

## SURVEY OF RECENT HALAKHIC PERIODICAL LITERATURE

### LIABILITY FOR HARM CAUSED BY METAPHYSICAL FORCES

**R**abbi Meir Shapiro, the renowned *Lubliner Rav* and head of *Yeshivat Hakhmei Lublin*, was once asked to explain how the approach to Torah study in his yeshiva differed from that of the Lithuanian yeshivot of his day. He responded that the difference was that which distinguishes a *hasid* from a *mitnaged*. Asked to elaborate, the *Lubliner Rav* responded with an apocryphal example.

Once, two students, one a *hasid* and the other a *mitnaged*, were studying tractate *Sukkah* together. When they reached the statement “It was said of Jonathan ben Uzi’el that when he was engaged in Torah study a bird that flew through the air would be immediately burned” (*Sukkah* 28a) both students became lost in thought. “What are you thinking?” the *mitnaged* asked his friend. The *hasid* answered, “I am pondering the awesome spiritual conduct of the sacred Tanna, Jonathan, who was privileged to attain such a great, superhuman state.” “And what are your thoughts?” continued the *hasid*. The *mitnaged* responded, “I was sitting and pondering the liability of Jonathan ben Uzi’el. Assuming that the bird had an owner, would Jonathan ben Uzi’el have been liable for the damage that he caused?”<sup>1</sup>

This writer unabashedly confesses to sharing the quixotic interest of the *mitnaged*. Since reading the report of R. Meir Shapiro’s comment, I have repeatedly mulled over the question of tort liability in the reported circumstances.

An analysis of the issue requires recasting the question in terms that capture its halakhic perplexity. Conventional instances of tort liability involve physical acts that result in harm to the person or property of another. Harm caused passively is generally not actionable. Accordingly, were a flying bird to collide with a stationary person and meet its death thereby, no liability would result: The stationary person was entirely passive; he performed no act. The act is an act of self-immolation committed by the bird.

<sup>1</sup> See Aaron Sorasky, *Nizozei Or ha-Me’ir* (Bnei Brak, 5734), pp. 215-216.

## TRADITION

But a person who rushes the bird and collides with it has performed a tortious act and will be responsible for any damage he has caused.

Were Jonathan ben Uzi'el to sit peacefully in his own domain, no liability could be assigned for harm caused to the bird flying overhead. The question must be limited to a situation in which Jonathan ben Uzi'el actively places himself in proximity to the bird. The quandary arises because the harm inflicted by virtue of such placement is not in the form of a physical cause and effect relationship. Jonathan ben Uzi'el is indeed the cause of the harm, but the instrument employed is not physical in the nature of brute force or the like but is supernatural or metaphysical. The issue, then, is: Does deployment of a metaphysical power that results in physical harm constitute an act from which tort liability arises?

### I

The broader question is whether Halakhah takes cognizance only of causal connections involving physical causes and physical effects, i.e., employment of physical powers to achieve such effects, or does it also recognize the harnessing of metaphysical forces as human acts for which a person may be culpable?

One ramification of the issue lies in the area of Sabbath desecration. A person who on the Sabbath bodily performs an act encompassed within the thirty-nine proscribed categories of labor is culpable. But what of a person who utilizes a metaphysical medium to achieve the same result? Is the act to be ascribed to the human who employed that power or is it to be regarded as a non-human act and hence not to be punished?

Rosh, *Pesahim* 10:13, and *Mordekhai*, *Pesahim* 105a, cite an earlier scholar who asserted that Moses died on *Shabbat*.<sup>2</sup> Rosh adduces a statement found in *Midrash Rabbah* Deuteronomy 9:9<sup>3</sup> declaring that Moses

<sup>2</sup> See *Tur Shulhan Arukh, Orach Hayyim* 292, who attributes this view to Rav Sar Shalom.

<sup>3</sup> See also *Pesikta de-Rav Kahana, Parashat Ve-Zot ha-Berakhah*, p. 196a and *Midrash Tehillim* 9:1. Cf., however, R. Ze'ev Wolf Einhorn, *Peirush Maharzav, Midrash Rabbah* 9:9, who understands those sources as indicating only that Moses completed the writing of thirteen scrolls in a single day. That explanation is compatible with the opinion recorded in *Gittin* 60a that Moses received and committed to writing each section of the Torah separately. See R. Judah Kalirs, *Ha-Ma'ayan, Tevet* 5757, p. 50. A number of writers, including R. Abraham Isaac Glick, *Teshuvot Yad Yizhak*, I, no. 136; R. Aaron Levine, *Avnei Hefez*, no. 80, sec. 9; *idem*, *Birkhat Aharon, ma'amar* 10, sec. 4; and R. Joseph Schwartz, *Ginzei Yosef*, no. 16, sec. 3, accept the view that Moses merely completed the thirteen scrolls on the last day of

wrote thirteen Torah scrolls on the last day of his life and argues that he could hardly have done so if that day was the Sabbath.<sup>4</sup> R. Moshe Sofer, *Teshuvot Hatam Sofer*, VI, no. 29, does not find the matter at all perplexing. Assuredly, it is not within the natural physical capability of any human being to write thirteen Torah scrolls in a single day. Hence, if Moses did so, it must have been by means of some supernatural power, i.e., by means of invoking a Divine Name.<sup>5</sup>

The implication might well be that acts involving metaphysical powers are not equated with physical acts for purposes of Halakhah. However, such a conclusion does not necessarily follow for a number of reasons: 1) Rosh, in raising his objection, clearly disagrees. Hence, according to the more authoritative position of Rosh, such an act is to be regarded as an act for purposes of Halakhah.<sup>6</sup> 2) Sabbath proscriptions are defined as activities comparable in all salient aspects to forms of labor employed in construction of the Tabernacle in the wilderness. An act involving metaphysical powers might be excluded from the definition of an act for purposes of Sabbath regulations but yet considered an act for other purposes. 3) *Hatam Sofer* himself describes employment of a Divine Name, not as outside the ambit of human acts, but as being *she-lo ke-derekh ketivah*, i.e., an unusual form of writing comparable to writing with one's left hand.<sup>7</sup>

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his life and, following the statement of the Gemara, *Bava Batra* 15a, declaring that Moses wrote the final sentences with "tears" (*dema*) rather than with ink, point out that "tears" do not produce a durable script and that, accordingly, such writing is not forbidden on *Shabbat*.

