

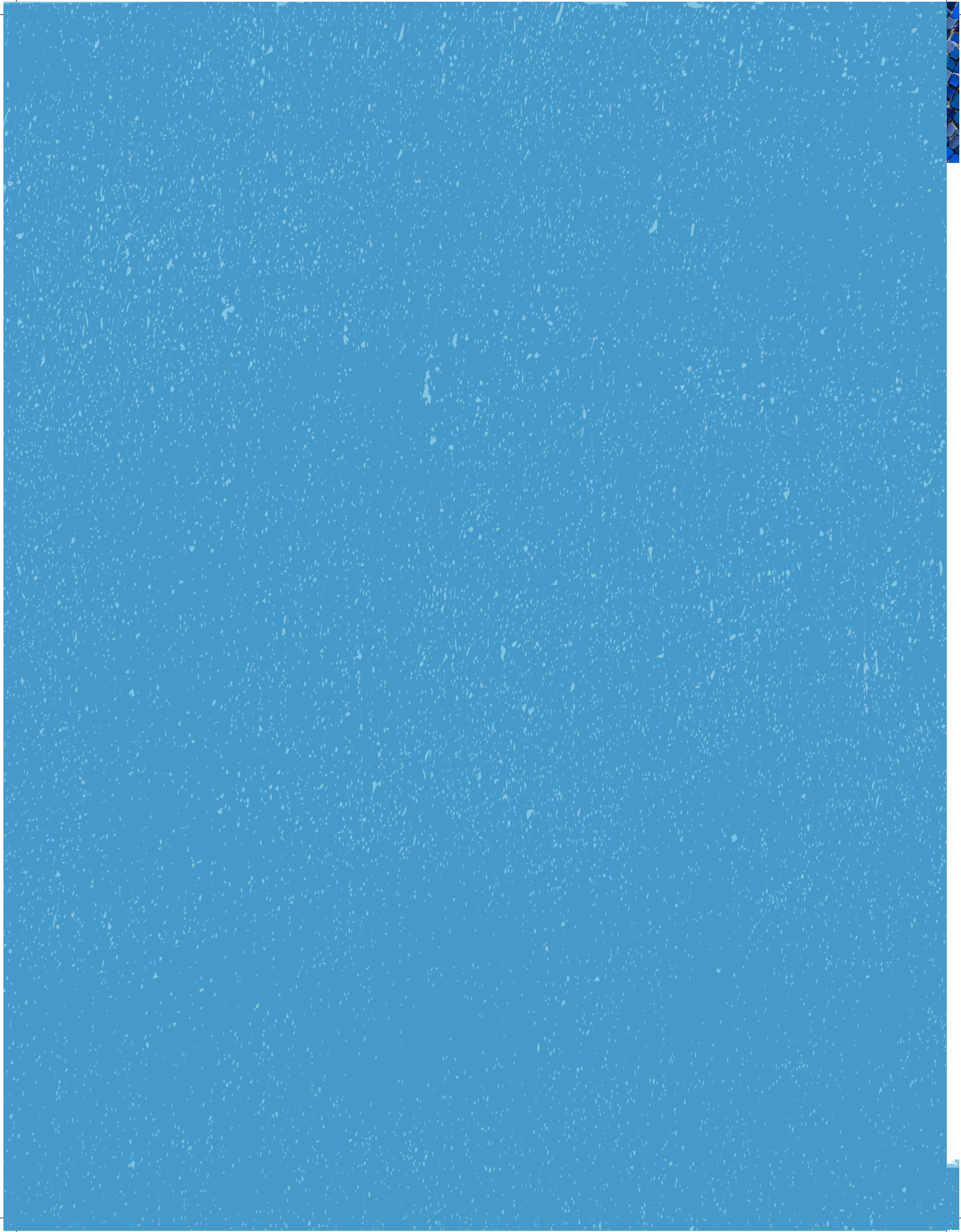


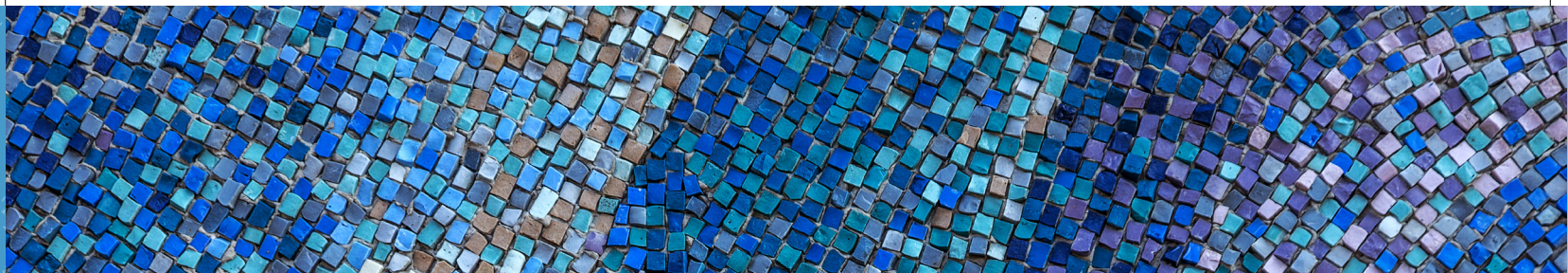
THE THIRD ANNUAL

Collegiate Moot Beit Din Sourcebook

February 14-16, 2020

AT PRINCETON UNIVERSITY





What is Collegiate Moot Beit Din?

The Collegiate Moot Beit Din is an intercollegiate moot court competition that empowers students to grapple with contemporary ethical dilemmas through a prism of Jewish law and ethics.

What is a Beit Din?

A beit din (“house of law”) is a Jewish court of law which makes rulings in accordance with the halakhic system. Halakha is the collective body of Jewish law, including biblical law and rabbinic law, as well as customs and traditions. It is derived from the Hebrew root that means “to go” or “to walk”.

When settling disputes, a beit din is typically comprised of three people with expertise in halakha. The role of the beit din is to apply halakhic precedent to the particular circumstances of the case to reach a ruling. A verdict is reached based on the majority opinion.

In the Collegiate Moot Beit Din, your team represents a beit din and you will be presented with a specific case. You will study the provided texts in the sourcebook to understand how Jewish tradition has approached these issues across time and space, so you can answer the questions posed. The aim is to study, discuss and defend a position—there is not one correct answer.

Beit Din Considerations

A foundation of the halakhic system is being able to hold multiple truths. As the Talmud writes about the conflicting opinions of Hillel and Shammai, “this one and this one are the words of the living God.” (Talmud Bavli Eiruvim 13b)

This sourcebook contains texts spanning the full breadth of Jewish tradition; ancient and medieval texts are juxtaposed with contemporary perspectives from our present moment. A strong argument will engage these sources and bring them into conversation with one another. Likewise it is important to explain why certain sources are not applicable or relevant in your understanding of the case. Yet there are elements of the case that may inspire you to look beyond the texts in this sourcebook. While you are encouraged to support your argument with external research, your team will not be penalized for choosing not to do so.

There is a hierarchy of sources, with earlier sources carrying more weight. Sources from the Written Torah (also referred to as Tanakh or the Hebrew Bible) are the most authoritative. Within Tanakh, the five books of Moses—the content of a Torah scroll—are most authoritative. Typically, later sources elucidate rather than dispute earlier texts. The power of later authorities stems from interpreting, clarifying and applying earlier arguments, much as your team will be doing. Collectively, these post-biblical teachings and traditions are known as the Oral Torah.



“The trouble with tainted money is t’aint enough of it.”

The above quote is attributed to William Booth, an English preacher who founded the Salvation Army in 1865 and helped grow the organization into one with worldwide recognition. Our case this year compels us to revisit this perspective at a time when controversies around money, power and political influence are perpetually in the headlines.

Students in particular must confront these questions. In recent years, student movements have risen to the forefront of public debates surrounding the key political issues of our time, from gun control to climate change to immigration. But it is one matter to stake out a position, and another matter entirely to effect real change in the world.

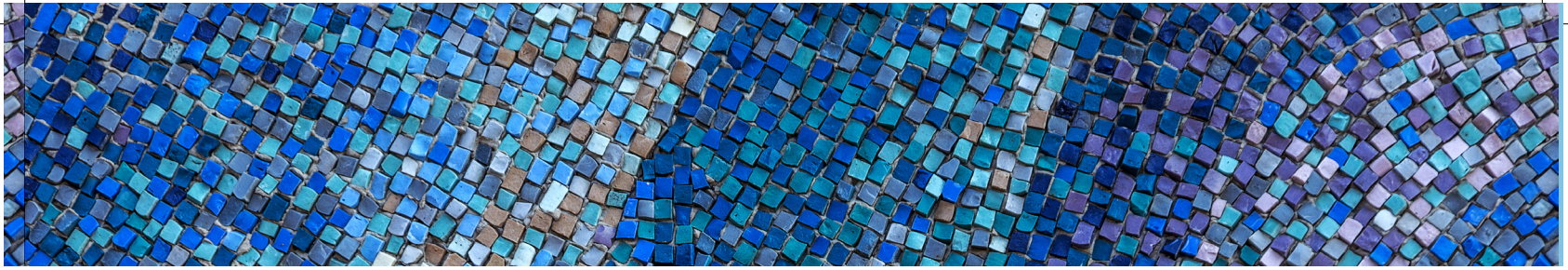
In accomplishing the latter, what means can justify our desired ends? What are the principles that determine the personalities and organizations with whom we can form partnerships? How does the fungible nature of money play into our calculations? The case this year brings these issues to light in a concrete manner. Student activists are confronted with an opportunity to maximize the real-world impact of their ideals by accepting a donation from an individual implicated in human rights abuses. How should they navigate this decision?

