers), and upon them it is said: “...for the earth is filled with hamas.” Although there is no formal (biblical or Talmudic) prohibition against forming a cartel (though Chazal certainly indicate that it is wrong to hike up prices), Sefer Hassidim asserts that such activity is included in the concept of hamas.

In the Talmud, the word hamas, and the hamsan who performs the crime, has a specific meaning: a hamsan is somebody who takes somebody else’s property against his will, yet by contrast with the regular thief (gazlan), he pays him for it (Bava Kama 62a). The hamsan forces the owner to sell his property against his will.

In the present article we will discuss the prohibition of hamas and the Talmudic hamsan. What are the parameters for this prohibition? What kind of pressure must one apply to a potential seller in order to transgress the prohibition? How is this related to the prohibition of lo tachmod, and can one transgress by merely coveting, even if the item is not taken?

These questions, among others, are discussed below.

Hamas as a Torah Transgression

The Torah prohibition that seems to be involved in the act of *hamas* is that of *lo tachmod*. The Gemara (Bava Metzia 5b) relates a case in which a guardian (shomer) wishes to refrain from making an oath concerning the loss of the object deposited with him (where he is in fact exempt from liability), preferring instead to pay for the lost item. On account of the concern that the item is not really lost and he just wishes to keep it for himself, the Gemara says that the guardian must make an oath to the effect that the item is not in his possession.

The Gemara proceeds to question the qualification of the guardian to make the oath. Surely, the very requirement of the oath indicates that we suspect the guardian of monetary fraud, and specifically (as Rav Abba of Difti explains) of *lo tachmod*, coveting another’s property. Since he is under suspicion of a Torah transgression, how can we rely on his oath? The Gemara responds to this, “People believe the prohibition of *lo tachmod* applies only without payment.” Since the guarding is offering to pay for the item, his understanding is that he does not transgress the Torah prohibition and therefore he is not disqualified from making an oath.

This Gemara implies that even when a person pays for the item he covets and takes, he really transgresses the Torah prohibition of *lo tachmod*—yet he is not disqualified from making an oath because of his belief that he does not transgress the prohibition. This is also

the implication of the Gemara elsewhere (Bava Kama 119a).

Another source, however, indicates that an act of *hamas* does not involve a Torah prohibition. The Gemara (Sanhedrin 25b) discusses the disqualification (as a witness) of thieves and of those who commit *hamas*, and explains that the Sages disqualified the *hamsan* when it became common practice to snatch others' property in exchange for payment. If the act of *hamas* involves a Torah transgression, there would be no need for this rabbinic disqualification.

Tosafos and the Rambam

According to one explanation given by *Tosafos* (*Bava Metzia* 5a), the prohibition of *lo tachmod* applies specifically to cases in which an item is coveted and taken without the offer of payment. That which people say, namely that the prohibition of *lo tachmod* applies specifically without payment, is in fact the truth!

As for the Gemara in *Bava Kama* (119a) which implies that *hamas* is a full transgression, *Tosafos* explain that this is only an *asmachta*—a law loosely based on a verse—but is not a full Torah prohibition.

However, another explanation offered by *Tosafos* (Sanhedrin 25b) is that the prohibition applies even when payment is made. This emerges from the *Mechilta*, a tannaic source where we find that a *hamsan* is biblically disqualified from testimony (*Mechilta debei Rabbi Yishmael, Masechta Dekaspa* 20; the Gemara, Sanhedrin 27a, has a different version of this source). This is also the opinion of the Rambam (*Sefer HaMitzvos* 286), who cites the *Mechilta*.

The Rambam and subsequently the *Shulchan Aruch* (*Choshen Mishpat* 359, 10), therefore, rules that *hamas* involves a full Torah prohibition (*Gezeilah* 1:9): “Anyone who covets a servant, a maidservant, a house or utensils that belong to a colleague, or any other article that he can purchase from him, and he pressures him with friends and requests until he agrees to sell it to him, violates a negative commandment, even though he pays much money for it, as it states: ‘Do not covet.’”

Somebody Who Merely Covets

The Rambam emphasizes that the violation of “do not covet” is only complete if the item is actually seized: “One does not violate this commandment until one actually takes the article he covets, as reflected by the verse: ‘Do not covet the gold and silver on these statues and take it for yourself.’ Implied is that the word *tachmod* refers to coveting accompanied by a deed.”

This, however, does not imply that somebody who covets without

desiring only to “make a name for themselves.”