<sup>4</sup> See also *Zohar*, *Parashat Terumah*, p. 156a and Rashi, *Sotah* 13b, s.v. *deyu*. Cf., however, *Tosafot*, *Menahot* 30a, s.v. *mi-ka'n*. See also *Alshikh*, Deuteronomy 31:24; *Teshuvot Maharil*, no. 203; and R. Isaiah Horowitz, *Shnei Lubot ha-Brit (Shelah)*, *Vavei ha-Amudim*, chap. 20.

<sup>5</sup> See also R. Moshe Sofer, *Torat Mosheh*, *Parashat Va-Yakhel*, s.v. *shesbet yamim*. In those comments Hatam Sofer also notes that the Tabernacle was assembled and disassembled each day during its seven-day inaugural period, including *Shabbat*. However, contends Hatam Sofer, the act of assembling the Tabernacle on *Shabbat* included forbidden acts of construction. But, as noted by Rashi, Exodus 39:33, God told Moses simply to place his hand upon the appropriate site and He would perform the construction. In effect, argues Hatam Sofer, Moses set into play metaphysical forces to accomplish the task and hence his participation is not deemed to constitute a human act. However, despite Hatam Sofer's comparison, it is not at all clear that the writing of Torah scrolls by Moses is to be equated with the erection of the Tabernacle. Moses presumably summoned divine aid in writing the Torah scrolls but, as Rashi emphasizes, Moses was ordered simply to place his hand in the appropriate position and the Tabernacle would "rise of its own accord."

<sup>6</sup> See R. Eliezer Deutsch, *Teshuvot Pri ha-Sadeh*, IV, no. 72. See generally sources cited by R. Eliyakum Dworkes, *Me'orot ha-Parashah* (Jerusalem, 5768), pp. 214-216.

<sup>7</sup> R. Yekuti'el Halberstam, the *Klausenburger Rav*, *Teshuvot Divrei Yaziv*, I, *Orah*

Acts of labor prohibited on *Shabbat* are not biblically forbidden when performed in an unusual manner.<sup>8</sup>

A similar question has been raised with regard to consultation of the *urim ve-tumim* on *Shabbat*. I Samuel 23:2 records that King David “inquired of God” whether he should go to battle against the Philistines. The Gemara, *Eiruvim* 45a, understandably assumes that David consulted the *urim ve-tumim*. Consistent with the context of that discussion, Rashi

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*Hayyim*, no. 105, sec. 2, argues that Sabbath regulations cannot serve as a paradigm for other matters because of another consideration. Prohibited forms of labor are proscribed on *Shabbat* because they are antithetical to the repose commanded for that day. If so, since speech is not incompatible with physical repose, acts performed by speech are not forbidden. *Divrei Yaziv*, however, presents the counter-argument that God’s rest on the Sabbath was rest from the “speech” He employed in creating the universe.

*Divrei Yaziv* draws attention to the query presented by the Gemara, *Eiruvim* 43a, regarding permissibility of travelling on Shabbat beyond the distance permitted by statute if one travels through the air more than ten *tefahim* above ground. Since humans are incapable of natural flight, Rashi explains that this might be accomplished by means of invoking a Divine Name. *Divrei Yaziv* infers that flight over such a distance at a height of less than ten *tefahim* is certainly forbidden. If so, it would appear that an act prohibited on the Sabbath is forbidden even if performed by means of employing a supernatural force.

<sup>8</sup> Hatam Sofer implies that such an act might be rabbinically proscribed on *Shabbat*. If, however, such an act is not to be regarded as a human act, there is no apparent reason to assume it to be rabbinically forbidden. Cf., R. Ya’akov Kanievski, *Kehillot Ya’akov, Bava Kamma* (Bnei Brak, 5748), no. 45, who contends simply that the Sages did not include such matters in their decrees. Moreover, if acts performed by means of metaphysical powers are not regarded as human in nature, it would stand to reason that the scrolls written by Moses would not be acceptable for public reading. Cf., however, R. Asher Weiss, *Minhat Asher, Parashat Va-Era*, no. 9, sec. 6, s.v. *u-ke-askinnu*. See R. Joseph Rosen, *Zofnat Pa’aneah, Sanhedrin* 21b, who asserts that Moses’ thirteenth scroll contained vowel signs and cantillation marks even though it thereby became unfit for public reading. See *Ha-Ma’ayan*, Tevet 5757, p. 52.

The Torah scrolls written by Moses may be disqualified for contemporary use for yet another reason. The Gemara, *Sanhedrin* 21b, records a dispute with regard to the script in which the Torah was originally written. R. Judah and R. Elazar ha-Moda’i are of the opinion that the Torah was transmitted by Moses in the script utilized in our day, *viz.*, *ketav Ashuri*, a Babylonian script. R. Jose disagrees and asserts that the Torah was originally recorded in *ketav Ivri*, the original Hebrew script, and preserved in that script until *ketav Ashuri* was substituted by Ezra upon return from the Babylonian exile in accordance with the original divine command as reflected in a biblical verse adduced by the Gemara, *Sanhedrin* 22a. According to R. Jose a Torah scroll may no longer be written in *ketav Ivri*. R. Menachem Mendel Kasher, *Divrei Menahem*, I, no. 34, sec. 2, argues that any scroll that predates Ezra’s substitution, since it was sanctified at the time of writing, remains fit for use. However, R. Chaim Kanievski, *Masekhet Tefillin*, sec. 3, s.v. *o she-ketavan*, rules that, according to R. Jose, such Torah scrolls, as well as *tefillin* and *mezuzot*, became disqualified when the original script was superseded by *ketav Ashuri*. Cf., however, *Yefeh Mareh*, Palestinian Talmud, *Megillah* 1:7.

indicates that David's inquiry occurred on *Shabbat*. *Midrash Shmu'el*, I Samuel 23, also states that the incident occurred on *Shabbat*.