Far from an isolated case, these questions have been a mainstay of public discourse in recent years and are impacting leading cultural, religious and academic institutions. For example, the philanthropy of the Sackler family has supported an array of museums, medical schools, and hospitals around the world, including the Metropolitan Museum of Art, the National Gallery, the Guggenheim, and other iconic institutions. What should be the response of these organizations, if any, to allegations that the Sacklers intentionally misled doctors and patients about the dangers of the addictive painkiller OxyContin—produced by the Sackler family’s pharmaceutical company—thereby generating extraordinary profits while hundreds of thousands of people died from opioid overdoses?¹

In some cases, the burden of the money’s origin was deemed to outweigh its philanthropic value. After a series of protests, the Guggenheim Museum announced in March of this year that it will no longer take money from the Sackler family. Two months later, the Metropolitan Museum of Art announced it would no longer take money from the Sacklers either, but that it would not rename its “Sackler Wing.” Confronted with the same question, the Louvre removed the Sackler name from its “Sackler Wing of Oriental Antiquities.”

A report by the Associated Press found that the Sacklers had donated \$60 million to universities

¹ In 2007, top executives at the Sacklers’ company (Purdue Pharma) pleaded guilty to federal criminal charges that they had misrepresented the dangers of OxyContin to regulators, doctors, and patients. Purdue Pharma was fined over \$600 million. More recently, a lawsuit filed by the attorney general of Massachusetts alleges that aggressive and deceitful marketing by the Sackler family helped ignite the opioid crisis. In 2017 alone, there were 47,800 deaths from opioid overdoses. (CDC)



around the world, much of which was contributed after their complicity in the opioid crisis had come to light. “Money from the Sacklers should be understood as blood money,” said Dr. Andrew Kolodny, a leading critic of Purdue and the Sacklers who heads a program on opioid policy at Brandeis University... Universities shouldn’t take it, and universities that have taken it should give it back.”²

But others are unsure. When asked if the Sackler School of Medicine would be renamed, representatives of Tel Aviv University declined to comment. “This is a complicated situation; thousands of doctors have done their training here,” said Matan, an Israeli medical student who requested that his last name not be used. “But that doesn’t absolve the family members of wrongdoing if it’s eventually proved that they did something wrong. What might help is if the family donates money for rehabilitating people addicted to opioids.”³

In a world of increasingly complex economic relationships, leading academic, cultural, and political organizations across the globe are confronting similar dilemmas. In a public apology for maintaining close ties with convicted sex offender Jeffrey Epstein, MIT president L. Rafael Reif wrote the following: “with hindsight, we recognize with shame and distress that we allowed MIT to contribute to the elevation of his reputation, which in turn served to distract from his horrifying acts. No apology can undo that. In response, we will commit an amount equal to the funds MIT received from any Epstein foundation to an appropriate charity that benefits his victims or other victims of sexual abuse.” Meanwhile, a spokesperson for Harvard University said it had “no plans” to return a \$6.5 million donation from Epstein. After facing heavy pressure from students, Harvard announced it would share whatever money remained from Epstein’s donations to organizations that support victims of human trafficking and sexual assault.

Questions abound when navigating these questions. What assets should be considered tainted and what should we do with them? Does it matter if the money in question was earned legally? Should standards regarding tainted money depend on the nature of an organization—should a hospital turn down a donation which could fund life-saving research? What if the donation has already been spent—must it be returned with the institution’s own funds? If so, to whom should tainted money be returned? What about political organizations up against competing organizations with oversized budgets? What about climate change and the urgent timeline many claim we are facing within which to act? More broadly, how does one balance a pragmatic, results-oriented outlook for bettering the world with a concern for ethical action and ideological purity?

In essential ways, Jewish legal and ethical tradition has been addressing these questions for many centuries. Approaching these moral challenges through a lens of halakha can offer unique insight. We invite you to engage in the challenge of applying these texts to the realities of the 21st century.

² “Prestigious Universities around the World Accepted More than \$60M from OxyContin Family.” USA Today, 3 Oct. 2019

³ “Sackler Name Is Everywhere at Tel Aviv U., but Not the Opioid Controversy Plaguing the Family.” Haaretz, 4 Mar. 2019



The Case

Three years ago, a group of students at Glendale University began gathering to discuss what they could do to protect the environment. Over the course of the coming months, the meetings became more regular and Students for a Sustainable Climate (SSC) was formed.

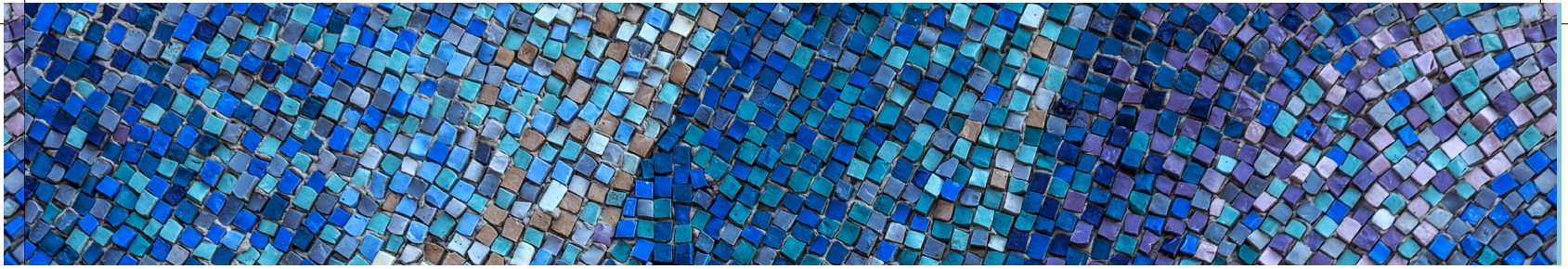
As of today, SSC has grown to include 11 campuses across the state. A key element of their expansion has been the ability of its student leadership to share effective strategies across campuses. Additionally, their concrete successes have increased student momentum around the group. At a recent ceremony at the state capitol celebrating the passage of the Carbon Emissions Reduction Act, Governor Klein specifically credited an SSC rally for changing her mind on the issue.

SSC has received requests from other campuses hoping to form local SSC branches, and their primary goal at the moment is to expand nationally. The biggest roadblock has been financial—SSC lacks the funding needed to operate on a larger scale. Money is needed to rent space, sponsor activist retreats, train emerging leaders, produce materials, buy equipment, develop its website, and more. There is currently no extra money in the budget to expand. In past years, SSC also made donations to poor communities affected by climate change, but it now lacks funds to continue offering material support to those in need. Attempts were made to raise money through a variety of online campaigns, but all of them have come up short, limiting their ability to expand.

All of this suddenly changed when Ron Elman offered to single-handedly provide the funds needed for SSC to expand nationally. Members of the SSC board had heard of Mr. Elman and remembered that his name had been in the news, but nobody knew much about him.

After doing some online research, a clearer picture began to emerge. Mr. Elman earned money by investing in a wide portfolio of business opportunities. Most recently, his name was in the news as a major backer of Defensive Holdings, which operates a number of private prisons and had been awarded a government contract to house detained asylum seekers as they await their hearings. An investigative report published by a major newspaper found credible allegations of human rights abuses at three Defensive Holdings facilities. According to the report, Defensive Holdings had been cutting costs by holding back on meeting the basic needs of those it housed. The report described a rampant disregard for human dignity or for meeting basic legal requirements, including cramped and unsanitary conditions, insufficient bathrooms, and severely inadequate access to medical care. Toothbrushes and toothpaste had been withheld at whim, and the provided food did not meet legal standards.

Mr. Elman was quoted prominently and unabashedly in the front-page article, including saying the following: “I’m proud to be overseeing a tight ship and will continue to do so. It’s not like we’re running a hotel.” In addition to the allegations of abuse, several sources within the accounting department of Defensive Holdings showed the reporter how numbers had been falsified on multiple occasions in order to overcharge the government for its services.



Upon reading the investigative report, the students felt deeply divided about what to do with Mr. Elman's offer. An open meeting for all SSC members was held. Sam, a senior, felt that accepting the money made the most sense: "We've been trying to raise money all year and nothing else has worked. This is our best shot at doing this critical work on a larger scale." Still, some students felt that accepting money tainted by its association to Defensive Holdings was the wrong choice. It was not worth jeopardizing their integrity by accepting the money, they argued. Miriam, an SSC member and journalist, shared some of her findings with the group: although Mr. Elman's firm has a majority share in Defensive Holdings, the company was only connected to a portion of Mr. Elman's net worth. More of his wealth is tied to other businesses, such as a company which sells industrial heating systems. Because of the nature of Mr. Elman's many investments, calculating the exact breakdown is impossible.

After coming to an impasse, the board of SSC decided to bring an additional voice into the conversation by reaching out to a Beit Din. Specifically, they posed the following three questions:

1. Are they allowed to accept the donation from Mr. Elman?
2. Should they accept the donation from Mr. Elman?
3. If they choose to accept the donation from Mr. Elman, must they attach certain strings to it? If so, what are those red lines which they cannot ever cross?