Fittingly, they lost the gift of *Lashon Ha-Kodesh*. Created in the form of the Divine, man, just like Hashem, is able to create worlds with his speech. The power of creation, however, is limited to the Holy Tongue, the very letters that Hashem used in the act of creation.

After their sin, the people of the Dispersion were no longer worthy of the power. Their speech was relegated to the level of foreign languages.

The lesson for us is that our power of human creation must be channeled in our speech – in any speech, but in particular in the power of the Holy Tongue, with which we are able to create worlds with our Torah and Tefillah.

Our prayer is that we should indeed merit to avoid any negative speech, and that our speech should be directed solely for the sake of positive construction, in Torah, prayer, and good deeds.

taking the item is innocent of sin. The Rambam (Gezeilah Ve-Aveidah Chap. 1) and the Shulchan Aruch (Choshen Mishpat 359:10-11) stress that there are in fact two prohibitions related to coveting another's property, one derived from the tenth commandment in Yisro (lo tachmod) and the other from the tenth commandment in Ve'eschanan (lo tis'aveh).

While lo tachmod is contingent on actually taking the coveted item, the prohibition of lo tis'aveh is transgressed by coveting alone, as the Rambam writes (Gezeilah 1:10): "Anybody who desires his fellow's house or wife, or anything else that can be purchased for money—once he considers how he will buy the item, and his heart is sealed on the matter, he transgresses a negative prohibition, as it says: 'You shall not desire'—there is no desire other than in the heart."

This prohibition is thus transgressed in thought alone, even without an accompanying deed. These authorities rule further that a mere thought of jealousy is not sufficient, and the thought must develop into a practical plan of how to procure the desired object. The prohibition is transgressed after a person reaches the thought of, "how I will purchase this thing."

The Aruch Ha-Shulchan (359:8) adds that the transgression is contingent on a concrete decision to set the plan in motion: The plan itself is not sufficient, and in order to transgress a person must actually decide to execute it. He adds, however, that it is certainly correct to avoid all such thoughts.

Pressuring the Owner to Sell or Give

Whether a full Torah prohibition (of lo tachmod) or otherwise, the law of hamas raises an ethical dilemma we often encounter.

Upon seeing an item that we need or desire—a house with just the right accessibility options for elderly parents, a well-kept car that seems to hardly be in use by its owner, or a company we

think can do better under new management—part of ordinary human interaction is to think about whether the item might be available for purchase, and to make an offer. At which stage does this turn into the prohibition of hamas?

The above-mentioned passage in the Rambam stresses that the prohibition of lo tachmod is contingent on the person, "pressur[ing] him with friends and requests until he agrees to sell it to him." In Shut Betzel Ha-Chochmah (Rabbi Betzalel Stern, Vol. 3, no. 43) the author writes that this pressuring involves requesting the item at least three times, proving (from Sema 228:8) that any less is not considered pressuring, and does not involve a prohibition.

The actual halachic ruling, however, will depend on the person and his relationship with the owner. For some people, as Rabbeinu Yonah (Shaarei Teshuvah 3:43) points out, even a simple request will at times be considered an application of pressure. This can be true of a rabbi, a boss, or somebody in a position of authority. For ordinary people however, there will be no prohibition in merely asking if the owner is willing to sell the item, unless illegitimate pressure is applied.

Rabbeinu Yonah mentions that the prohibition applies both to one who pressures the owner to sell, and to pressuring the owner to give the item as a gift. Based on this ruling, the Chafetz Chaim (Sefer Mitzvos Hakatzar, Lo Ta'ase 40) writes that a chasan (groom) must be careful not to pressure his future father-in-law to give him gifts beyond those that were agreed in the tena'im, for this will involve a transgression of lo tachmod.

However, the Chafetz Chaim also implies that the concept of hamas is limited to wanting a specific item. The foundation of the prohibition is lo tachmod, referring to coveting, and therefore there must be a concrete object in mind in order for there to be a prohibition. Based on this, the transgression applies only when a chasan demands

an item that belongs to his father-in-law. Note that were it not for this qualification, every child who insists his parents buy him something will transgress the prohibition!

I Want to be just as Rich!

A source concerning the matter of wanting a non-specific item can be found in the following question: Does the prohibition of *lo tachmod* apply to somebody who wants to be as rich as his neighbor, or wants a car like his neighbor's, but not his specific car?

Relating to this issue, Sefer Derech Pikudecha (of the Benei Yissachar, 38:2) writes, "Even if a person covets riches as those of his fellow, and does not covet a specific item belonging to his fellow, he transgresses the prohibition of *Lo Tachmod*." This is possibly also the opinion of the Malbim (Shemos 20:13), who mentions somebody who "covets the wealth of his fellow."