Further support for the view that guidance of the *urim ve-tumim* may be solicited on *Shabbat* is found in a statement of the Gemara, *Menahot* 95b. The Gemara presents an interpretation of I Samuel 21:6 as referring to replacement of the shew-bread on *Shabbat*. I Samuel 21:10 describes an incident that occurred on the same day. The term "*abarei ha-efod*" in that verse is understood as referring to consultation of the *urim ve-tumim*.<sup>9</sup> If so, the biblical narrative is a report of solicitation of the *urim ve-tumim* on *Shabbat*.<sup>10</sup>

The Gemara, *Yoma* 73b, records a controversy with regard to the manner in which the *urim ve-tumim* responded to inquiries. R. Yohanan maintained that the letters forming the response protruded individually from the breastplate and the High Priest discerned the words they were intended to spell. Resh Lakish maintained that the letters shifted position and formed themselves into words. *Ma'aseh Rokeah*, *Parashat Mattot*, sec. 2, cites *Nahalat Binyamin* as declaring that, since, according to Resh Lakish, the letters combined to form actual words, consultation of the *urim ve-tumim* on *Shabbat* is prohibited as a forbidden form of writing. R. Chaim Yehudah Leib Litvin, *Teshuvot Sha'arei De'ah*, no. 194, regards such an act as entirely permissible because 1) an act requiring "inordinate wisdom" (*hokhmah yeteirah*) is described by the Gemara, *Shabbat* 74b, as not being in the form of a normal or usual act and hence not forbidden on *Shabbat*; 2) the act is the product of *gerama* rather than of a proximate cause; and 3) "a matter accomplished by a miracle is not encompassed within the commandments of the Torah." R. David Oppenheim, *Teshuvot Nishal David*, *Orah Hayyim*, no. 9, expresses a differing view in categorizing the operation of the *urim ve-tumim* as a "normal form of writing for such is the manner of the *urim* whenever it is consulted." Nevertheless, *Nishal David* argues that consultation of the *urim ve-tumim* is permitted on *Shabbat* because no actual human act of writing is involved. Indeed, this writer fails to understand the basis of the perplexity since the person addressing the *urim ve-tumim* is in no way responsible for the response. The content of the response— and hence the act of writing— as well as the very decision to respond or not to respond is entirely within the purview of the Deity.

A related problem involving a non-natural cause of harm is formulated by R. Jacob Kanievski in his *Kehillot Ya'akov*, *Bava Kamma* (Bnei Brak, 5748), no. 45. The Gemara, *Mo'ed Katan* 18a, records that a person

<sup>9</sup> See, for example, Rashi, *ad locum*.

<sup>10</sup> See *Encyclopedia Talmudit*, I (Jerusalem, 5766), 395, note 64.

who simply casts away his nail parings<sup>11</sup> is a wicked person because a pregnant woman might pass by and abort her fetus. The miscarriage is presumably caused by an evil spirit resting upon the fingernail parings. *Kehillot Ya'akov* asserts that, although causing a miscarriage is forbidden, there is no need to consider damages for harm to a fetus that comes about through an evil spirit because the placement of the nail parings in a public place is in the nature of *bor*, i.e., comparable to creating a nuisance in the form of a pit, and liability for harm suffered by a human being who falls into a pit is specifically excluded from the tort of *bor*.<sup>12</sup> *Kehillot Ya'akov*, however, utilizes the opportunity to enter into an expanded discussion of liability for causing other forms of damage by means of a *segulah*, i.e., a non-natural cause, including damage resulting from an “evil eye.”

The converse question arises in a situation in which a physical act results in non-physical damage, i.e., diminution of value occurs, not because of an empirical change, but because of an attendant prohibition having economic ramifications. It would seem that it is precisely that issue that is the subject of the controversy regarding liability for a *hezek she'eino nikar*, i.e., a harm that is not physically perceived. The Mishnah, *Gittin* 52b, declares that a person who intentionally commingles *terumah* with mundane produce belonging to another or defiles foodstuffs belonging to another or uses the wine of another in pouring an idolatrous libation is liable but is not liable if he does so inadvertently. The Gemara, *Gittin* 53b, amplifies that ruling in stating that the principle expressed in the Mishnah regarding inadvertent damage caused in such a manner reflects the view of R. Judah whereas R. Meir assigns liability in all circumstances.

The Gemara records a dispute among the Amora'im with regard to the parameters of liability for a *hezek she'eino nikar*. Hezekiah asserts that, in terms of biblical law, unperceived damage is treated no differently from physical damage with resultant liability both for an unintended harm as well as for a willful act as is the opinion of R. Meir. Nevertheless, R. Judah

<sup>11</sup> See *Eliyahu Rabbah* 260:7 who states that before Adam sinned he was covered with a nail-like substance. Upon his sinning, that covering was removed, leaving Adam with only fingernails and toenails. Those vestiges of Adam's sin are a source of danger to women because of Eve's role in his sin. See also R. Amram Blum, *Teshuvot Bet She'arim, Yoreh De'ah*, no. 344 and R. Meir Eisenstadter, *Teshuvot Maharam Ash, Yoreh De'eb*, no. 60.

<sup>12</sup> See *Bava Kamma* 54b. *Kehillot Ya'akov* is responding to the opinion of R. Pinchas Epstein, formerly head of the *Bet Din* of the *Edah ha-Haredit*, cited by R. Joseph Lerner, *Shemirat ha-Guf ve-ha-Nefesh*, 68:19, I, note 21, who maintained that there is liability for resultant miscarriage of the fetus. R. Menasheh Klein, *Mishneh Halakhot*, V, no. 365, asserts that, in the absence of tactile contact with the pregnant woman's abdomen, the act is in the nature of a *gerama*.

maintains that, if the act was unintended, the tortfeasor is relieved of liability by virtue of rabbinic decree in order to encourage him to report what has occurred to the owner of the affected property. The prospect of liability would have a chilling effect upon the inadvertent tortfeasor with the result that the tortfeasor would remain silent and the owner of the compromised item would be led into unwitting transgression. Accordingly, the inadvertent tortfeasor is exonerated “*mipnei tikkun ha-olam*—for the sake of perfection of the universe.” No comparable enactment was promulgated in instances of such willful damage because willful damage is mean-spirited in nature and the tortfeasor’s perverse gratification is derived from the victim’s consternation born of the loss he has suffered. The willful tortfeasor’s purpose cannot be achieved unless his victim becomes aware of what has transpired. Hence, no further measures need be taken to encourage the tortfeasor to inform his victim.

R. Yohanan disagrees and adopts the view that, according to biblical law, no liability is attendant upon a *hezek she’eino nikar* even if the harm is caused wantonly.<sup>13</sup> According to R. Yohanan, liability for purposeful damage arises only by virtue of rabbinic enactment “lest every person defile the ritually pure foodstuffs of his fellow and claim ‘I am not liable.’” According to R. Yohanan, R. Meir asserts that the edict was strengthened by extending liability to inadvertent damage as well. The normative rule is in accordance with the view of R. Yohanan who maintains that there is no liability in biblical law for causing a *hezek she’eino nikar*.