Glossary of Jewish Texts in Sourcebook

Leviticus: The third of the Five Books of Moses.

Numbers: The fourth of the Five Books of Moses.

Deuteronomy: The fifth of the Five Books of Moses.

Sifrei BeMidbar: A midrash halakha, which is a form of biblical exegesis focused on expounding the legal parameters of the mitzvot (commandments). Written around 200 CE.

Mishnah: The oldest post-biblical collection of Jewish law, redacted around 200 CE by R. Judah ha-Nasi. The Mishnah systematizes the laws of the Torah into six groups, encompassing 63 tractates.

Tosefta: A compilation of Jewish law from the period of the Mishnah.

Talmud: The Talmud consists of the Mishnah and the Gemara, the latter being an elucidation of the Mishnah. The Talmud Bavli records the conversations and rulings of sages who lived in modern day Iraq and was compiled around the year 500. It is the central text of rabbinic Judaism.

Talmud Yerushalmi: The Jerusalem Talmud is an elucidation of the Mishnah written in Israel, completed around 350 CE.

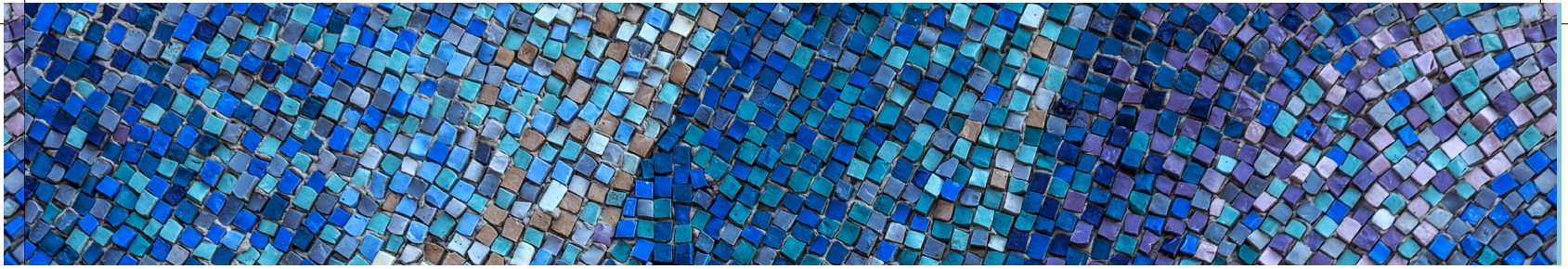
Rashi: Rashi is an acronym for R. Shlomo Yitzhaki (1040-1105), a leading commentator of the Torah and Talmud who lived in Troyes, France.

Rambam (Maimonides) is an acronym for R. Moses ben Maimon who lived in Spain and Egypt (1135-1204). His Mishneh Torah is a comprehensive codification of Jewish law from the Talmud.

Tosafot: The tosafot are medieval commentaries on the Talmud, printed opposite the comments of Rashi. These comments were primarily written by sages in France and Germany in the 12th and 13th centuries.

Sha'arei Teshuva, The Gates of Repentance, is an ethical work written by R. Yonah Gerondi (Rabbeinu Yonah), a 13th century Spanish rabbi.

Sefer HaHinukh: This work systematically discusses the 613 mitzvot. It was published anonymously in 13th century Spain.



Tur (Arba'ah Turim) A codification of Jewish law written by R. Yakov ben Asher (1269-1343), a medieval rabbinic authority in Spain. The structure of the Arba'ah Turim, his key work in Jewish law, was later used by R. Yosef Karo in the authoritative work Shulhan Arukh.

Orhot Tzadikim, The Ways of the Righteous, is a book on Jewish ethics written in Germany in the 15th century.

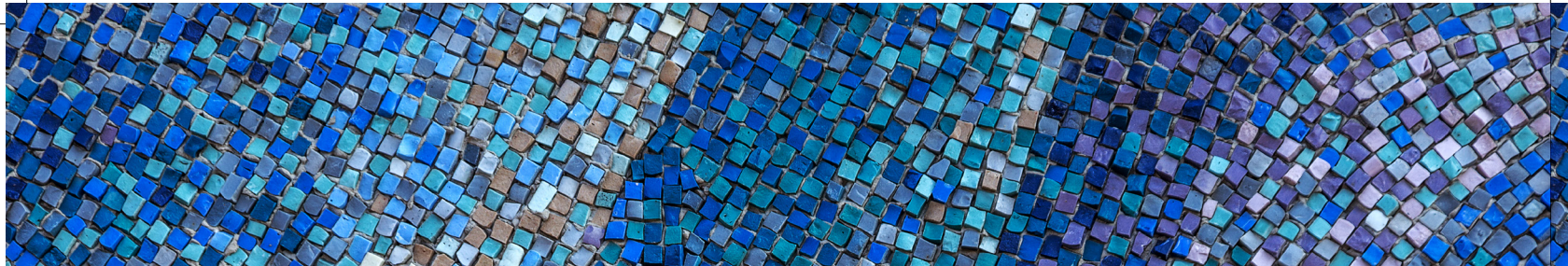
Shulhan Arukh: Written by R. Joseph Karo in 1563 in Safed, Israel, the Shulhan Arukh is the most influential codification of halakha since the Talmud.

Rabbi Moshe Feinstein (1895-1986) was a leading 20th century halakhic authority who was born in Belarus and settled in New York City.

Rabbi Yitzhak Greenberg (born 1933) is a leading Modern Orthodox scholar and author.

Rabbi Elliot Dorff is a Conservative rabbi and professor at the UCLA School of Law. He is an author and bioethicist.

Rabbi Amy Wallk Katz is a Conservative rabbi and teacher at the Jewish Theological Seminary, as well as a member of the Rabbinic Cabinet for the Masorti Foundation and the Rabbinic Cabinet of the Jewish Federations of North America.



Moot Beit Din ▸ 2020 Sources

I. Benefiting from Theft

While the Torah clearly forbids the act of stealing, these sources address the more complex question of how to interact with stolen goods. For example, can one accept charity from stolen money? Is it permissible to purchase stolen items? What if there is only a suspicion of theft?

Mishnah Bava Kama 10:1

One may not make change from the tax authority's box nor from the tax collector's purse. Nor may one accept *tzedakah* from them. But one may take money from them that comes from their home or from the market.

משנה בבא קמא י"א

אין פורטין לא מתיבת המוכסין ולא מכיס של גבאין. ואין נוטלין מהם צדקה. אבל נוטל הוא מתוך ביתו או מן השוק

Talmud Bavli Bava Kama 113a

But didn't Shmuel say that the law of the land is the law?! Said Rav Hanina b. Kahana said Shmuel: This Mishnah is talking about a tax authority that has no limit. In R. Yannai's house they said: It is talking about a self-appointed tax authority.

תלמוד בבלי בבא קמא קיג.

והאמר שמואל: דינא דמלכותא דינא! אמר רב חנינא בר כהנא אמר שמואל: במוכס שאין לו קצבה. דבי ר' ינאי אמרי: במוכס העומד מאליו.

Rashi on Bava Kama 119a

"That has no limit"—Rather, the tax collector takes as much as they desire.

רש"י בבא קמא קי"ט.

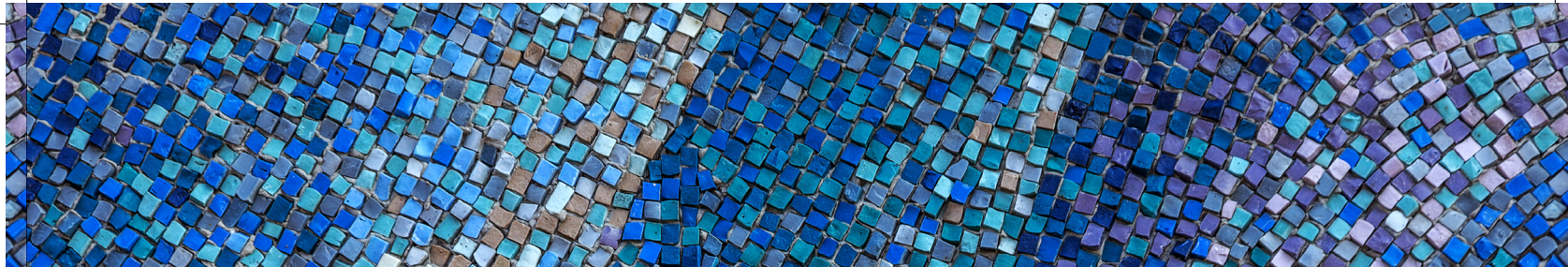
שאין לו קצבה—אלא נוטל ככל חפצו.

Talmud Bavli Bava Kama 119a

It was stated: When is it permitted to buy from a thief? Rav said: Only when the majority of his items belong to him. Shmuel said: Even when just some of his items belong to him. Rav Yehudah instructed Ada the servant according to the view that allows when just some of his items belong to him.

תלמוד בבלי בבא קמא קי"ט.

איתמר: גזלן, מאימת מותר לקנות הימנו? רב אמר: עד שתהא רוב משלו. ושמואל אמר: אפילו מיעוט שלו. אורי ליה רב יהודה לאדא דיילא, כדברי האומר: אפילו מיעוט שלו.



Rashi on Bava Kama 119a

5

"The majority"—of his money belongs to him, free of theft; then we follow the majority and can benefit from him. "Even when just some of his items belong to him"—We assume that this given item that he gives us properly belongs to him.

