

# עולם ההלכה



מכון סמיכה  
נייש ככל אחד  
נורם הלכה

גיליון ע"א | שבת קודש פ' במדבר | כ"ט אייר תשפ"ו

## עולם התשובה

לקט שאלות ותשובות



## עולם המורה

הרב מנחם מענדל צירקינד, משיקאגו

### Can I Own Stocks?

Rabbi M.M Prescott Rosh Yeshiva Machon Smicha

Question: How can I own stock in a bank whose revenue comes from interest — much of it from Jewish borrowers — placing me in the position of a malveh b'ribbis? Similarly, how can I deposit money into or borrow from a bank whose stocks are sold publicly, and likely partially owned by Jews?

Answer: Your concern is well founded. When you deposit money, that deposit is basically a loan to the bank, because the bank carries full responsibility for repayment. If the account bears interest — however low the rate — it is a halvah b'ribbis. The same holds true when borrowing from a bank (borrowing is actually more stringent than depositing, as will be explained below). Since most regional banks are owned by a vast number of shareholders — in the form of publicly traded stocks — which include many Jews, this matter deserves serious attention.

A concrete example is Wells Fargo, which operates nationwide and is part of the S&P 500, exposing its stock ownership to hundreds of millions of people. (A rough estimate places the value of Jewish ownership of Wells Fargo stock through S&P index funds alone at well over \$700 million — yet Jews all over the country bank with Wells Fargo.)

The core question is how to define stock ownership in the eyes of Halacha. In its basic traditional sense, "stockholder" is essentially another term for partner — not an operating partner, but a limited or silent partner who is also authorized to sell or transfer his share. Over time, however, stock ownership took on a new character, evolving into a mere vehicle of financial growth barely tied to the actual underlying asset, and this shift influenced how the poskim view that ownership.

The following incident from the 1870's illustrates how the poskim grappled with this new ownership structure. The city of Nadvorna was sold to an investment group. It may sound strange for a city to be sold, but municipalities were structured differently in those times — a remnant of the feudal system, where a wealthy landowner (known to us as the Poritz) owned the city and leased out the land to residents on long-term leases. By this period, the system had become more sophisticated, but remained under private ownership. In this case, it was an investment company called Boden Credit Anstalt, an Austrian investment bank, that purchased the city. Much like modern-day stocks, the Boden Credit Anstalt was comprised of a pool of private investors, each owning a small share, with dividends distributed annually. Among the investors were many wealthy Jews. The problem: Nadvorna featured

### היתר לרב להורות לבד

כתב כ"ק אדמו"ר ברשימת היומן (עמ' רפז) אודות כ"ק אדמו"ר הצ"צ, ז"ל הק' "הצ"צ הי' פסק'ענען א שאלה רק בשלשה. גם בסירכות הריאה שהיו שואלין אותו, אם היתה שאלה חמורה הי' מצרף

### כמה דברים אודות רב מורה הוראה בתורת רבותינו אדמורי חב"ד זי"ע

Part 16

אליו עוד שנים.<sup>[4]</sup>

ובאמת יש להבין בנוגע לכללות ההיתר לרב לפסוק לבד, שהרי ענינו של פסק הוא בגדר עדות שדבר מסוים הוא היתר או איסור, וא"כ רב כשפוסק לבד הוא עד אחד. ואע"פ ששגור בפי כל ד"עד אחד נאמן באיסוריו", מ"מ כשמעייני בפוסקים יראה שאינו פשוט כ"כ ושיש הרבה גדרים לזה ואין לפשוט וללמד בסתם מכלל זו.

ולעניינינו גופא, ביכולת לרב אחד לפסוק לבד הקשה הפר"מ<sup>[2]</sup> בפתיחה לאו"ח<sup>[3]</sup> דקשה להבין התירו, ובשו"ת פרדס רימונים<sup>[3]</sup> מבאר מסקנת הפר"מ, דהטעם דחכם יחיד נאמן הוא משום "דמן התורה נאמן עד אחד אפילו באיתחזק, ועיקר האיביעיא הוא אם נאמן גם בדרבנן, ועל כן הם אמרו והם אמרו דעד אחד בהוראה נאמן, ע"ש".