Rambam, *Hilkhot Hovel u-Mazik* 7:1, defines a *hezek she’eino nikar* as a harm in which “the entity has not been changed and whose form has not been ruined.” Me’iri, *Gittin* 40b, defines the act as one which causes a change “solely with regard to *issur*,” i.e., ritual law. An empirically unperceivable change in status affecting only religious law may aptly be described as metaphysical. It would thus appear to be the case that metaphysical damages are not actionable even when such damages are brought about by a physical cause.

*Tosafot*, *Bava Batra* 2b, s.v. *ve-hayyav*, apparently understood the exclusion of liability for *hezek she’eino nikar* differently. *Tosafot* observe that the act of taking a rodent and placing it upon food heretofore known to be ritually pure is included in the category of causing defilement of foodstuffs. Both the positioning of the rodent and its contact with the food

<sup>13</sup> Tort liability is derived from the verse “he who smites an animal mortally shall pay for it” (Leviticus 24:18). R. Shlomoh Zalman Auerbach, *Minhat Shlomoh*, I, no. 88, s.v. *ulam*, suggests that, since the verse describes damage that is physical in nature, physical damage must be regarded as a necessary element of liability.

product can be clearly observed by any onlooker. Why, then, query *Tosafot*, is the damage categorized as unperceivable? *Tosafot* respond that the harm is not perceivable because the rodent does not invariably defile by means of tactile contact: foodstuffs are subject to defilement only if they have previously been moistened by contact with one of a specified number of liquids. The onlooker is in no position to ascertain whether such antecedent moistening has occurred; hence, he does not perceive damage in the placing of a rodent upon the foodstuff.<sup>14</sup> *Tosafot*'s position is certainly at variance with that of Me'iri. If diminution in value born of a change in ritual status is by definition a *hezek she'eino nikar*, the perplexity expressed by *Tosafot* is without basis. Placement of a rodent upon a food product is indeed an observable act but such placement does not result in any physical or perceivable change in the food product. The harm results from a change in ritual status, a change that is metaphysical rather than perceivable.

Apparently, then, *Tosafot* understand the term "*eino nikar*" quite literally. To a bystander, *terumah* is indistinguishable from mundane produce; hence, mixing them seems to be an innocuous act. The act of pouring an idolatrous libation is no different than other forms of pouring; the act is idolatrous only because of an attendant intention that cannot be perceived by an onlooker. But, according to *Tosafot*, damage caused by placing a rodent upon a foodstuff is a perceivable act even though the resultant damage, since it is metaphysical in nature, is not empirically observable.

R. Shlomoh Zalman Auerbach, *Minhat Shlomoh*, I, no. 88, s.v. *ulam*, demonstrates that Ramban disagrees with *Tosafot*'s definition of *hezek she'eino nikar*. Ramban, in his *Kuntres Dina de-Garmi*, discusses the cogency of assigning liability to a ritual slaughterer who renders an animal unfit by virtue of pausing during the act of slaughter (*shebiyah*) or by pressing down with his knife upon the animal's trachea or esophagus (*derasah*). The resultant harm is the diminished value of the animal because it has become non-kosher. Ramban voices perplexity with regard to assignment of liability for such an act because examination of the slaughtered animal will not reveal that the act of slaughter was performed improperly. *Minhat Shlomoh* notes that if *Tosafot*'s analysis is adopted the damage must be categorized as a *hezek nikar*. Placement of a rodent upon

<sup>14</sup> It should logically follow that, according to *Tosafot*, causing a rodent to come into contact with a ritually pure liquid should result in liability since susceptibility to impurity is immediately evident. See R. Elchanan Wasserman, *Kovez Shi'urim, Bava Batra*, sec. 15 and *Minhat Shlomoh*, I, no. 88. Cf., however, *Torat Gittin, Gittin* 53a, who expresses astonishment with regard to *Tosafot*'s position.



a foodstuff is an observable act; even if the rodent is removed immediately, the damage has already been done and was observable at the time it occurred. Similarly, upon completion of the act of slaughter, the occurrence of a *shehiyah* or *derasah* is no longer perceivable, but, while it is taking place, the nature of the act and its implications are discernible to any astute observer. *Minhat Shlomoh* deduces that Ramban rejects *Tosafot's* view and maintains that any harm resulting solely from a change in halakhic status is, by definition, a *hezek she'eino nikar*.<sup>15</sup>

## II

The possibility of utilizing supernatural forces to achieve physical ends is reflected in the statement of the Gemara, *Berakhot* 55a, declaring that Bezalel, who fashioned the Tabernacle in the wilderness, “knew how to combine the letters by which heaven and earth were created.” In a more limited manner the Gemara, *Sanhedrin* 65b, reports that R. Hanina and R. Oshaia were wont to sit each Friday and engage in the study of the Book of Creation by means of which they would create a third-grown calf (or, according to one interpretation cited by Rosh, a third-born calf regarded as particularly delectable) and eat it.

Indeed, the Gemara, *Sanhedrin* 67b, posits a similarity between the act performed by R. Hanina and R. Oshaia and forbidden acts of sorcery. Abaye compared the laws of sorcery to the laws of the Sabbath: On the Sabbath some acts warrant death by stoning; some are forbidden but are not punishable; yet other acts are entirely permissible. Similarly, one who performs acts of sorcery is punished by stoning; one who creates an illusion, although the act is forbidden, is exempt from punishment; other acts, such as those performed by R. Hanina and R. Oshaia, are entirely permissible.

The import of the statement of the Gemara declaring that certain acts are entirely permissible is limited to exclusion of such acts from the category of sorcery; it does not necessarily imply that such acts meet with approbation. *Ethics of the Fathers* 1:13 declares that a person “who makes use of the crown shall perish.” R. Ovadiah of Bartenura, in his commentary

<sup>15</sup> Ramban himself asserts that the slaughterer is liable because, although the harm is the result of a change in halakhic status, that change is the product of an inevitable and durable physical change in the animal, i.e., death of the animal, whereas placement of a rodent in tactile contact with an item of food causes no physical change in the foodstuff.

elucidating that statement, cites an interpretation that renders the term “crown” (*taga*) as the ineffable name of God. According to Bartenura the Mishnah declares that the punishment of an individual who employs the Name for mundane benefit is destruction and denial of a portion in the world-to-come. Indeed, an explicit statement to that effect appears in *Avot de-Rabbi Natan* 12:13.<sup>16</sup> Nevertheless, *Shulhan Arukh, Yoreh De’ah*, 179:15, rules that such utilization of the Book of Creation is unobjectionable. Rema did not challenge that ruling although he did append a gloss to a similar ruling in *Shulhan Arukh, Yoreh De’ah* 246:21 in which he noted that “some say” that the dictum “one who makes use of the crown will be destroyed” refers to a person who employs Divine Names.<sup>17</sup>

The supernatural powers to which reference is made in those sources involve employment of various Divine Names. *Shakh, Yoreh De’ah*, 179:18, comments that such names of God are the subject matter of the Book of Creation “and God, may He be blessed, placed in them power so that the pious and the prophets might perform acts by means of them” and, furthermore, in employing them one demonstrates the “greatness and might” of God. Nevertheless, *Shakh* cautions that Divine Names may be employed only by a person who is in a state of “sanctity and purity” and even then only “for the sake of sanctification of the Name or the sake of a great *mizvah*.” The requisite conditions, declares *Shakh*, cannot be fulfilled in our generation and, accordingly, “it is made clear in the books of the Kabbalists that it is a grievous sin to make use of His name.”