רש"י בבא קמא דף קיט.

5

רוב-ממונו משלו, בלא גזילה; הולכין אחר הרוב ונהנין ממנו. אפילו מיעוט משלו-תלינן ואמרין האי מידי דיהיב ליה מדידה הוא.

Rambam Hilkhoh Gezeilah va-Aveidah 5:1

6

It is forbidden to buy from a thief anything stolen; it is a grave sin since this encourages criminals, inducing a thief to commit other thefts. If he finds no customer, he will not steal. On this it is written: "The partner of a thief is his own enemy" (Proverbs 29:24).

רמב"ם הלכות גזלה ואבדה ה:א

6

אסור לקנות מן הגנב החפץ שגנב; ועון גדול הוא, שהרי מחזיק ידי עוברי עברה וגורם לו לגנב גנבות אחרות. שאם לא ימצא לוקח, אינו גונב. ועל זה נאמר: "חולק עם גנב שונא נפשו" (משלי כט:כד).

Tur Hoshen Mishpat 369

7

One may not benefit from a person who is presumed to be a thief, because everything he has is presumed to be stolen. But if he has something that we know is not stolen, it is permitted to benefit from him, even though it is a small fraction of his wealth, unless it is absolutely clear that it is stolen. But R. Hananel ruled that one may not benefit from him until most of his money is not stolen.

טור חושן משפט הלכות גזילה שסט

7

מי שהוחזק גזלן אסור ליהנות ממנו, דכל מה שיש לו הוא בחזקת גזילה. ואם יש לו דבר שידוע לנו שאינו גזול, מותר ליהנות ממנו, אף על פי שהוא מועט ממנו, עד שידע בודאי שהוא גזול. ור"ח ז"ל פסק עד שיהא רוב ממונו שאינו גזול.

Shulhan Arukh, Hoshen Mishpat 366:1

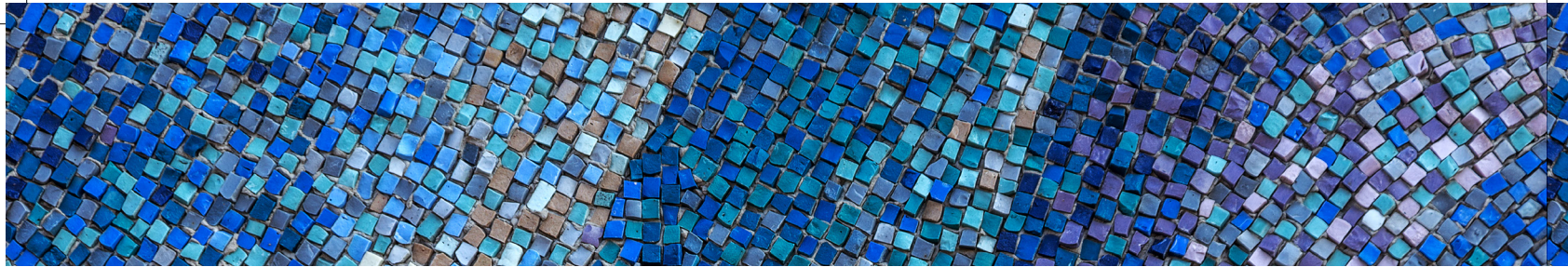
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It is forbidden to buy something stolen from the one who stole it...for whoever does things like this strengthens the hands of sinners, and transgresses [the Biblical prohibition of] "before a blind person do not place a stumbling block."

חושן משפט שס ט:א

8

(א) אסור לקנות דבר הגזול מהגזלן ואסור לסעדו על שינויו כדי שיקנהו שכל העושה דברים אלו וכיוצא בהם מחזיק ידי עוברי עבירה ועובר על ולפני עור לא תתן מכשול.



Sefer HaHinukh Mitzvah 429

1. To not benefit from an offering to idolatry: That we not have anything of idolatry cling with our money and in our domain, to benefit from it. And about this is it stated, "And you shall not bring an abhorrent thing into your house," etc. (Deuteronomy 7:26).

2. The root of the commandment is to distance from all matters of rotten idolatry...

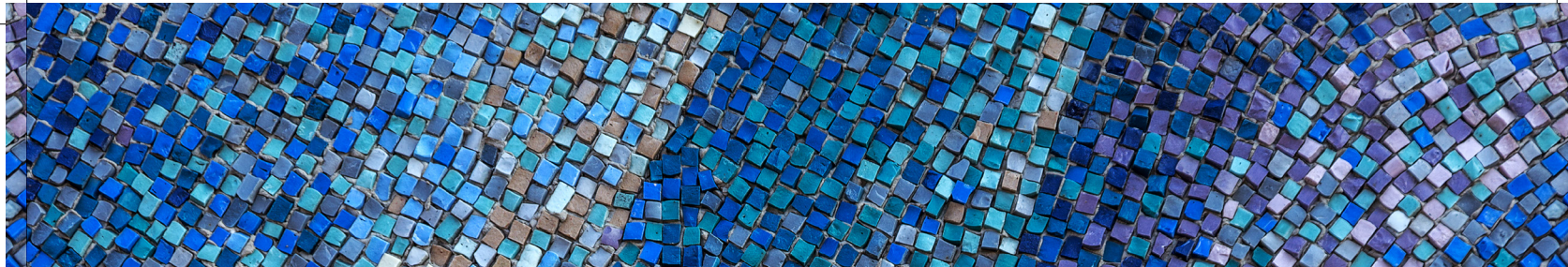
3. And included in this commandment is that a person should not have cling to his money that God has graced him with justly, other money that is from theft, extortion, interest or from any ugly thing; since all of this is included in the auxiliaries of idolatry. As the evil impulse of a man's heart desires it and brings it to his house—and the evil impulse is called by the name, idolatry; and like they, may their memory be blessed, said (Bava Batra 10a) that about it is it stated (Deuteronomy 15:9), "Beware, lest there be in your heart an unfaithful thought, [saying, "The seventh year, the year of release has approached," and you will begrudge your needy brother and not give him, and he will cry out to the Lord against you, and it will be a sin to you]" and it is written about the matter of idolatry (Deuteronomy 13:14), "Unfaithful men have gone forth from among you and have led the inhabitants of their city astray [saying, 'Let us go and worship other gods, which you have not known.']" And about monies like this that we mentioned and about the auxiliaries of idolatry, about all of them it is stated (Deuteronomy 7:26), "[Nor should you bring an abomination into your house,] lest you are to be accursed like it, [but you shall utterly detest it, and you shall utterly abhor it; for it is to be destroyed]"; meaning to say that all that clings to it is accursed. As the blessing of God is not found in it, and [so] it disappears and is lost; like the matter that they, may their memory be blessed, said (Bava Metziah 71a) that a small coin of interest makes treasuries of money disappear. As this comes and destroys that.

ספר החינוך תכט

1. שלא להנות מתקרבת עבודה זרה: שלא נדביק שום דבר מעבודה זרה עם ממוננו וברשותנו להנות בו. ועל זה נאמר, "ולא תביא תועבה אל ביתך" וגו' (דברים ז:כו).

2. משרשי המצוה: כדי להרחיק כל ענין עבודה זרה הנמאסת...

3. ומן הנכלל במצוה זו: שלא ידביק האדם אל ממונו שחננו האל בצדק ממון אחר שהוא של גזל או חמס או מרבית, או מכל דבר מכער, שכל זה בכלל משמשי עבודה זרה הוא. שיצר לב האדם רע, חומד אותו ומביאו אל הבית, והיצר הרע נקרא בשם עבודה זרה, וכמו שאמרו זכרונם לברכה (ב"ב י א) שבו נאמר "פן יהיה דבר עם לבבך בליעל" (דברים טו:ט) וכתוב בענין עבודה זרה (דברים יג:יד) "יצאו אנשים בני בליעל מקרבך וידיחו" וגו'. ובממונות כאלו שזכרנו, ובמשמשי עבודה זרה, על כלן נאמר (דברים ז:כו) "והיית חרם כמוהו"; כלומר, שכל הנדבק עמו הוא חרם, שאין ברכת האל מצויה בו, ואבד וכלה; וכענין שאמרו זכרונם לברכה (ב"מ עא.), שכרוטה של רבית מכלה כמה אוצרות של ממון, שבא זה ומאבד את זה.



II. Performing a Mitzvah Through a Transgression

May one violate a halakha in order to perform a mitzvah? Beginning with the example of a stolen lulav⁴, this section will explore a number of issues around this question. These texts will bring forth a discussion about if (and when) we may compromise on observing certain halakhot in order to fulfill other mitzvot.

Talmud Bavli Sukkah 29b

1

Mishnah: A lulav that was stolen or that is dry is invalid. The lulav of a tree worshipped as idolatry and a lulav from a condemned city of idolators is invalid.

Talmud Bavli Sukkah 30a

2

[A stolen lulav] is unfit because it is a mitzvah that comes to be fulfilled by means of a transgression, as it is stated: "And you have brought that which was stolen and the lame, and the sick" (Malachi 1:13). A stolen animal is similar to a lame animal. Just as a lame animal has no remedy, so too a stolen animal has no remedy ...