והפרדס רימונים גופא מסיק ומבאר ג"כ, שההיתר הוא מכיון דהא דאין עד אחד נאמן כשאתחזק איסורה הוא מדרבנן, הם אמרו והם אמרו, דכיון שיש טירחא ללקט ג' רבנים לכל הוראה והוראה התירו רבנן בעד אחד אפי' באתחזק איסורה כשיש לנגדו חזקה אחרת דאין אדם חוטה ולא לו. אבל כל זה דוקא בנוגע להוראות לאחרים שיש להרב חזקה זו דאין אדם חוטה וכו', אבל לפסוק לעצמו או בדבר שיש לו צד נגיעות שאין לו חזקה זו, אכן הרב אינו נאמן לפסוק.

וראה עוד מ"ש בדרכי תשובה<sup>[4]</sup> מדעת קדושים "דמ"ש בכ"מ דאינו נאמן להורות לעצמו במה דאיתחזק איסורא, זה דוקא בדבר שההוראה הוא ע"פ שיקול הדעת. משא"כ בהוראה בדבר משנה והלכה ברורה אין חשש בזה", עכ"ל.

אמנם כל זה הוא לדעת הפר"מ והפ"ר, אבל לדעת כ"ק אדה"ז אף זה לא מהני שהרי ההתיר מיוסד על זה שבדבר דאתחזק איסורה עד אחד אינו נאמן דוקא מגזירת רבנן, אבל דעת רבינו הוא שאינו נאמן ככהאי גוונא מדאורייתא. ומש"ה מבאר רבינו שחכם אחד מהימן רק אם לא אתחזק איסורא, ז"ל הטהור<sup>[5]</sup> "ואף על גב דאינו נאמנים אלא משום שבידם לתקן האיסור [מדובר בטבח היודע הלכות שחיטה] וזה המורה אין בידו לתקן, וכו', והמורה שנאמן להורות היתר מיקרי לא אתחזק איסורא אפילו בשחיטה וכהאי גוונא משום דהרי שחוטה לפניך. דאם לא כן אף בשל אחרים לא היה שום חכם נאמן להורות היתר בספק שנולד בשחיטה, שהרי אין בידו לתקן, וכיון דאתחזק איסורא לא מהימן מדאורייתא, כמ"ש בס' א'".

והיינו דנראה מכאן בסברת רבינו, דבכל נידון במורה הוראה המורה היתר צריך להיות בגדר של "לא אתחזק איסורה", ורק א"ה מותר להם להורות. משא"כ אם יהא בחזקת איסור, משמע שאין להם היתר להורות היתר לבד כיון דעד אחד אינו נאמן מן התורה בדבר דאתחזק איסורה ואין בידו לתקן.<sup>[6]</sup>

אבל טעם ההיתר שכתב הפרדס רימונים, דכשאינו החכם נוגע בדבר יש חזקה דאין אדם חוטה ולא לו נגד חזקת איסורה ומש"ה נאמנים, נראה דאין רבינו מסכים לזה שהרי כתב רבינו בפירושו "אף בשל אחרים לא היה שום חכם נאמן להורות היתר בספק שנולד בשחיטה, שהרי אין בידו לתקן וכיון דאתחזק איסורא לא מהימן מדאורייתא", ומוכח דזה שהוא של אחרים לא מהני אע"פ שיש חזקת אין האדם חוטה וכו'. ודוק היטב בזה, ונמצא דעדיין יש ליישב בזה דנאמן חכם אחד להתיר לאחרים בדבר שאיתחזק איסורה.<sup>[7]</sup>

ומוכח שלפי דעת רבינו קשה להתיר להורות הוראות היתר בלבד באתחזק איסורה כשאין היתר בידו, ורק בלא אתחזק יש להתירה. ואכן לאחרונה שמעתי הקלטה משיעור שמסר מו"ז הרב אליעזר צבי זאב צירקינד שבו הוא אמר שאף שעמא דבר הוא שהרבנים פוסקים שאלות לבד בלי שום פקפוק, מ"מ ברור בדעת כ"ק אדה"ז בס' יח שאינו דבר פשוט ותלוי בכמה תנאים וכנ"ל.