The vast majority of rabbinic scholars accept the basic principle that pronouncement of Divine Names with adequate preparation and with proper intention can give rise to physical effects and thus accept the principle that man can utilize metaphysical powers to cause physical effects. They further accept the notion that sorcery also involves harnessing certain occult powers. Indeed, *Teshuvot Hatam Sofer, Orah Hayyim*, no. 197, questions the nature of the distinction between sorcery and theurgy, i.e., the distinction between black magic and white magic. Hatam Sofer seeks to identify the powers it is forbidden to harness and the powers it is permissible to harness and to delineate the reason for the distinction.

<sup>16</sup> Cf., however, *Megillah*, 28b, where a differing explanation of “makes use of the crown” is given.

<sup>17</sup> *Bi’ur ha-Gra, Yoreh De’ah* 246:70, cites *Sanhedrin* 106a: “Woe, who should live after God has appointed him?” (Numbers 24:23). Said R. Shimon ben Lakish, ‘[the verse should be rendered as] ‘Woe unto him who gives life to himself by means of the name ‘*El*.’” Cf., however, Rashi, who does not interpret the passage as a reference to a Divine Name but to a person who makes himself an “*el*,” i.e., “who makes himself a deity as [did] Pharaoh and Hiram.”

Hatam Sofer points to the statement of the Gemara, *Hullin* 7b, that defines the term “*mekhashef*,” meaning “sorcerer,” as a contraction of the words “*makhshish pamalya shel ma’alah*—one who weakens the heavenly retinue.” The natural order is guided by angels and powers termed the *pamalya shel ma’alah*—the heavenly retinue. That order was ordained by God and, although it transcends the physical universe, it manifests a certain order and regularity entirely analogous to the natural order. Man is forbidden to tamper with those powers, and hence with the natural order they regulate, because in doing so he weakens the powers established by God for administering His universe. Any attempt to modify the natural order by interfering with such powers constitutes sorcery and is forbidden. However, those angels and powers are simply intermediaries that receive transcendental regulatory influences and transmit them through metaphysical channels in an ordered manner. It is with that transmission that man dare not interfere. Such interference “weakens” the angelic hosts and it is the weakening of those hosts that is forbidden. However, by proper invocation of Divine Names, it is possible to go above those angels and powers and manipulate metaphysical influences before the flow of such influences reaches the angels serving as conduits. Such acts do not interfere with, and hence do not “weaken,” the heavenly hosts, and, for that reason, are not prohibited.

Hatam Sofer’s analysis is certainly in contradiction to R. Moshe Chaim Luzzatto’s exposition of the efficacy of invocation of Divine Names. In his *Derekh ha-Shem*, Part III, chap. 2, R. Moshe Chaim Luzzatto presents a naturalistic exposition of supernatural phenomena associated with invocation of Divine Names. According to Luzzatto, God decreed that, under proper conditions, concentration upon, or verbalization of, such Names, either singly or in combination with other words, will cause transcendental influences to achieve certain effects. The patterns and systems of the natural world, i.e., the laws of nature, are interconnected. But they are all subject to divine influences so that invocation of a Divine Name results in a modification in the transmission of such influences that, in turn, yields a changed effect in the natural order.

Those statements are congruent with the thesis advanced by Hatam Sofer. However, Luzzatto adds that angels have been granted additional power to act in modifying matters within their particular jurisdictions. Their usual ongoing activity is entirely in accordance with the order established for the continuing natural performance of the universe. Nevertheless, they have the power to act within their individual spheres of activity with greater force and strength than their normal and ordinary

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level of activity; in that manner they can effect miracles and wonders in accordance with the divine will. But God also willed that when a Name associated with a particular influence is pronounced “upon the angels in accordance with the order He has established... the angel will be compelled to utilize that additional power that has been delivered into his hand for a particular effect in accordance with the effect compelled by the person who utters the Name over it.”<sup>18</sup> Contrary to Hatam Sofer, Luzzatto stresses that utterance of a Divine Name, as if one is calling upon God to answer, can (1) cause influences to be drawn directly from God and (2) compel angels to utilize their limited powers in order to supersede the natural order.

Luzzatto emphasizes that, when employed by inappropriate persons, “one who makes use of the crown will pass away.” Moreover, even within the limits of theurgy, God can prevent the outcome of “weakening” or diminishing the established celestial powers whenever His wisdom regards it to be fitting and proper to do so.

Luzzatto also describes forces of evil from which God’s light is absent and His presence is concealed. By means of incantations the influence of such forces can be employed in a manner that transcends the order of nature and causes unnatural results. These forces, to the extent that they have been empowered to act, can thwart the laws of nature and the ministrations of angels who transmit influences according to the ordered system. Utilization of those forces is termed *keshefim* (sorcery) because “it weakens the heavenly retinue.”<sup>19</sup> According to Luzzatto and the Kabbalists, sorcery involves employment of negative forces entirely distinct from those harnessed by means of Divine Names.

To the extent that reference is to metaphysical phenomena that obey rules of causality, those phenomena are ordered, regular, and, for a person proficient in that science, predictable. In a sense there exist two parallel universes, the physical and the metaphysical, but with points of intersection between those universes. The result is a unified order of which only a portion is perceivable to corporeal creatures. The ontological reality and operative forces of the metaphysical portion of that order are fully integrated with physical reality even to the extent of reciprocal causal connections. A rough parallel would be an integrated highway system composed of two levels, one aboveground and one subterranean, with points of merger and crossover between them. The subterranean roads are invisible above ground but the subterranean highway profoundly affects surface travel by virtue of

<sup>18</sup> *Derekh ha-Shem*, Part III, chap. 2.