And R. Yohanan said in the name of R. Shimon ben Yohai: What is the meaning of that which is written: "For I the Lord love justice, I hate robbery in a burnt-offering" (Isaiah 61:8)? It is a parable of a flesh-and-blood king who was passing by a customs house. He said to his servants: Pay the levy to the taxmen. They said to him: Doesn't all the tax in its entirety belong to you? He said to them: From me, all travelers will learn and will not evade payment of the tax. So too, the Holy One, Blessed be He, said: "I the Lord hate robbery in a burnt-offering." From My conduct, My children will learn and distance themselves from robbery.

4 A lulav is used on the festival of Sukkot as one of the Four Species.

תלמוד בבלי סוכה כט:

1

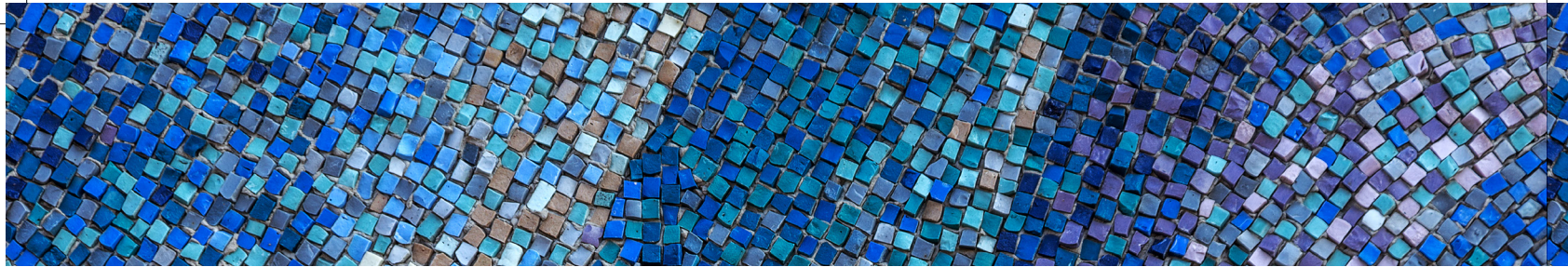
מתני' לולב הגזול והיבש פסול. של אשירה ושל עיר הנדחת פסול.

תלמוד בבלי סוכה ל.

2

משום דהוה ליה מצוה הבאה בעבירה, שנאמר: "והבאתם גזול ואת הפסח ואת החולה" (מלאכי א:יג). גזול דומיא דפסח. מה פסח לית ליה תקנתא, אף גזול לית ליה תקנתא. ...

וא"ר יוחנן משום ר' שמעון בן יוחי: מאי דכתיב "כי אני ה' אוהב משפט שונא גזל בעולה" (ישעיהו סא:ח)? משל למלך בשר ודם שהיה עובר על בית המכס. אמר לעבדיו: תנו מכס למוכסים. אמרו לו: והלא כל המכס כולו שלך הוא! אמר להם: ממני ילמדו כל עוברי דרכים ולא יבריחו עצמן מן המכס. אף הקב"ה אמר "אני ה' שונא גזל בעולה." ממני ילמדו בני יבריחו עצמן מן הגזל.



Shulhan Arukh, Orah Hayim 649:1

All four species are invalid when it is stolen, whether the original owner has given up hope of regaining the item or not. But if it was stolen, and then trimmed without assisting the performance of the mitzvah, such as a stolen lulav which was trimmed, it is kosher since it was acquired by an act of change. However, one should not make a blessing on it. And some say that a stolen lulav is only invalid for the one who stole it, but is kosher for others.

שולחן ערוך אורח חיים תרמט:א

כל ארבעה המינים פסולים בגזול ובגנוב, בין לפני יאוש בין לאחר יאוש. אבל גזול וקנאו בלא סיוע המצוה, כגון גזל לולב ושיפיהו, כשר דקנייה בשינוי מעשה. ומיהו לא יברך עליו. ויש מי שאומר דלא נפסל גזול וגנוב אלא לגנב ולגזלן עצמו, אבל לאחריו כשר

Talmud Bavli Berakhot 47b

There was an incident involving R. Eliezer, who entered a synagogue and did not find a quorum of ten, and he liberated his slave and he completed the quorum of ten... How did he do that? Didn't Rav Yehudah say: Anyone who frees his [Canaanite] slave violates a positive mitzvah, as it is stated "they will serve as bondsmen for you forever" (Leviticus 25:46)? For a mitzvah it is different. But it is a mitzvah that comes through a transgression! A mitzvah for many is different.

תלמוד בבלי ברכות מז:

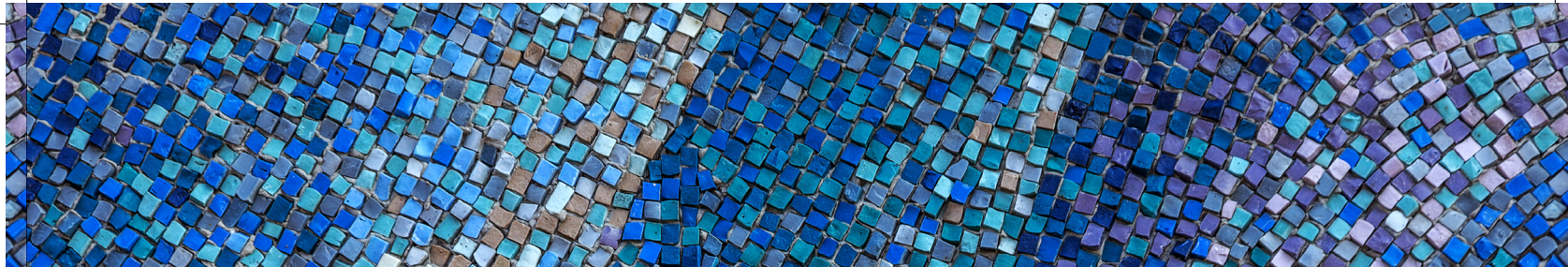
מעשה ברבי אליעזר, שנכנס לבית הכנסת ולא מצא עשרה, ושחרר עבדו והשלימו לעשרה... והיכי עביד הכי? והאמר רב יהודה: כל המשחרר עבדו עובר בעשה, שנאמר: "לעלם בהם תעבדו" (ויקרא כה:מו)? לדבר מצוה שאני. מצוה הבאה בעברה היא! מצוה דרבים שאני.

Mishneh Torah, Laws of Shofar, Sukkah, and Lulav 1:3

A stolen shofar which was blown may be used to fulfill one's obligation. For the commandment is only listening to the sound—even though one did not touch it or raise it up, the listener has fulfilled the mitzvah—and there is no law of theft with sound... And if you say, "Did he not derive pleasure from listening to the sound"—the commandments are not given for pleasure. Therefore, one who has vowed not to derive pleasure from the shofar is permitted to blow the blow of the commandment with it.

משנה תורה, הלכות שופר וסוכה ולולב א:ג

שופר הגזול שתקע בו יצא, שאין המצוה אלא בשמיעת הקול אף על פי שלא נגע בו ולא הגביהו השומע יצא ואין בקול דין גזל... ואם תאמר, והלא נהנה בשמיעת הקול. מצות לא להנות נתנו. לפיכך המדר הניה משופר מתר לתקע בו תקיעה של מצוה.



III. Redeeming Ill-Gotten Money

As we recall during peak moments of High Holy Days liturgy, tzedakah (charity) and teshuvah (repentance) are closely associated. These sources will explore how tainted money plays into the conversation. How does one perform teshuvah for violating the prohibition of theft? Can one dedicate ill-gotten money for sacred purposes? What are the parameters around accepting it?

Deuteronomy 23:19

Do not bring a prostitute's hire or a dog's fee into the house of the Lord your God as the fulfillment of any vow, for the two of them also are an abomination of the Lord your God.

דברים כ"ג:יט

לֹא־תָבִיא אֶתֶּנְן זֹנָה וּמַחִיר
כָּלֵב בֵּית ה' אֱלֹהֶיךָ לְכָל־נֶדֶר כִּי
תֹעֲבָבַת ה' אֱלֹהֶיךָ גַּם־שְׂנֵיהֶם:

Mishnah Temurah 6:2-4

What is considered "a prostitute's hire"? One who says to a prostitute: take this lamb as your payment. Even if he gives a hundred, they are all forbidden... Their offspring are permitted, for it says "them" and not their offspring. If he gave her money, then those funds are permitted [to purchase materials for an offering]. If he gave her wine, oil or flour, or anything that can be offered on the altar, it is forbidden.

משנה תמורה ו'ב'-ד'

איזהו אתנן האומר לזונה הא לך
טלה זה בשכרך אפילו מאה כולן
אסורין... ולדותיהן מותרים שנאמר הן
ולא ולדותיהן: נתן לה כספים הרי אלו
מותרין יינות שמנים וסלתות וכל דבר
שכיוצא בו קרב על גבי מזבח אסור נתן
לה מוקדשין הרי אלו מותרין...

Talmud Bavli Temurah 30b

Our Sages taught: If he gave her wheat and she made them into flour, olives and she made them into oil, grapes and she made them into wine—one tradition teaches: they are forbidden; another teaches: they are permitted. Said Rav Yosef: Gurion from Asporak taught: Beit Shammai forbid and Beit Hillel permit.