ואולי י"ל בדוחק דכיון ש[עכ"פ רוב ה]שאלות הבאות לפני מורי הוראות מקרי ספק איסורא ולא ודאי איסורא, מהימיני חכם אחד [עכ"פ בהם].

ועכ"פ ע"פ זה אולי יש לבאר קצת מה שכתב כ"ק אדמו"ר אודות פסקי הצ"צ, ודו"ק.

וראה עוד מ"ש כ"ק אדמו"ר להרב אליהו<sup>[8]</sup> שהביא רא"י מרבה בר נחמני שרב אחד יכול לפסוק, ותירף כ"ק אדמו"ר שהוא היה מיוחד בזה שהיה יכול לפסוק לבד כמבואר בהמשך הגמ', ע"ש.

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עשרים שנה ולא חזו ליה טעותא. משא"כ בתלמיד זה אף אם יהי חריף ובקי, עדיין אינו נק' מומחה לרבים. וא"כ ראוי להיות לו יראת שמים והיות נכנע לרבו להתיישב עמו על כל דבר הקשה, וגם רבו יהי עמו בטוב, אז יקויים בהם 'מאיר עיני ה'".

ויש ללמוד מזה כמה דברים, א' שצריך המ"ץ השנית רשות להורות בדיני או"ה ממ"ץ הראשונה.<sup>[11]</sup> וגם שיש ענין של מומחה לרבים בכדי לפסוק גם בעניני איסור והיתר, כמבואר גדרו בהלכות דיניים (חו"מ ג' ג' ונו"כ).<sup>[12]</sup>

ויש להוסיף מ"ש כ"ק אדה"ץ<sup>[13]</sup> "כמו שהוא כבודם בשאר הוראות שאין לתלמיד ולא אפי' לחכם אחר להורות במקום שיש חכם העיר". ועוד<sup>[14]</sup> "בכל איסורים שא"צ נטילת רשות להורות בהם היתר כל שהגיע להוראה ואין רבו בחיים יכול להורות אף בשל".

המופ' נ"י לכאורה ראוי ונכון מאד להתלמד להיות כפוף לרבו ההמ"ץ נ"י, ויניח לו סידור גיטין. בהיות שמעולם נהגו זהוה ממונה אגיטי אחד המיוחד שבכל עיר ובשאר הוראות או"ה ראוי לרבו שיתן לו רשות.

אך נכון לו שיתיישב עם רבו, ועל זה אמרו 'אם נבלת בהתנשא', אם נבלת עצמך על דברי תורה סופך להתנשא. וכתוב 'בישישים חכמה כו'. וגם מומחה לרבים שבגמ' פי' הרא"ש בפ"ק דסנהדרין סי' ב', 'ומעייני בדיני כמה שני ומנסו לי' זימנין סגיאיין ולא חזו לי' טעותא, גנון האי הוה מומחה לרבים' עכ"ל. הרי דאינו נק' מומחה אע"פ שהוא בקי במשנה וגמ' ושקול הדעת, עיין שם, א"כ אף מעייני ג"כ בדיני כמה שני ומנסו ליה זימנין סגיאיין כו'.<sup>[10]</sup> א"כ אף גם אם יאמר התלמיד שנתחכם כמו רבו, עכ"ז יש מעלה גדולה ויתירה לרבו שהוא הנק' מומחה לרבים והיותו מו"צ בעינים זה

ולהעיר ג"כ מתו"מ התועודיות תשמ"ח ח"ד עמ' 403 "ולכו, בכל ענין וענין, הן בענינים הפרטיים והן בענינים הכלליים כו, יש להתנהג ע"פ הוראת הבר"צ של רבני ליובאוויטש (בכל מקום ומקום 58) ובהערה 58 "ובפרטיות - לשאול אצל שלשה רבנים, או אצל א' מהם (בפרט בענינים שמצד צניעות וכיו"ב אי-אפשר לדבר עם שלשה) - שהוא יתדבר גם עם השנים, וישיב בשם כולם".