<sup>19</sup> *Loc. cit.*

the impact of vehicles traversing the two systems at points of interface.

Luzzatto and the Kabbalists regard the physical and the metaphysical realms as constituting a seamless interactive system. The non-natural world is governed by laws quite similar to those governing the natural world. Hence, interaction between those realms is not surprising. The term “metaphysical” has the connotation of a transcendental world entirely distinct from the physical world. Perhaps it would be more felicitous to employ the term “transnatural” to denote the metaphysical phenomena in question in order to distinguish the concept from the manner in which the term “metaphysical” is generally employed by philosophers. The term “metaphysical” is generally used in the sense of “non-material,” “incorporeal,” “otherworldly,” or “supernatural” while “transnatural” is more readily understood as “across from” the perceived natural order. Use of “transnatural” more readily captures the relationship between the physical and the transcendental than does the term “metaphysical” because it deemphasizes the dichotomous nature of the two realms.

Rambam, *Guide of the Perplexed*, Part 1, chap. 42, denies that Divine Names, in themselves, can be used to work miracles or otherwise affect the operation of laws of nature. Rambam describes belief in the power of Divine Names as unfitting for rational persons. In particular, Rambam decries the error of those who write amulets.<sup>20</sup>

Rambam himself offers the opinion that those Names must encapsulate certain elusive metaphysical concepts and convey profound understanding. Those Names are of use only to a person trained in virtue who has completed the requisite preparations for comprehensive knowledge and understanding of metaphysical concepts. Divine Names, for Rambam, seem to serve as a type of *aide memoire* enabling focused concentration upon such concepts.

The gulf between Rambam and the Kabbalists is not as great as might appear. The Kabbalists, no less so than Rambam, stressed that Names, when pronounced mechanically, are not at all efficacious. They, too, stress the need for virtue and preparation, although, for the Kabbalists, the preparation is not identical to the intellectual preparation posited by Rambam. For Rambam, an amulet worn as a talisman could not possibly

<sup>20</sup> Nevertheless, in his *Mishneh Torah, Hilkhot Shabbat* 19:14, Rambam permits wearing amulets of demonstrated efficacy on *Shabbat*. See this writer’s “Maimonides on the Distinction between Science and Pseudo-Science,” *Moses Maimonides, Physician, Scientist, and Philosopher*, ed. Fred Rosner and Samuel S. Kottke (Northvale, N.J., 1993), pp. 105-115.

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have any effect because the Names contained in an amulet are not endowed with any supernatural power. Nevertheless, Rambam does not explicitly deny the possibility that persons who have achieved the requisite degree of knowledge and understanding can, with adequate preparation, employ metaphysical or transnatural powers to achieve physical ends.

### III

The halakhic question to be addressed is whether employment of metaphysical or transnatural forces can result in criminal culpability or tort liability. The earliest source in which this question is discussed is probably R. Samuel Hagiz, *Halakhot Ketanot*, II, no. 98. The question presented to him concerns a person who kills another individual “by means of a Name or sorcery.” In an extremely brief response, *Halakhot Ketanot* states that “perhaps” since “through his word he has performed an act his status is comparable to a person who commits homicide by shooting an arrow of whom the prophet said ‘their tongue is a sharpened arrow’” (Jeremiah 9:7). R. Judah Aszod, *Teshuvot Mahari Assad, Orah Hayyim*, no. 199, cites Rashi’s comment on Exodus 2:15 to the effect that Moses killed the Egyptian taskmaster by invoking the Divine Name and points out that the text which reads “and he smote the Egyptian” (Exodus 2:12) employs the same verb as is employed in the verse “and he who smites a man and he dies shall surely be put to death” (Exodus 21:12). *Mahari Assad* apparently regards the linguistic argument as less than compelling because a few lines later he appears to question whether culpability for such an act is biblical or rabbinic in nature.<sup>21</sup> R. Chaim Joseph David Azulai, known as *Hida*, in his *Devash le-Pi, ma’arekhet mem*, sec. 5, declares unequivocally that such an act results in statutory culpability. *Hida* emphasizes that employment of a Divine Name involves a freely willed human act and should therefore be ascribed to the person invoking the Divine Name.

In ruling that employment of a Divine Name to kill a person constitutes homicide, *Halakhot Ketanot* maintains that verbal acts that result in

<sup>21</sup> In context, *Mahari Assad*’s comment is somewhat ambiguous. In context, the reference to culpability by virtue of rabbinic decree may include causing death by means of a Divine Name or sorcery as well as inducing an abortion by administering poison or the reference may be limited to causing an abortion by means of poison because administration of poison may not be deemed a proximate cause. See R. Judah Eiyush, *Teshuvot Bet Yehudah, Even ha-Ezer*, no. 14 and additional sources cited by this writer, *Contemporary Halakhic Problems*, I (New York, 1977), 333.

physical effects are treated by Halakhah in the same manner as physical acts. As stated by the Gemara, *Shabbat* 120b, the verse “you shall not do any work on the Sabbath day” (Exodus 20:8) serves to establish that labor is forbidden on *Shabbat* only if the labor is performed by means of a physical “act” (*ma’aseh*). A physical act is generally defined as an act involving movement of the body.

However, whether or not the physical activity involved in speech, in and of itself, constitutes a *ma’aseh* is a matter of controversy. A sin-offering is brought in expiation of certain sins but only if they are committed through performance of an “act.” The Gemara, *Sanhedrin* 65a, posits a dispute between the Sages and R. Akiva with regard to whether unwitting blasphemy requires such a sacrifice. The crux of the controversy is whether or not the act of “curling the lips” that is necessary for the fashioning of speech constitutes a *ma’aseh*. Similarly, the Gemara, *Makkot* 2b, explains that bearing false witness is not punishable by lashes because mere speech does not constitute a physical act. The Gemara, *Bava Mezi’a* 90b, records that movement of the lips that produces a tangible physical effect, e.g., a shouted command to animals of different species harnessed together that causes them to move or a vocal order designed to prevent an animal from eating while the animal is engaged in threshing, is regarded by R. Yohanan as a punishable offense. Resh Lakish, however, disagrees because he regards the *de minimis* movement of lips to be below the threshold level of movement that constitutes a *ma’aseh*. Rambam, *Hilkhot Kela’im* 9:7 and *Hilkhot Sekhirut* 13:2 as well as *Shulhan Arukh, Yoreh De’ah* 297:11 and *Hoshen Mishpat* 338:3, rule in accordance with the opinion of R. Yohanan. Hence, it might be concluded that verbal activity that yields a physical effect is deemed to be a *ma’aseh*.