בבלי תמורה ל'

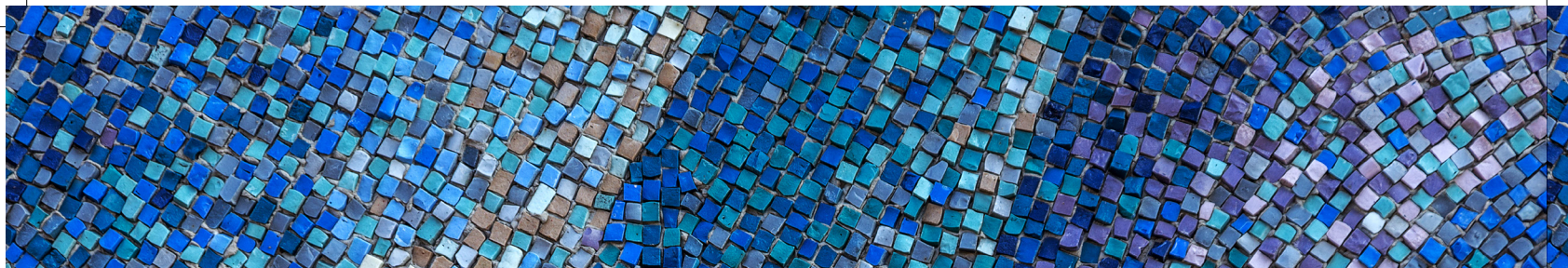
ת"ר: נתן לה חיטין ועשאתן סולת, זיתים
ועשאתן שמן, ענבים ועשאתן יין; תני
חדא: אסורים, ותניא אידך: מותרין. אמר
רב יוסף, תני גוריון דמן אספורק: ב"ש
אוסרין וב"ה מתירין.

Tosefta (Lieberman) Bava Metzia 8:26

It is very hard for tax collectors to repent. They must return funds to those they know and the rest of the stolen money should be given to public works.

תוספתא בבא מציעא (ליברמן) ח:כו

הגבאין והמוכסין תשובתן קשה. ומחזירין
למכירין, והשאר עושין בהן צרכי רבים



Shulhan Arukh, Hoshen Mishpat 366:2

5

It is very hard for shepherds and tax collectors to repent since they stole from the public and do not know to whom to return the theft. Therefore they should use the money for public works, such as cisterns, canals and caves (for water).

Responsa Iggerot Moshe Hoshen Mishpat I:88, R. Moshe Feinstein

6

On a few details of returning stolen objects... His lofty honor, the student who was moved to full repentance, and God will surely accept him, for the power of teshuvah is great... You wanted to know how to fulfill the mitzvah of returning stolen goods... You asked about someone who stole from a charity fund that operated for a specific purpose at one point in time. The rule pertaining to this money that you stole is the same as leftover funds—the rule is that the leftovers from a collection for the poor must go to the poor. If it was for one specific person, then it goes to that person... Therefore, you have to return it to the managers of the fund. If the purpose of the fund was changed, then it should go to the current fund because the managers made this decision and all the leftover funds go to this new fund. You asked what to do if you don't know from whom you stole. It is explicit in the Talmud that one must use it for public works... this must specifically be for public works and not for tzedakah. But the construction and repair of mikvaot [ritual baths] are considered public works and therefore it would be good for you to give to mikvaot... You asked that it is clear to you that you have forgotten about many of the thefts that you have committed. It seems to me that you need to give to public works an amount large enough such that you have no doubt that you have covered the amount you stole... You asked whether you fulfill your obligation to return the theft if you pay in a way that it looks like a donation... Obviously, if you give secretly so that they have no ability to count it in your favor and to honor you because they think that you are donating now, you have fulfilled your obligation. But if you give in a way that makes them think that you are donating now and they will count it in your favor and honor you for this, you do not thereby fulfill the obligation of returning the stolen money...

שולחן ערוך חושן משפט שס"ב

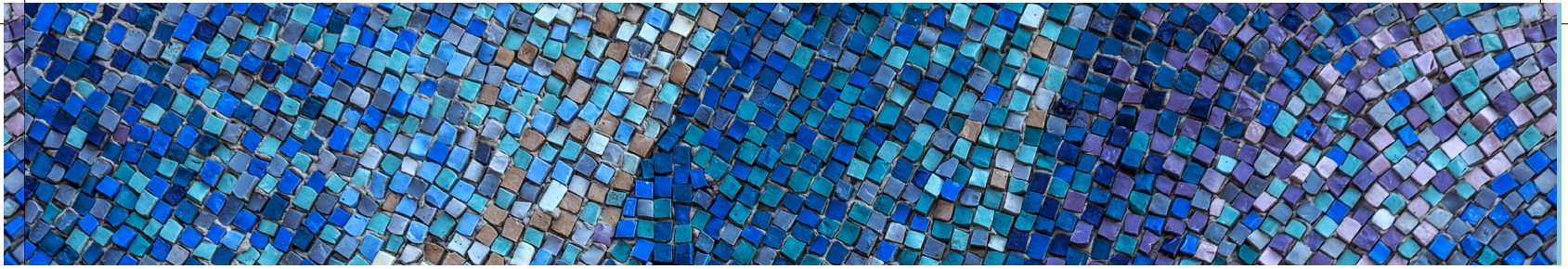
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הרועים והגבאים והמוכסים תשובתן קשה, מפני שגזלו את הרבים ואינם יודעים למי יחזרו. לפיכך יעשו בו צרכי רבים, כגון בורות שיחין ומערות.

שו"ת אגרות משה חושן משפט א:כח

6

בכמה פרטים בעניני השבת גזלה... מע"כ התלמיד אשר נשאו לבו לשוב בתשובה שלימה, ובודאי קבלהו השי"ת, כי גדולה תשובה... בדבר רצונו לידע איך לקיים מצות השבה בגנבת ממון בפרטים שציין באותיות. הנה מה ששאלת באות א' בגונב מקופה של צדקה שהיתה לפי שעה. הדין במעות אלו שגנב לעשות כדין מעות שניתותרו שהדין במותר עניים לעניים ואם היה ליחיד הוא לאותו היחיד... ולכן צריך להחזיר להפרנסים שעסקו בזה. ובשינתה הקופה את תפקידה צריך להחזיר להקופה שישנה עתה שעומדת במקומה דהא עליה הסכימו הפרנסים וכל המותר שייך לה. ומה ששאלת באות ב' מה לעשות אם אין מכיר את בעל הגנבה. הנה זה מפורש בב"ק דף צ"ד שצריך לעשות צרכי צבור... וזהו דוקא לצרכי רבים ולא לצדקה ולבנין ותקון מקואות הוא כלצרכי רבים ולכן טוב שיתן למקואות... ומה ששאלת באות י"ב שברי לך ששכחת הרבה גנבות שעברת. הנה נראה לע"ד שצריך אתה ליתן לצרכי רבים כ"כ עד שיצא הספק מלבך... ומה ששאלת באות י"ד אם תצא ידי השבת גזלה כשתשלם באופן שנראה כצדקה... פשוט שליתן בחשאי שלא ידעו להחזיק לך טובה ולכבדך בזה שיחשבו שנדבת עתה תצא ידי חובתך אבל אם תתן באופן שיחשבו שנדבת עתה ויחזיקו לך טובה ויכבדוך בשביל זה לא תצא ידי חובת השבת הגזלה...



Donations from Ill-Gotten Gain

Elliot N. Dorff Responsum of the Committee on Jewish Law and Standards of the Rabbinical Assembly (June, 2009)

The Situation: Mr. and Mrs. Jones (not their real family name) send their children to Camp Ramah and have become very friendly with the Ramah community, to the extent that Mrs. Jones is on the Ramah Board. Several years ago they donated money to Ramah. It was used primarily to build a facility at camp that bears their family name, but there is still some money left over for Ramah to use for other purposes. Mr. Jones was just indicted by a grand jury for money laundering and stock fraud, and the cover story in the local Jewish newspaper described the indictment in great detail. Their synagogue's rabbi gave a sermon on the Shabbat following the indictment denouncing Mr. Jones and announcing that the facility that they had donated to the synagogue in the Jones family name would no longer bear their name.

Response

...Nonprofits may and should presume that the money being offered to them is legitimately and morally earned until and unless the donor is a "well-known thief" (a ganav mefursam), at which point the burden of proof shifts and the nonprofit must investigate the source of the money proffered. Normally, though, nonprofits need not investigate the sources of potential gifts. On the other hand, nonprofits depend for their support on the trust of others, and if a gift undermines an agency's integrity, it may be unwise to accept it. The decision of a nonprofit to refuse a gift on moral grounds or because it conflicts with its best interests, however, must be an ad hoc one, based on the mission of the nonprofit and the specific circumstances of the gift...

Rulings

1. Indictment vs. conviction. Until and unless Mr. Jones is convicted, Jews individually and collectively must think and act toward him on the strong presumption in American law and the even stronger presumption in Jewish law that he is innocent. To do otherwise would violate the ban on slander (motzi shem ra)...

5. Accepting further donations from Mr. Jones. If Mr. Jones is convicted of what he is accused of doing, Ramah may not accept any more money from him unless (a) Mr. Jones has publicly specified that in addition to the compensation, fines, and/or prison time the court imposed he wants to make this further donation as part of his process of teshuvah and (b) Ramah can determine that he earned the new money legitimately. Generally, a nonprofit may assume that donations to it are legally earned, but if the individual is "a known thief," as Mr. Jones is once he was convicted of fraud, Ramah or any other nonprofit must take these extra precautions in order to receive further donations from him in accordance with Jewish law.