**ההורות במקום שיש שם אחר**

כתב הצי"צ<sup>[9]</sup> ע"ד גט ששידך א' בעיר שיש שם תקנה בחרם שלא יורה רק ההמ"ץ שבעיר. וזה האחד ששידך הגט נתמנה למ"ץ שני, אך שלא ברצון כל העיר רק ע"י מקצת נגידו העיר, ויצא ערעור לפסול הגט, ע"ש. ונתן התשובה מתייחס רבינו לענין השייך לדברינו, וז"ל "ובגוף הענין על הקטגוריא בין ההמ"ץ לתלמידו

שירצה בו האדם המניין". ע"ע שו"ת מנ"א ח"ג סי' כ', שו"ת מהר"ש לבית הלוי יו"ד סי' ה, ושו"ת מערכי לב (להרב י"ל צירלסאהן) סי' נב. ע"ע מ"ש המחבר בי"ד סי' רמב סל"א ובח"מ סי' י"ב, וברמ"א יו"ד סי' רמה סע' כב וש"ך ס"ק ט"ו ובפ"ת ס"ק יא ומאריך גיטא בשו"ת דברי חיים יו"ד סי' נ"א ד"ה "אך כו". וראה בכ"ז באריכות גדולה בדעת תורה למרשר"ם ססי' רמה, ואכמ"ל.

[12] ע"ע בהלכות נדרים יו"ד ריש סי' רכה. ועי' בשו"ת רדב"ז הנ"ל שלהורות באו"ה חמורה יותר מלדון בדיני ממונות, כיון שאם טעה בדיני ממונות יכול לשלם מבתו משא"כ בדיני או"ה, וע"כ להורות בדיני או"ה יותר חמור להגיע לכלל הוראה, ע"ש.

[13] יו"ד סי' יח קו"א ט בתו"ד.

[14] שם קו"א י.

תשובות הפוסקים דבשאלות חמורות כותבים בסוף דבריו, ע"ד, שכן נראה לו אבל למעשה יש לשאול עוד א' או ב' רבנים להסכים אתו, ויתכן דהיינו משום שהוא דבר חמור כ"כ או איתחזק איסורא ואין לסמוך על ע"א בזה. ולהעיר משדי חמד כללי הפוסקים סי' ט"ז אות מ"ז, מה שדן בה כשפוסקים תולה בדריהם באם יסכים אחרים, וע"ש שהביא דלפי משמעות אחד מהפוסקים יש לחלק בזה אם הוא להקל או להחמיר, ועוד יש לדון בזה, ואכ"מ.

[8] ספר השיחות תשנ"ב ח"ב עמ' 450 מהא דב"מ פו ע"א, ע"ש.

[9] שו"ת צ"צ אה"ז סי' שעה.

[10] זהו דעת הסמ"ע חו"מ סי' ג ס"ק ה.

[11] יש להעיר מגליון מהרש"א שהביא משו"ת מהר"ש הלוי ש"אדם שממנים אותו על הצבור, אין הצבור רשאי למנות אחר לסייע כ"א מי

- [1] ע"י מבואר לשו"ת מהרי" תומרקין ריש אות ג.
- [2] הנהגת השואל עם הנשאל איסור והיתר סדר א' אות ד'.
- [3] שו"ת ח"א יו"ד סי' כה, אות טו-ז.
- [4] ס'ת יח ס"ק קפח.
- [5] ביו"ד סי' יח קו"א י.
- [6] ראה עוד מ"ש רבינו ביו"ד סי' א קו"א יב וטו. וראה בחקרי הלכות על קו"א יב שמביא שרבינו מחמיר בזה אף שכו"כ מקילים בדבר.
- [7] ושו"מ בקובץ אבן המשפט (כולל חסידי קרלין סטולין ירושת"ו תשנ"ב) שבס"י יב הערה 26 העיר מדברי הפרמ"ג ומדברי רבינו, ונשאר בצ"ע משום שבכלל לא מצאנו בשום אחד מספרי תשובות או הנהגת רבנים וגאונים גדולי התורה שכתב למנוע מלפסוק מטעם חוסר נאמנות, ועצ"ע. [ואגב לולא דמסתיפא הייתי אומר, שמטעם זו עצמו נפוץ הדבר למצוא בכ"כ

