

# HALOCHOSCOPE



**This week's question:**

An engineering student has calculated a way to penetrate tank armor with an ordinary bullet, if it is made of a certain material and is projected in a certain way. While he has not carried out a live trial, his professor would like it to be published. This would include publishing it on the Internet. However, he is wondering, does this violate *halacha*? The information will undoubtedly be available to the wrong people as well. Is this his concern?

**The issues:**

**A) Selling weapons or other damaging items**

**B) Defensive weapons and armor**

**A) Selling weapons and harmful items**

The Talmud lists various items that are considered dangerous or harmful, and that may not be sold to idolaters. The presumption is that these are unscrupulous people who are always considered suspected of being murderous. Either they are always looking for the opportunity to get away with it, or they will commit it quickly when they lose their temper. One may also not provide services to help them use the dangerous items. They can be classed in many categories: weapons; weapon handles; weapon holders; one may not sharpen their weapons; items used to hold people in captivity, such as chains; horses, that can be trained to trample fallen foes; bears and lions that are either trained to fight captive humans, or are just not tamed or restrained; one may not build buildings used to judge death penalty cases; one may not build buildings used to carry out the death penalty, such as a gallows; one may not build a circus or theater where captives or prisoners are forced to fight wild animals for the spectators; one may not sell these items to a Jewish robber, who might use them in the course of his crimes; one may not sell iron of a specific type used for weapons manufacturing.

The reasons for these restrictions are debated. The seller is not committing the murders himself. He is not even causing them to take place. However, he is facilitating them. Perhaps, in some secular system he could be called an accessory. This would be similar to charging a gun store or manufacturer as an accessory to a murderer. In Jewish law, such people cannot be charged in a *Bais Din*. Their judgment is in the hands of Hashem. However, it is unclear what exactly is their violation. While it might make common sense to forbid such sales, there must be a *halachic* precedent. On the surface, the prohibition is a Rabbinic decree. However, depending on the source, it might be included in a more general Scriptural prohibition.

The passage in which this is discussed includes various other matters relating to dealing with idolaters. Specifically, procuring items that they will use in the service of their idols is forbidden. Idolatry is forbidden to gentiles as one of the seven *mitzvos* of the

*Bnei Noach*. A Jew is forbidden to procure an item that will allow another to sin. This is included in the Scriptural *mitzvah*, *lifnei ivair lo sitain michshol*, before the blind, you may not place a stumbling block! Apart from the obvious simple meaning, there are two other meanings. One may not give an item to another with which he will sin, such as giving wine to a *nazir*, one who has adopted *nezirus*, which bans him from drinking wine. One may not give another advice that is against his better interests. This also includes advising him to sin. This prohibition forbids one from aiding anyone, including gentiles, in violating their *mitzvos*. Some suggest that the same prohibition applies to aiding a gentile in committing murder, bodily harm or property damage. These are also included in the seven *mitzvos* of *Bnei Noach*.

Some suggest that murder with one's own hands is the only form punishable by death. This could include directly causing it, such as tying someone up in a river bed and flooding it. Indirect cause would not be punishable by *Bais Din*. However, when describing how to punish a murderer, the Torah mentions the term *drisha*, seeking out. It refers to punishment by Hashem for indirectly having a hand in a murder. Thus, one who hires a hit man is liable in Heaven. The hit man is given death, but the hirer is punished by Hashem. One is sometimes liable for unintentional killing, and it is termed murder by the Torah. One could not be liable for indirectly causing this. However, the same negligence is present. Therefore, the prohibitions against procuring weapons or dangerous items for a murderer would be included in this.

It is also forbidden to cause damage. While not all are in agreement on the source for the prohibition, all agree that it must be avoided, and it is certainly forbidden to cause it outright. The source, according to many, is the prohibition against robbing and stealing. Damaging also deprives an owner of the use of his property. Others derive it from the *mitzvah* to pay for damages, which the Torah says is a result of not watching his property well. Damaging or injuring a human is specifically forbidden. Some say the positive Scriptural *mitzvah* to love one's fellow includes not to damage him or his property. The Rabbis made many rules to add to the Torah's damage laws that require one to maintain a safe distance between harmful elements on one's property and the neighbor's property. Some say that these are also based on the concept of stealing or depriving.

There are Scriptural *mitzvos* to prevent danger in the home, and by extension, anywhere one has jurisdiction. One must remove hazards where they are found. One must fence in a rooftop which is used. One must protect his life and his health. Rambam includes these *mitzvos* and their *halachos* in the section on murder. He further states that the Rabbis forbid many things that they considered dangerous. Included in this list is the sale of these dangerous items.

There are also a few *mitzvos* relating to saving people's lives. *Lo sa'amod al dam raiecha*, do stand idly by while your brother's blood is shed. The *mitzvah* to return a lost item includes language that means one must return his life or body to him. This means saving his life. An extension of these Scriptural *mitzvos* would be to prevent harm by not selling dangerous items to dangerous people.

There also seems to be further debate on whether the Jewish seller is being held responsible for a murder that the gentile commits against a fellow gentile, or only against a

Jew. The same issue arises with regard to buildings to punish with the death penalty. Does the responsibility apply to unfair punishments against any citizen? Or is the Jewish seller only held liable in some way for the lives of fellow Jews? It is still be unethical to endanger the gentiles, but maybe the Rabbis could not enact a decree to forbid that.