Rabbi Yitzhak Greenberg

Ask the Rabbis | Should Dirty Money Be Returned?

Moment Magazine, November/December 2019

The Torah states that the wages of prostitution should not be brought into the Temple in fulfillment of any vow (Deuteronomy 23:19). This is a direct precedent for returning dirty money and not using it for sacred purposes. As a generalization, let me specify: Where accepting the money would be perceived as legitimating the bad behavior of the donor, then the money should be refused or returned.

Nevertheless, I feel that the poor—and the good causes—need the money more than we need the feeling of righteousness that we have returned the money. So let me put limits on this refusal policy. The money need not be returned, 1) when the dirty money's source was marginal to the philanthropist's overall wealth and actual giving; 2) when the recipient organization, innocent of the dirty money aspect, spent the money and cannot recall it without hardship; 3) when the behavior itself is offensive but does not reach the level of being morally repugnant.

I close with a reminder that the Rockefeller Foundation—founded out of profits generated by abusive monopolistic business practices—within a generation had evolved into one of the great humanitarian and socially responsible philanthropies of the world.

Rabbi Amy Walk Katz

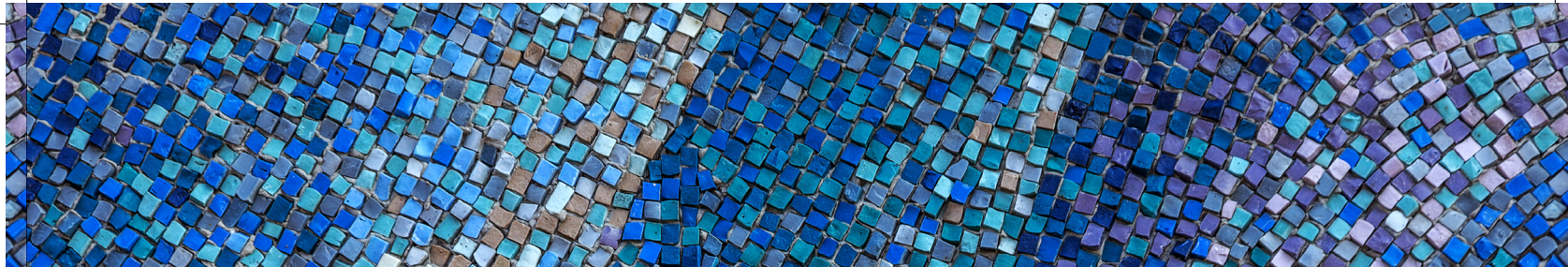
Ask the Rabbis | Should Dirty Money Be Returned?

Moment Magazine, November/December 2019

When considering this question, I turn to the work of my teacher Rabbi Elliot Dorff, who in June 2009 wrote a paper for the Conservative movement's Committee on Jewish Law and Standards entitled "Donations from Ill-Gotten Gain." Dorff's short answer to this question is no, the money need not be returned. He explores many of the ethical issues that surface when considering this question.

What is dirty or ill-gotten money? We would all agree that stolen money is dirty. But is money dirty if it is legally earned but morally tainted or socially unacceptable? For example, would we accept donations from a company that sells tobacco? Or from a man who imports clothing that is made in the sweatshops of China? How is it decided what money is morally tainted or socially unacceptable?

Charitable organizations must be able to trust that the donations they receive are earned legally and honestly. It would be an onerous burden to expect nonprofits to investigate how the money being donated is earned. However, if the donation were to come from a known thief (*ganav mefursam*), the organization accepting the gift would need to investigate the source of the money being offered.



IV. The Prohibition of Flattery (חנופה)

Derived from a verse in Bamidbar, the prohibition of flattery relates to certain types of speech or behavior which can serve to encourage a person transgressing the Torah. These sources raise practical questions: when must one speak up? Is silence ever permissible? Are there situations where honoring an individual who has transgressed the Torah is warranted?

Numbers 35:33

And you shall not corrupt the land in which you live, for the blood corrupts the land, and the blood which is shed in the land cannot be atoned for except through the blood of the one who shed it.

במדבר לה:לג

וְלֹא־תַחְנִיפוּ אֶת־הָאָרֶץ אֲשֶׁר אַתֶּם בָּהּ כִּי הַדָּם הוּא יַחְנִיף אֶת־הָאָרֶץ וְלֹא־יִכָּפֵר לָדָם אֲשֶׁר שָׁפַךְ־בָּהּ כִּי־אִם בְּדָם שֹׁפֵךְ:

Sifrei BeMidbar 160

"Do not pollute the land"—
this is a warning against flattery.

ספרי במדבר קס

ולא תחניפו הארץ—
הרי אזהרה לחניפים.

Mishnah Sotah 7:8

How is the king's portion read?... The king stands, receives the Sefer Torah and then reads from it while sitting. King Agrippas stood, received the Sefer Torah and read while standing and the Sages praised him. When he reached the passage, "You may not place over you [as a king] a foreign man [who is not your brother]" (Devarim 17:15), his eyes welled up with tears. They said to him, "Agrippas, don't be afraid! You are our brother! You are our brother! You are our brother!...

משנה סוטה ז:ח

פרשת המלך כיצד?... והמלך עומד ומקבל וקורא יושב. אגריפס המלך עמד וקבל וקרא עומד, ושבוהו חכמים. וכשהגיע ל"לא תוכל לתת עליך איש נכרי" (דברים יז:טו), זלגו עיניו דמעות. אמרו לו: אל תתיירא אגריפס! אחינו אתה! אחינו אתה! אחינו אתה!...



Talmud Yerushalmi (Vilna) Sotah 7:7

It is taught: R. Hanina b. Gamliel says: Many corpses fell on that day on account of the fact that they flattered him [Agrippas].

Tosafot on Sotah 49b

"At that moment the enemies of Israel were sentenced to destruction"—The Talmud Yerushalmi cites R. Hanina b. Gamliel who said many corpses fell on that day on account of the fact that they were sycophantic towards him. And this is a very strange thing, since from the Torah's ruling he was fit to be king since his mother was from Israel...and Rabbi Yitzhak explains: the verse emphasizes that "from amidst your brothers shall you appoint a king," implying that he must really be from amidst you with a father and mother from Israel. And this is the flattery that he ruled by force not in accordance with the law of the Torah, and they praised him and strengthened him in the matter. Granted that they were not able to stop him, but they should have remained silent and not strengthened him.

Tosafot on Sotah 49b

"One who flatters their peer"—This [transgression] is only when there is no danger present, but in an instance of danger it is permissible. This is as reflected in Nedarim 22a, when Ulla travels to the land of Israel with two people from Mehuza. One of them got up and killed his friend, and then asked Ulla if he acted appropriately. Ulla said to him, yes, and to cut open his throat! When Ulla came before R. Yohanan, he asked him whether he, God forbid, strengthened the hand of a transgressor. R. Yohanan said to him, you saved your own life.

תלמוד ירושלמי (וילנא) סוטה ז:ז

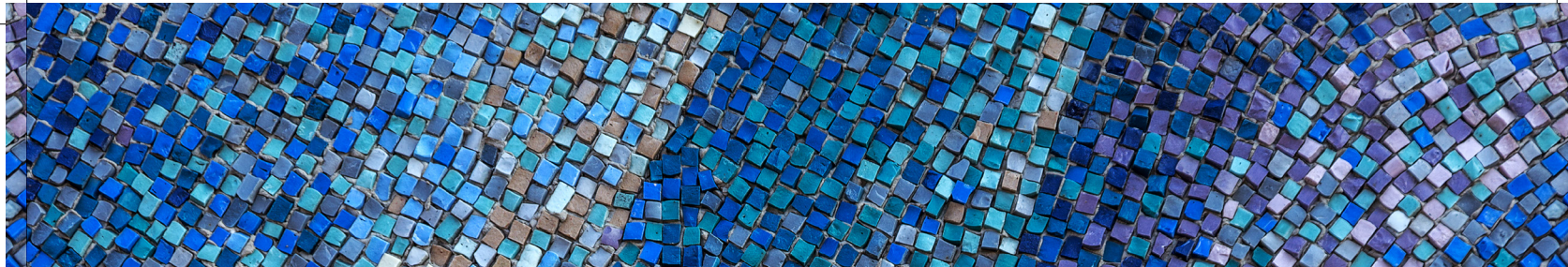
תני: רבי חנינה בן גמליאל אומר: הרבה חללים נפלו באותו היום שהחניפו לו.

תוספות סוטה מא:

אותו היום נתחייבו שונאי ישראל כלייה—ירושלמי תני רבי חנינא ברבי גמליאל אומר הרבה חללים נפלו באותו יום שהחניפו לו. ודבר תמוה לומר, אם היה ראוי מפני התורה כיון דאמו היתה מישראל... ופירש ר"י: "...מלך חזר ושנה עליו: "מקרב אחיך תשים עליך מלך" דקפיד קרא גבי מלך עד שיהא ממש מקרב ממוצע מאביו ואמו מישראל. וזו היתה החנופה, שמלך בזרוע שלא כדין תורה, והודו לו והחזיקו בכך. נהי שלא יוכלו למחות; היה להן לשתוק ולא להחזיקו.