## Would a Money Manager be Liable For Causing a Client to Lose a Tax Credit?

| Rav Aryeh Finkel

**Question:** There is a threshold of how much investment income a taxpayer can have and still be eligible for the Earned Income Credit. Reuven told his money manager to make sure he doesn't go over that threshold, as it would not be worthwhile to lose out on the credit. The money manager disobeyed his instructions and made him some extra money on an investment which caused him to lose the Earned Income Credit. Is he liable to pay him for that loss?

**Answer:** This is certainly not an act of damage, but it might be garmi.

The Poskim discuss a case called *"mevatel kiso shel chavero"*, which is where someone caused his friend a loss of potential income. An example of this would be if someone locks up his friend's merchandise so that he cannot sell it on the market day, thereby causing him a loss of profit that he could have made. The Poskim rule that this is a case of *grama*, which means that he is exempt in *bais din* but liable in *dinei Shomayim*. It could be argued that this case is the same, as the money manager is causing the client to lose a profit that he otherwise could have made.

Moreover, one might claim that because an Earned Income Credit is given automatically by the IRS to any family that qualifies, the money is already his and is just waiting to be claimed. Thus, it is even more of a direct loss than *mevatel kiso shel chavero*, which is only a loss of potential profit that could potentially have been made. Accordingly, perhaps this would qualify as *garmi* and the money manager would even be

liable in *bais din*.

However, it seems more accurate that causing the loss of the Earned Income Credit cannot be considered *garmi*. Even though it is given electronically and is done automatically, the individual still must file his taxes and be found eligible. Many things can happen over the course of the year that can cause him to not qualify. Accordingly, the money isn't simply waiting for him to claim it. Therefore, it cannot be considered *garmi* and remains in the same category as *mevatel kiso shel chavero*.

We would still have to consider the fact that the money manager is a hired worker and such professionals are sometimes held culpable because part of their contract is that if they cause a loss to a client by not following instructions, they are liable for that loss. That is a different question that needs to be addressed but, in any case, he is not liable because of *garmi*.

## If Someone Makes a Short Stop In The Middle of the Road, Is He Liable For The Damages of a Car that Rear-Ends Him?

| Rav Aryeh Finkel

**Question:** Someone is driving and suddenly stops in the middle of the road. The driver behind him isn't able to brake in time and hits him from behind, which causes substantial damage to the second driver's car. Is the car that is parked in the middle of the road considered a *bor*, which would mean that he is exempt from damages to *keilim* including the damage to the other car, or is he considered an *odum hamazik*, which would make him liable to pay for the damages?

**Answer:** The Mishnah discusses a case where a potter trips while holding his pots and a person behind him falls over him and gets hurt. The Mishnah says that the first man is *chayav* to pay for the damages. The Rishonim argue whether the man is liable as a *bor* or as an *odum hamazik*, with the practical difference being whether he is liable on *keilim*. The Shulchan Aruch rules that he is *chayav* as a *bor*. This seems to indicate that when someone is in a stationary position, he is classified as a *bor*, not as an *odum hamazik*.

On the other hand, another Mishnah says that if someone is carrying a beam in the street and stops suddenly, causing a barrel moving behind it to collide and break, the person is *chayav* to pay for the barrel. The Rishonim note that this indicates that the person holding the beam is considered to be an *odum hamazik*, who is liable on *keilim*, rather than a *bor*. This seems to contradict the other Mishnah.

Rebenu Peretz and the Tosafos Rid resolve this contradiction by saying that if a person is lying prone on the floor and is not doing any action, he is considered to be a *bor*. Whereas, if he is standing and holding something, even though he isn't moving, holding the item in place is considered to be an action and the person is considered to be an *odum hamazik*.