However, Shut Betzel HaChochma proves from the simple reading of many rishonim and poskim that the prohibition is only transgressed if a person covets an item belonging to one's fellow. Rabbi Avraham ben Ha-Rambam writes this explicitly, stating that the prohibition applies to "a particular item in the possession of another, and not to something similar to the possession."

The Orach Meisharim (13) adds that one cannot expect somebody who sees somebody's [attractive] food and drink not to crave it, and no prohibition applies provided the craving is directed to "general ice cream" and not to that person's specific ice cream. A similar ruling is given by Shut Divrei Yatziv (Choshen Mishpat 65), who writes, "When a person wants to be as rich as somebody else, no prohibition is involved."

An Item that is Easily Found

Beyond the rulings mentioned above, we find in Eretz Zvi (4, citing the Imrei Emes) that the prohibition of *lo tachmod* does not apply to

something that can be purchased with relative ease on the market.

The halachah is cited without any accompanying explanation, but it appears that because the item can be found in the market, the coveting does not relate to the specific item belonging to another person, but to the idea of the item in general—not Yaakov's Ferrari, but a Ferrari in general.

Nonetheless, this ruling involves a significant *chiddush*, and other authorities do not mention the qualification.

Lo Tachmod for Organ Transplants

Rabbi Yisrael Yaakov Fischer (*Shut Even Yisrael* 8:105) was asked about whether a person is obligated to donate a kidney for his brother or sister, in particular where parents are pressing him to do so. As part of his response he discusses the matter of whether pressing a son to do so might involve the prohibition of *lo tachmod*.

In this connection Rabbi Fischer writes, "The prohibition is certainly limited to something that one can see and covet, and does not apply to something that one cannot see." He also writes, "The prohibition only applies to something that a person covets for oneself, and not to something that somebody covets for somebody else."

Both of these halachic rulings are significant.

Additionally, concerning the question of organ transplants, it may be that the prohibition of *lo tachmod* cannot apply, because the transgression is limited to possessions (the verse refers to "your fellow's house ... and all that belongs to your fellow"), and certainly does not apply to the performance of some action (such as playing the piano).

If we assume that a person's organs are not among his possessions, it follows that performing a transplant cannot be compared to a sale or a gift, but is rather like a physical action, so that the prohibition will not apply.

⌘ Halachic Responsa ⌘ to Questions that have been asked on our website dinonline.org



The Question:

Is a Jew allowed to be a fan of a non-Jewish ballplayer? Does this involve a transgression of the prohibition of 'lo techanem'?



Answer:

This depends on the nature of the support. It is permitted to support a team, and even a player, but not to “idolize” him.

Please see below for more details.

Best wishes.

The Gemara (Avodah Zarah 20) states that one should not praise a non-Jew (idol-worshiper), for fear that doing so will cause undesirable closeness.

Rashi explains that this means one should not say: “How beautiful is this non-Jew.” The Ran (6a) and the Rambam (Idolatry 10:4) write that one should likewise not praise his deeds.

However, we find many examples in the Gemara where non-Jews are praised, such as the Gemara (Avodah Zarah 23) where a non-Jew is praised for the manner in which he honored his parents. How do such statements fit with the principle of not praising non-Jews.

The answer appears to be that it is only forbidden to praise a non-Jew or his deeds when this is done as a direct praise for the non-Jew, and not when this is done for a purpose, such as the case of honoring parents, where the praise for the non-Jew was part of studying the laws of honoring parents. Likewise, it is permitted to praise the beauty of a non-Jew for the purpose of reciting a berachah, as we find in the Gemara (A.Z. 20).

In the case of sport, most sport fans enjoy being part of the competition, and praise for the non-Jew is part of the game: “My team is the best,” or “my player is the best.” Under these circumstances, there is no prohibition, for there is a separate purpose for the praise as part of enjoying sport competition. Sometimes, however, the support for a player can verge on “idolization,” including hanging up his pictures on the wall, and so on. This can be a problem of lo techanem, and the only possible heter will be that the non-Jew is not an idolater (the Rashba 1:8, and many who follow him, writes that the prohibition does not apply for non-idolaters, though others dispute this ruling).

We do not generally rely on this leniency (for example in selling land in Israel to non-Jews – much has been written on this subject), and a given non-Jew’s status as an idolater or not is not necessarily clear, so that one must avoid being an “all-out fan” (pictures on the wall etc.) of a particular non-Jewish player.

See also Tzitz Eliezer, Vol. 15, no. 47, who writes at length concerning a similar question.