תוספות סוטה מא:

כל המחניף לחבירו—יש לפרש שלא במקום סכנה, אבל במקום סכנה מותר. כי ההיא דפרק ארבעה נדרים (נדרים כב): עולא אזל לארעא דישראל לוו בהדיה תרי בני חוזאי. קם חד, שחטיה לחבריה. אמר ליה לעולא: יאות עבדי? אמר ליה: אין, ופרע לו בית השחיטה! כי אתא לקמיה דרבי יוחנן, אמר ליה: דלמא ח"ו אחזקית ידי עוברי עבירה? א"ל רבי יוחנן: נפשך הצלתה.



Mishnah Makkot 2:8

A killer who was exiled to a city of refuge and the people of that city wished to do him honor, should [refuse] by saying to them, "I am a killer!" If they say to him, "Nevertheless" he should accept from them, as it is said: "and this is the word of the killer" (Deuteronomy 19:4).

משנה מכות ב:ח

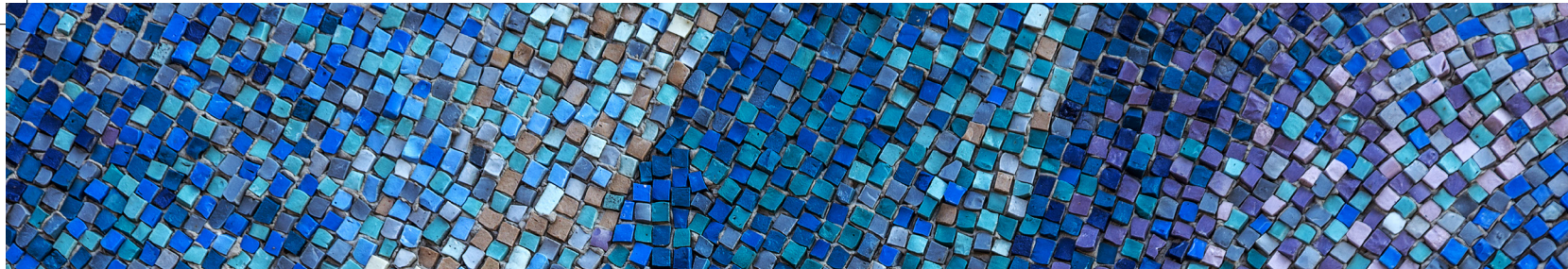
רוצח שנגלה לעיר מקלטו ורצו אנשי העיר לכבדו, יאמר להם רוצח אני. אמרו לו אף על פי כן, יקבל מהן, שנאמר "וזה דבר הרצח" (דברים יט:ד).

Sha'arei Teshuvah III:189,199, R. Yonah Gerondi

This flatterer is one who praises a wicked person in the presence of others, whether in the presence of the wicked person or not, even if he doesn't justify nor lies about the wicked behaviors. Instead, the flatterer says that the person is good...Even if the flatterer does not praise the wicked person other than with respect to good qualities, speaking favorably about the person in the presence of other people...This too is a terrible thing, for by mentioning the good without mentioning the bad and thereby covering up the sins, the person will be thought of as righteous by all those who hear and will be honored and will gain power and triumph.

ספר שערי תשובה לרבינו יונה שער ג

קפט החלק השני - החנף אשר יהלל רשע לפני בני אדם אם בפניו אם שלא בפניו, אף על פי שלא יצדיקנו על חמסו ולא יכזב על משפטו, אבל יאמר עליו כי איש טוב הוא...וגם כי לא ישבח את הרשע זולתי במה שנמצא בו מן הטוב ויליץ עליו בפני בני אדם להגיד לאדם ישרו. גם זו רעה חולה, כי בהזכירו את הטוב, ואת הרע לא יזכור ועל כל פשעיו יכסה, צדיק יחשב אצל השומעים, ויתנו לו יקר, וירים ידו וגבר.



Orhot Tzadikim 24

The sixth category of flattery is one who is in a position to protest and does not protest, nor does he pay any attention to the deeds of the sinners. This thing comes close to flattery, for then the sinners think, "As long as they do not protest and do not reproach us, all of our deeds must be good." But we have been commanded to root out the evil from our midst, as it is said, "And you shall destroy this evil from within you." (Deuteronomy 13:6).

And our Sages said, "Everyone for whom it is possible to protest against [the transgressions of] the people of his household, and they do not protest, they are seized with the members of their household. If it is possible for them to protest against [the transgressions of] the people of their city and they do not do so, they are seized with the people of the city. If it is possible for them to protest against [the transgressions] of the whole world and they do not do so, then they are seized with all the world" (Shabbat 54b). And it is said, "And they shall stumble one upon another" (Leviticus 26:37). And our Rabbis, of blessed memory, explained it as meaning, "Each man for the sin of his brother," which teaches us that all Israel are responsible, one for another (Sanhedrin 27b).

אורחות צדיקים כד

הששי: מי שיש בידו למחות ואינו מוחה, ואינו נותן לב על מעשה החטאים—זה הדבר קרוב לחניפות. כי הם החוטאים חושבים: כיון שאינם מוחים בידינו ואינם מקנטרים אותנו, כל מעשינו הם טובים. ונצטוונו לבער הרע מקרבנו, שנאמר: "ובערת הרע מקרבך" (דברים יג:ו). ואמרו רבותינו ז"ל (שבת נד:): מי שיש בידו למחות על אנשי בתו, ואינו מוחה—נתפס על אנשי ביתו; באנשי עירו, ואינו מוחה—נתפס על אנשי עירו; בכל העולם כולו, ואינו מוחה—נתפס על כל העולם כולו, שנאמר: "וכשלו איש באחיו" (ויקרא כו:לד); ודרשו רבותינו ז"ל: איש בעוון אחיו. ואמרינן (סנהדרין כז:): מלמד שכולן ערבים זה בזה.

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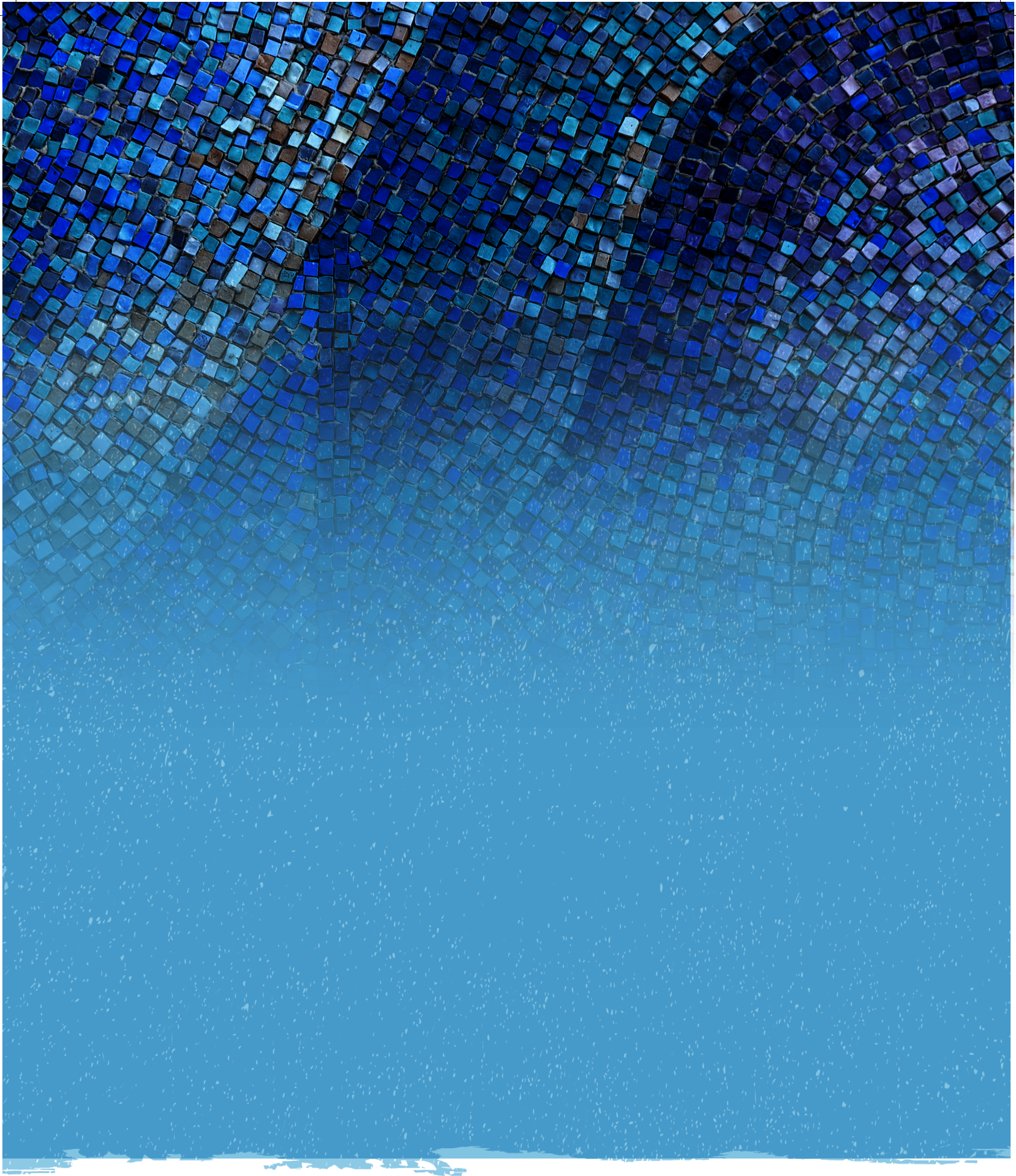
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