In our case, it would seem that if the road was inclined and the car would roll down on its own if the driver weren't sitting there and holding the brake, he would be considered to be doing the action of holding the car in place and would be an *odum hamazik*. If the road was flat and the car would be stationary or rolling very slowly even if his foot was not on the brake, the driver would not be doing any action; therefore, the car would only be a *bor* and the driver would be exempt on damages to the other car. [Of course, the victim may pursue a claim against his insurance.]

a municipally-owned whiskey and beer factory — all of whose production was chometz. Was that chometz sh'avar alav haPesach, since Jews held partial ownership in the enterprise?

Rav Yitzchak Aharon HaLevi Ettinger (of Lvov, brother-in-law of the Shoel U'meishiv) was presented with the problem and ruled leniently.<sup>[1]</sup> In his view, since the shareholders have no legal right to access the whiskey and beer, the Torah does not require them to dispose of it, and it is not subject to bal yeira'eh. As investors, explains Rav Ettinger, they are entitled only to dividend distributions, while the actual assets are controlled entirely by a non-Jewish managing company.

Many recent poskim<sup>[2]</sup> compared modern stock ownership to the shareholdings of the Boden Credit Anstalt and permitted owning stock in a chometz-producing company over Pesach. The matter remains under debate, however, as some poskim do not accept the sevara that inaccessible chometz is patur from bal yeira'eh. They maintain that if you own it, you must dispose of it or sell it before Pesach.<sup>[3]</sup>

Looking closely at this debate, both sides appear to agree that stockholding constitutes real ownership, fundamentally subject to bal yeira'eh. Rav Ettinger's leniency rests solely on the inaccessibility of the chometz — similar to the Mishna's exemption of chometz she'nafal alav mapoles,<sup>[4]</sup> which is a sevara native to bal yeira'eh alone.

When we turn to ribbis, however, the parallel breaks down. If one lends to a partnership that is partly Jewish-owned, a Jew has borrowed with interest and the depositor has transgressed ribbis. The fact that shareholders do not physically handle the funds and have no control does not remove the problem the way it does regarding chometz. Bal yeira'eh is connected with the mitzvah of tashbisu — so one can argue that where tashbisu is impossible, bal yeira'eh does not apply. But ribbis carries no such condition, bringing us back to square one: how can we bank with publicly traded banks?

In a teshuvah discussing the issue of owning stock in a company that operates on Shabbos, Rav Moshe Feinstein<sup>[5]</sup> presents a similar approach to Rav Ettinger's, but with a broader basis applicable to ribbis as well — one that ultimately became a landmark ruling on the broader stock ownership question. He defines stock ownership differently than its elementary understanding as partial ownership in a company. There is no better way to convey Rav Moshe's outlook than to quote his own words:

The purchasers of shares cannot be considered as having any meaningful role in the business, since owning shares is merely a fractional participation in the commerce, in which they have no voice or opinion in the actual business operations. This is not comparable to a partial partnership, where the partner has a voice like a full owner.

Furthermore, the share purchaser does not intend to become an owner of the business, and does not intend to acquire anything in the actual business itself — rather he is merely purchasing a share in the profits and losses that occur in the business, proportional to the amount he invested.

Moreover, it appears more correct that shares do not even constitute a halachic acquisition at all — since it is an acquisition of something not yet in existence — and their validity is only by virtue of civil law.

As for the fact that according to the conditions of the sale, a shareholder has a voice in electing the president — this is merely empty words in practice, since the company retains for itself more than the majority of votes, making it irrelevant for shareholders to express any opinion. And furthermore, the buyers themselves have no intention of exercising such a voice, as this was never their intent in purchasing.

Therefore in my humble opinion, one need not be concerned about what the company owners do, as it does not affect the shareholders at all... However, it is certainly prohibited to purchase such a large quantity of shares that one's opinion would be taken into account.