With regard to a Jewish robber, the Talmud says that we are obviously not referring to one who kills outright. This would be the same as a gentile murderer. However, he robs, and in the process uses his weapons to either threaten the victims or defend himself. Thus, he might kill, and even if he does not kill, he will steal and damage. In this case, some poskim say that the prohibition is one of the forms of *lifnei ivair*. This would seem to be a Scriptural violation, rather than a Rabbinical decree.

Rambam is one of those who consider selling to a Jewish robber *lifnei ivair*. The Talmud says that *lifnei ivair* only applies when the sinner would not be able to perpetrate his activity without the help of the facilitator. For example, if a *nazir* is across a river and cannot reach the wine, the person who hands it to him violates *lifnei ivair*. If he is on the same side, the helper only aided him, but did not facilitate it. This is forbidden Rabbinically, as a *mesayaia*, helper. Rambam does not make this distinction and considers *mesayaia* Scriptural. He then adds the other type of *lifnei ivair*, that of giving advice to another to help him sin. This is understood to mean that along with selling actual arms, providing information on how to procure them, or any information that would help is also forbidden, possibly Scripturally. Nowadays, weaponry is mechanical and technological. Selling the designs and technology would be included in this last category. For example, selling a horse nowadays might not be problematic, but selling a fighter jet would be. Technology and designs might also be included in the category that forbids selling the specialized iron. [See Avoda Zara 15b-16a, Poskim. Rambam Rotzaiach 11-12, commentaries. Tur Sh Ar YD 151:5-6 CM 378:1 395 426-427, commentaries.]

#### **B) Defense, armor and war**

The Talmud discusses various possibilities that would permit selling an item to a potential murderer. The first discussion is whether one may claim that there is a chance that the item will not be used for dangerous activities. For example, nowadays, a purchaser might claim that he needs the weapon to hunt animals. In Talmudic times, the purchaser might be a law-abiding idolater. This is not sufficient reason to permit selling the weapon. Nowadays, one could not sell chemicals needed for explosives, with the excuse that they could be used for positive needs, such as building.

The Talmud debates selling a shield. It is primarily for defense, but if one has lost his weapon, he might use it to attack. We follow the view that permits selling a shield.

The Talmud also asks why they were accustomed to selling specialized iron to the gentiles in their times. The answer is that the Persians in their region were protecting their Jewish neighbors. Based on this, the poskim permit selling actual weapons to a government and an official army, if they are protecting their Jewish citizens. The presumption is that the prohibition would apply to governments as well, if they do not protect their Jewish citizens. It also applies to armies. The Talmud does not say that the Persians are not prone to murder. Rather, the positives outweigh the dangers, and the decree is not applied. This indicates that it works for Rabbinical decrees, but not for Scriptural

*mitzvos*. The prohibition against horses applies specifically to their use in war. War is not ideal ever. It is permissible only under specific circumstances, for Jews or gentiles. Most poskim maintain that a defensive war is permitted, but not an offensive.

In a defensive war, one uses weapons to attack as a defense. In our case, if the theory works, one would be using a bullet, an attacking weapon, against a tank, which is also attacking. The bullet is being used to defend, by penetrating the defenses of the tank. One could argue that it is being used in defense, but it would seem that the Talmud does not provide for a dispensation like this, or it would have mentioned it.

Although the Talmud and poskim permit selling weapons to friendly governments, they do not suggest any dispensations to permit building prisons or courthouses for them. One could argue that these also maintain law and order and protect citizens from danger. Nonetheless, the risk of unfair actions against Jews mean that one should not participate in this. Alternatively, the prohibition relates to buildings that are obviously made to hurt captives and prisoners, rather than to establish law and order. Indeed, some point out that the *bnai Noach* are also required to enforce the law. Helping them should be good.

The poskim make another ruling based on the Persians. In more recent times, the gentiles are not idolaters. The reason idolaters are considered dangerous is because they have no scruples. Those who follow a religion with a clear code of conduct and who also follow a form of law and order. Thus, nowadays, one could sell weaponry and technology to a democratic government that follows international conventions against tyranny. The Talmud still seems to have forbidden selling to a law-abiding idolater, but it appears that these poskim maintain that the law was not enforced uniformly.

In our case, selling this theory, or simply making it available, to a friendly government, would be included in this dispensation. The problem is that the very purpose and nature of publishing, which is partly to invite peer review, allows rogue parties to gain this information. The only redeeming factor is that the theory has not been proven. Therefore, it is at least a step removed from actually providing it. In terms of *lifnei ivair*, this double step would be permissible with regard to gentiles. In addition, as soon as it is proposed, tank designers will work to counter it. When such ideas are considered workable, they are kept secret for these very reasons. Thus, putting this in the public domain does as much good as harm. [See refs to Section A. Le'or Halacha, Milchama 1:1.]

In conclusion, while there is indeed a risk of giving ideas to rogue parties, the *halachic* issues do not seem to apply.

**On the parsha ...** [Yitzchok told Eisav]: "Take your equipment, sword (to slaughter) and bow ... [27:3] You will live by your sword ... [27:40] Yitzchok must have known that Eisav had murdered Nimrod. While he was certainly patient with him and loved him, how could he actively encourage him to use a sword? Advice can also be considered *lifnei ivair*! Yitzchok wanted to channel Eisav's bloodthirsty nature to positive purposes. He meant that the weapons should be used specifically to hunt or in defensive wars [Rashbam and Ramban].

Sponsored by Noah Bass and Debbie Rotenstien in memory of Noah's father, Mordechai ben Noach z"l

whose *yahrzeit* is on the 3<sup>rd</sup> of Kislev. ה

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