That assumption, however, might seem to be contradicted by a literal reading of the Gemara, *Sanhedrin* 101a. The Gemara permits snake charming on *Shabbat* in order to render snakes and scorpions immobile. Rashi comments that the incantation used in the charm does not constitute a forbidden form of capture (*zeidah*). Rashi’s comment can readily be understood as meaning that a mere verbal pronouncement does not constitute a biblically prohibited “act.” However, *Levush, Orah Hayyim* 328:45, understands Rashi’s intention to be that prohibited forms of labor are forbidden on *Shabbat* only when performed in a usual manner whereas employment of a charm is an unusual means of capturing an animal. If so, the underlying principle is that moral pronouncements that serve to cause physical effects are deemed culpable human acts. Whether or not an act is performed in a usual manner is an issue only with regard to Sabbath violations but is irrelevant to

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culpability for homicide committed by invoking the Divine Name.<sup>22</sup>

A radically different categorization is presented by the *Brisker Rav*, R. Yitzchak Ze'ev Soloveitchik, *Hiddushei Rabbeinu ha-Griz Soloveitchik al ha-Torah*, sec. 46. Commenting on the verse “and he saw that there was no man and he smote the Egyptian” (Exodus 2:12), Rashi remarks that Moses saw that the Egyptian, even were he to be left unscathed, would not become the progenitor of any person who would become a convert. The *Brisker Rav* questions why that factor should in any way serve to mitigate culpability on the part of the Egyptian. A *bet din* is charged with determining guilt and administering punishment solely upon evidence concerning the alleged act. Extraneous matters are ignored in determining punishment. The *Brisker Rav*'s response is that, as recorded by Rambam, *Hilkhot Melakhim* 10:6, a non-Jew who strikes a Jew is not executed by a human court; rather, he is culpable for the death penalty at the hands of Heaven. Indeed, in *Hilkhot Hovel u-Mazik* 5:3, Rambam states that culpability for such an act is derived from Exodus 2:12. Unlike a human court, asserts the *Brisker Rav*, the heavenly court considers all manner of exculpatory factors before executing punishment. Since Moses killed the Egyptian by means of a Divine Name, the Egyptian's punishment was administered at the hands of Heaven and would not have been carried out if any of his unborn progeny would, if born, have converted to Judaism.

The *Brisker Rav*'s analysis is not a homiletical excursus but a halakhic illumination of an otherwise problematic narrative. The implication is not that, were a potential descendant to have become a convert, God would have intervened in order to thwart the effect of Moses' act but that any effect of employment of a Divine Name must involve a positive act on the part of the Deity. If so, the affirmative act of the Deity is, in fact, a supervening event with the result that the person who pronounces the Divine Name cannot be regarded as the proximate cause of the resultant event.

<sup>22</sup> The issue of whether invocation of the Divine Name is a normal means of performing an act is significant with regard to another Sabbath question. R. Judah Samuel Ashkenazi, *Geza Yishai, ma'arekhet alef*, regards employment of a Divine Name to create a human or an animal on the Sabbath as a “usual” form of an act prohibited on the Sabbath since “there is no other way of creating a man or beast other than by this method of combining the letters of the Name through which the universe was created for that is the way of performing this labor of creating a man or beast....”

Addressing the penalty for creating a man or beast on the Sabbath, *Geza Yishai, ibid.*, sec. 2, cites the controversy recorded in *Shabbat* 156b regarding punishment for causing an animal to perform labor on the Sabbath in response to a verbal command. Citing Rashi's comment, *Geza Yishai* asserts that the various opinions enumerated by the Gemara apply to punishment for any act of labor performed verbally on the Sabbath.



According to the *Brisker Rav*, it would appear that there cannot be culpability in biblical law for any result that occurs by means of invoking a metaphysical force.

A similar position seems to have been espoused by R. Joseph Rosen renowned as the author of *Zofnat Pa'aneah*. In a cryptic comment published in his *Teshuvot Salmat Yosef*, no. 18, sec. 6, Rabbi Rosen remarks that employment of the Divine Name by Moses was in the form of a request or directive addressed to God. The tenor of His reply indicates that the act performed in response to invocation of the Divine Name by Moses must be attributed to the Deity rather than to man.<sup>23</sup>

In contradistinction, Jonathan ben Uziel may have been endowed with a metaphysical force analogous to a “poison ray” that caused the death of birds. If so, and if metaphysical powers are to be equated with physical powers, Jonathan ben Uziel may well have been responsible for the destruction of the bird.<sup>24</sup>

The metaphysical phenomena involved in the matters under discussion may be of one of two natures. The force or power may be entirely analogous to a physical force of power in the sense that it is constant, regular and subject to laws of causality and hence predictable. Divine action could, of course, thwart a causal effect but such intervention would be no less miraculous than divine interference with causality governed solely by the physical laws of nature. Other forces, particularly those of theurgy employing pronouncement of Divine Names, may require an act of divine intervention in order to create an effect. Invocation of a Divine Name would then be simply in the nature of a summons to the Deity beseeching His intervention. Seeking divine intervention for the purpose of causing harm is hardly laudable but does not seem to present an identifiable halakhic

<sup>23</sup> R. Chaim Pelaggi, *Lev Hayyim*, II, *Orah Hayyim*, no. 188, reports that recitation of Psalm 98 serves to extinguish a fire but that it is permissible to recite the psalm on *Shabbat* because such recitation simply causes God to take notice and it is He who extinguishes the fire.

<sup>24</sup> Cf., however, this writer's *Contemporary Halakhic Problems*, V (Southfield, Mich., 2005), 148-152, where the argument is made that neither mere existence nor non-volitional physical qualities, e.g., body heat, constitute acts for purposes of “Halakhah.” If so, there may be no culpability for harms caused by “poison rays,” whether physical or metaphysical. See also R. Joshua Neuwirth, *Shemirat Shabbat ke-Hilkhatah*, I, 18:18, note 70 and III, 18:70.

There is, however, tort liability resulting from mere presence when such presence constitutes a public nuisance in the form of a *bor*, e.g., in the case of a person who lies down in a public thoroughfare and thereby causes people to stumble over him. See *Shulhan Arukh*, *Hoshen Mishpat* 413:1. If so, the issue hinges upon the question of whether a metaphysical nuisance is to be equated with a physical nuisance.