Rav Moshe's position is both novel and direct. Although shareholders legally

hold equity, he does not treat them as ordinary silent partners. Rather, he understands stock as merely a right to share in future profits and losses — not as ownership of the company's assets themselves. He goes as far as to consider it a kinyan on a davar shelo ba l'olam, which is not halachically effective and is valid only by virtue of dina d'malchusa — because it resembles the classic case of mocher peiros dekel, selling the future fruit of a tree.<sup>[6]</sup> Just as the fruits do not yet exist at the time of sale, the future earnings of the company do not yet exist either.

One may ask: what about stocks that don't distribute dividends? Most small-cap tech stocks retain all their earnings rather than paying them out. This is perfectly understandable according to the conventional legal definition of stock ownership — even without dividends, you still own a proportional share of the business itself. But according to Rav Moshe, what exactly are you purchasing?

The answer lies in understanding what a non-dividend stock actually represents. Rather than distributing earnings to shareholders, the company reinvests them back into its own operations — typically in research and development and expansion. In effect, the shareholder is agreeing to have his earnings reinvested now, in anticipation of larger distributions down the road. The stock carries no current payout, but it represents a claim on future dividends — perhaps decades away. Its rising market value reflects nothing more than the market's increasing confidence in the likelihood and size of those future dividends. So even a non-dividend stock, properly understood, is ultimately a right to future dividend collection — which fits squarely within Rav Moshe's framework.

An loose comparison is stock options. One purchases the right to buy a stock at a certain price. While the holder has an interest in the company's growth, he holds no ownership whatsoever — the options contract is merely a legal right. Stocks themselves, according to Rav Moshe, are similarly just "rights."

The Minchas Yitzchak<sup>[7]</sup> devotes an entire teshuva on defining stock ownership. He echoes Rav Moshe's ruling, but only regarding non-voting shares — which he refers to as "A Shares" (terminology has since changed). But where a shareholder does have voting rights, as is the case with most common stock traded on the market, he finds it difficult to claim that shareholders are non-owners.

That said, it is not entirely clear what type of stocks or quantity of ownership the Minchas Yitzchak was referring to. The reality is that voting rights in a standard S&P company are largely symbolic — you receive the emails, you can vote, but with millions of shareholders your individual vote is essentially meaningless. (Institutional investors like BlackRock, Vanguard are the ones who actually move the needle.)

Before closing, an important distinction should be noted. While the ribbis concern in Jewish-owned banks is potentially relevant both to depositing and borrowing, there is a significant difference between the two. Depositing is considerably more lenient. When a corporation borrows — including when a bank accepts deposits — the liability is corporate, not personal. No shareholder personally owes the debt; only corporate assets stand behind repayment.

For that reason, many poskim hold that this does not constitute ribbis d'oraysa, since no individual bears the obligation of a classic borrower, though ribbis d'rabbanan may remain. By contrast, when a corporation lends to an individual, that is a full loan to the borrower, and the shareholders participate in the earnings — making the ribbis concern potentially d'oraysa and therefore far more severe. More on this in the next article, iy"H.

[1] בשו"ת מהרי"א הלוי חלק ב (סימן קכד)  
 [2] לדוגמה, ראה בשו"ת חשב האפוד חלק א (סימן סב)  
 [3] ראה בספר מועדים וזמנים חלק ג (סימן רסט, בהגה)  
 [4] מס' פסחים (לא, ב)  
 [5] אגרות משה אבן העזר חלק א (סימן ז, בסוף)  
 [6] עיין מס' בבא מציעא (לג, ב)  
 [7] חלק ג (סימן א)

## Bor and Other Stumbling Blocks

| Rabbi Baruch Fried, Dayan Bais Havaad

### A Bor in Public or Private Property

It is forbidden for an individual to damage public property.[1] If one digs or uncovers a bor, a pit, on public property and a person or animal falls in and sustains injuries, the one responsible for the open pit must pay for the damage.[2] If he placed a sufficient cover or protection around the bor, he is no longer liable for it. If the cover or protection gets removed, he remains exempt until he is informed of this and has sufficient time to replace it.[3]

One who has a bor on his own property is liable for the damage it causes, even if it was created by someone else, as long as he was made aware of it and had sufficient time to remove it.[4] However, if the victim had no right to be in the area of the bor, the owner is not liable for the damage.[5]

One is permitted to temporarily dig a ditch on his property's edge for construction purposes, and is not liable for any damage it causes because this is considered a normal use and he is not being negligent.[6] According to some Poskim,[7] this exemption is limited to a temporary bor that is within one's own property. However, one who creates a bor on public property, even if he did so lawfully, remains liable for any damage it causes.

### Personal Objects Left Where They Cause Harm

Objects placed in areas where others can stumble upon them and become injured, carry the same liability as a bor. This is true whether or not the object belongs to the one who placed it there. However, if the victim only stumbled upon the object, but fell onto the ground and sustained injury or damage, the Shulchan Aruch rules that the one who left the object there is not liable.[8] Other Poskim disagree and rule that he is liable.[9] According to some Acharonim,[10] if the one who created the obstacle also owns the ground where the victim fell, he is liable according to all opinions [assuming the victim had the right to be in the area].

If a personal object falls into public property due to an unexpected or unavoidable incident, such as an object that happens to break while being carried in public property, and the owner left the pieces there with no intention of retaining ownership, then the owner is not liable in Bais Din for any subsequent damage. Because the incident was unavoidable, the creation of this bor is not attributed to him, and by forfeiting ownership he has removed his responsibility as an owner. Still, he is liable in *dinei shamayim* for not clearing it away.[11] If an object fell into public property due to the owner's negligence, he remains liable for creating a bor on public property even if he forfeits ownership of the object.[12]

### The Torah's Exemptions on Bor

Chazal derive from the *pesukim* that one who creates a bor is only liable for human injury, or the damage or death of an animal. However, for human death, or for damage to vessels (defined as all movable items other than animals), the one responsible for creating the bor is not liable.[13] As with the exemption for covered items regarding fire damage, there is a dispute among the Acharonim as to whether there is responsibility in *dinei shamayim* in these cases.[14]

### Collapsed Trees, Walls, or People

If one's tree or wall collapsed and fell into a public area, he is not responsible for any damage they cause, provided they were originally planted or built properly. If he was warned by a Bais Din to chop down the tree or demolish the wall and he did not do so within 30 days, he is subsequently liable for any damage they cause.[15] Even then, there is a dispute among the Rishonim as to whether his liability would be in the same category as liability for a bor, along with its exemption of damage to movable property aside from animals.[16]

If a tree or wall fell into a neighbor's property, one may not tell the neighbor to keep the debris and clear it himself, since presumably, he does not intend to truly forfeit his ownership.[17] If he clearly does intend to leave it there, as is common today, it would seem to be a machlokes among the Rishonim as to whether the neighbor may insist that the owner remove it himself.[18]

A person who falls and is lying in a public area is not liable for damage to others until he has had enough time to get up.[19] According to some Poskim,[20] if he had the ability to warn them not to trip over him he is liable from that point onwards, even if he could not yet have gotten up.

Once this time passes, according to some Poskim, his body is considered a bor and is liable for any human injuries he causes to those who stumble over him, but not to their property. Other Poskim categorize his body as a human damager and consider him liable for any damage he causes. [21]

[1] Bava Kama 51a

[2] C.M. 410:1-2

[3] C.M. 410:26

[4] C.M. 410:4 The one who dug the bor must pay the owner for the damage to the property as an adam hamazik, but he is not liable for the damage caused by the bor.

[5] Sema 410:5

[6] C.M. 410:9

[7] Sema ad loc.

[8] C.M. 410:1

[9] Gra ad loc. 5

[10] Chazon Ish Bava Kama 2:14

[11] Bava Kama 28b-29a

[12] C.M. 411:1-2

[13] Tur C.M. 410:10

[14] Birchas Shmuel Bava Kama 2:1; Chazon Ish Bava Kama 2:7

[15] C.M. 416:1

[16] Rosh Bava Kama 1:1

[17] C.M. 166:1

[18] Tosafos Bava Metzia 118a s.v. Amar; Tosafos HaRosh ad loc.

[19] C.M. 413:1

[20] Rema ad loc.

[21] Sema C.M. 413:5

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