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basis for human culpability. If there does exist a true causal connection between harnessing a metaphysical or transnatural power and the resultant physical effect, full liability for such actions might result. It is also possible, as is apparently the view of R. Yechiel Michel Epstein, *Arukh ha-Shulhan*, *Hoshen Mishpat* 378:1, that the responsibility of the person involved is attenuated and relegated to the category of *gerama*.

*Kehillot Ya'akov* accepts the notion that there is tort liability for damage caused in a non-natural manner. The Gemara, *Bava Mezi'a* 107a, declares that a person should not tarry in the vicinity of his neighbor's field when the field is filled with ripened produce lest he cause damage by means of an "evil eye." The Gemara is silent with regard to liability for damages incurred in that manner were it possible to prove with certainty that damage to the crop was caused by the evil eye. *Arukh ha-Shulhan*, *Hoshen Mishpat* 378:1, rules that there is liability for such harm but only at "the hands of Heaven," presumably because he regards the act causing the harm to be a form of *gerama*. Nevertheless, *Kehillot Ya'akov* asserts that, were the causal connection demonstrable, such damage would be actionable.

*Kehillot Ya'akov's* analysis was directed to an unnamed correspondent who asserted that there could not be a cause of action in a human court for liability caused by an evil eye. That scholar maintained either that a human court can take no cognizance of harms committed through the medium of a metaphysical force or, alternatively, that the phenomenon described as an "evil eye" serves simply to draw celestial attention to the good fortune of the object of the evil eye and prompts a heavenly review of that individual's spiritual standing to determine whether he is actually deserving of such good fortune. If so, casting an evil eye is either devoid of all liability or, at worst, a form of *gerama* for which there is liability only at the hands of Heaven as is the opinion of *Arukh ha-Shulhan*. If there is cogency to *Kehillot Ya'akov's* view that, were absolute proof available to attribute a harm to the evil eye rather than to some other cause, such a view must be predicated upon the notion that an evil eye involves a necessary causal connection of some nature.

There are numerous talmudic anecdotes concerning various Sages who "cast their eyes" upon certain malfeasors who thereupon instantly perished. Their demise was clearly supernatural in nature but was indeed caused by the individual Sages to whom reference is made. Nevertheless, there is no hint that any of the Sages involved in such a matter was held accountable for his action. Those cases are described by *Kehillot Ya'akov* as involving no more than a determination by the Sage that the victim was guilty of a

serious transgression and justly deserved punishment. In each of those instances, that determination was accepted by Heaven and immediately acted upon.

*Kehillot Ya'akov* cites another series of anecdotes in which any possible infraction on the part of the victim would not seem to warrant death at the hands of Heaven. Yet there is no indication of censure of the Sages responsible for such loss of life. Those instances are depicted by *Kehillot Ya'akov* as situations in which the Sages in question had no intention of imposing punishment or of causing harm. They did, however, register astonishment or perplexity and thereby unleashed forces that led to onerous results. The Sages are not regarded as culpable, asserts *Kehillot Ya'akov*, because they could not control their own reactions and hence they are regarded as having acted due to *force majeure*. However, *Kehillot Ya'akov* agrees with *Halakhot Ketanot* that intentionally and voluntarily invoking a supernatural power in order to kill another individual is a fully culpable offense.<sup>25</sup>

Assuming, as does *Kehillot Ya'akov*, that man is responsible for the effects of metaphysical or transnatural forces unleashed by him, *Kehillot Ya'akov's* thesis explains why there is no censure of the Sages who caused death by means of acts beyond their control. Financial liability is a somewhat different matter. Just as an uncontrollable glance by one of the Sages could result in the death of a human being, the mere presence of Jonathan ben Uzi'el might cause the destruction of a bird. The act of killing the bird is certainly an *ones gamur*, i.e., absolutely beyond human control. Liability for an act in the nature of an *ones gamur* is a matter of controversy between *Tosafot*, *Bava Kamma* 4a, and Ramban,

<sup>25</sup> *Devash le-Pi* distinguishes the talmudic references to Sages who caused individuals to turn into "a pile of stones" from *Halakhot Ketanot's* ruling that killing by means of a Divine Name is to be regarded as homicide. *Devash le-Pi* regards the latter as an act having a direct causal effect whereas the former, he asserts, involved only "withholding the spark of holiness" with the result that only the victim's bare bones remained. If *Halakhot Ketanot's* ruling is accepted in principle, this writer fails to understand the distinction drawn by *Devash le-Pi*. Causing death by withdrawing blood is certainly culpable homicide and such is usually the cause of death in instances of stabbing. If metaphysical properties and entities are treated in a manner analogous to treatment of physical forces and properties and if a "spark of holiness" is a necessary condition of life, why should withholding a spark of holiness be treated any differently from withdrawing life-sustaining blood?

*Kehillot Ya'akov*, *ibid*, sec. 2, reports that he did not have access to the text of *Devash le-Pi* but presumes that *Devash le-Pi* is discussing an exclusion from the prohibition against pronouncing a curse. Cursing is prohibited even though a necessary causal connection between a curse and its effect does not exist. If so, the problem hardly seems to be resolved since pronouncing a curse calling for removal of the "spark of holiness" necessary to preserve life is certainly prohibited.

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*Bava Mezi'a* 82a.<sup>26</sup> If so, were Jonathan ben Uzi'el willfully to place himself in proximity to the bird, he would be liable. Were Jonathan ben Uzi'el to go to sleep and the bird then to fly over his head in an unrestricted area the situation would be comparable to that of a person who goes to sleep and pottery is subsequently placed near him with the result that when he rolls over in his sleep he breaks the utensils. It is that paradigm of an *ones gamur* that is the subject of controversy between *Tosafot* and Ramban. If, on the other hand, there is never responsibility for damage committed through the instrumentality of a metaphysical power there would be no liability. If employment of a metaphysical force is regarded as a form of *gerama*, culpability would be limited to liability at the hands of Heaven.

Even if, as *Tosafot* maintain, a person is not culpable for an act in the nature of an *ones gamur*, Jonathan ben Uzi'el might nevertheless be liable for creating a *bor*, or nuisance, in a public place. *Shulhan Arukh, Hoshen Mishpat* 413:1, rules that an individual who falls in a public place and chooses not to rise is liable for creating a “*bor*.” If metaphysical entities and powers are comparable to physical entities and powers, Jonathan ben Uzi'el would be liable for causing destruction of the bird by means of a *bor* in the form of his own person that he had positioned in a public area.

<sup>26</sup> For additional sources and further discussion see *Encyclopedia Talmudit*, I, 171.