

Is it Permissible to Play Paintball?

Rabbi Yehuda Balsam

Paintball is a game that has become exceedingly popular among teenagers and young adults. It combines the strategy, skill, and thrill of an actual battlefield in a relatively safe environment. The game involves teams attempting to shoot each other with guns which are powered by carbon dioxide, and loaded with paintballs. The carbon dioxide pressure causes the gun to fire paintballs which travel in excess of 150 MPH. Upon impact, these paintballs break open thereby staining the intended target with paint, indicating that the target has been hit. In most cases the game is played by two teams, each of which attempts to shoot members of the opposition. One might perhaps oppose playing such a game from an ideological perspective; claiming that war games are an improper way for youths to spend their time. On the other hand such a sport might serve to help the participants develop survival skills and learn the value of teamwork. Ideological considerations aside, there might be halachic ramifications to consider as well. Often, when struck by a paintball, the player experiences a sharp tinge of pain, which is frequently accompanied by a small welt or bruise marking the point of impact. Causing a fellow Jew to receive such a bruise might constitute an *issur d'oraisah* of *chovel b'chaveiro*.

The source of the issur of chovel b'chaveiro

The Torah (devarim 25:3) teaches us that a shaliach beis din whose job it is to administer malkos (39 lashes) may not add even one lash of his own. If he does so, he is in violation of the *issur* of *lo yosif pen yosif*. The Gemarah (kesuvos 32a, 33a) applies this *issur* to the standard case of *chovel b'chaveiro*, and assumes that one who hits a fellow Jew has violated this same biblical prohibition. Elsewhere the gemarah (Sanhedrin 85b) explains this application based on a *kal vachomer*: if it is *assur* for a shaliach beis din, who is performing a *mitzvah*, to add even one extra lash, how much more so is it prohibited to hit someone who is completely undeserving of such treatment (generally we don't derive prohibitions from a *kal vachomer*-see Tosfos s.v. *ha b'no*, but here the *kal v'chomer* helps us apply the existing *issur*, not learn a new one- see Aruch L'neir s.v. *lo shana*.)

The gemarah (kesuvos *ibid* also see Rashi) also tells us that even though most *issurei d'oraisah* carry a punishment of malkos (39 lashes), one who seriously injures his friend does not receive this punishment. The Torah teaches us that one who physically damages his friend must pay for 5 categories of damage (*nezek, tzar, shevet, ripuy, boshes*) corresponding to pain, suffering, devaluation, medical bills, and lost wages. This is in a case where one seriously injures another Jew. If the sum total of the damage is negligible (less than a *shaveh prutah*), i.e. a punch or kick through which no injury is incurred, the offender would then receive malkos. Thus we see that one must be extremely careful never to strike a fellow Jew, for doing so, even without causing injury constitutes *chovel b'chaveiro*.

Mechilah

The Mishnah (Bava Kamma 92a) discusses cases where an individual requests that his friend blind him, cut off his arm, or break his foot the friend is still in violation of the issur, and must pay for the damage. Even if the individual says *al m'nas liftor* he is still in violation of the issur, and must pay for the damages. However, if he requests that his friend damage his property *al m'nas liftor*, than the friend is patur from paying. The gemarah (93a) quotes a braisah that seems to contradict this principle and says that one can request that his friend hit him and the friend is patur. The amora'im have two ways to resolve the difference between cutting off a limb, and hitting. Rav Sheshes explains that the issue at hand is embarrassment to the individual's family. If one loses a limb, this creates a difficult situation for his entire family, but if he receives a blow, only he is affected. Thus, an individual has the right to be *mochel* on his own pain, but not if it affects his family. Rava clarifies these statements differently. He agrees that one has the right to be *mochel* on his own pain, but no one in his right mind would knowingly allow a major limb to be rendered useless. Therefore we have no right to listen to him even if he assures us that this is his desire. The third opinion is subject to dispute. Rabbi Yochanan explains that sometimes one can say the word *yes* in a rhetorical or sarcastic manner and really mean *no*, and vice versa. One of the cases is when he said *yes* in a sarcastic voice and really meant *no* and the other is when he really allowed it. The rishonim dispute to which statements Rabbi Yochanan was referring (see Rashi and Tosfos).

L'halachah, the Rif and Rosh (Sanhedrin *ibid*) hold that one can even be *mochel* on a limb and if the permission is absolutely clear, one may command his friend to amputate a limb and the friend may do so. The Rambam (*chovel u'mazik* 5:11) agrees with Rava that even if one orders his friend to damage a major limb, we must assume that he didn't really mean it and the *chovel* is liable, for one would never be *mochel* on a major limb. The Maggid Mishneh explains further that the Rambam would agree that one can absolve his friend from payment for any harm that doesn't cause any major damage.

Until now we have discussed cases where the damage has been done directly and intentionally. What would be the halacha if one accidentally damaged his friend? The Mishneh (Bava Kamma 26a) has the famous concept of *adam mu'ad l'oalam*, that man is always responsible for his actions, and ignorance or accident is almost never a valid defense. Despite this, the Rosh (*shut* 101:6) writes that if two people have a wrestling match and one accidentally falls on the other's eye and blinds him, no payment is required. This case constitutes a *total oneis* because each participant was trying as hard as he could to throw the other to the ground, making the entire affair an imprecise and dangerous endeavor. In such a case, one cannot be expected to avoid accidents. Furthermore, the Rosh states that both participants understood the situation when they agreed to wrestle. This seems to indicate a level of *mechilah*: since they knew the risks going in, each participant is inherently *mochel* any *chavalah* that he might incur. (Perhaps one can extend this statement to include all sports injuries that

are incurred accidentally due to the athletes' effort and intensity, and are common to that sport.) The Bedek Habayis (see Beis Yosef C.M. 421:5) questions why the Rosh seems to change from his original reason of oneis to his second reason of mechilah. Furthermore, how can mechilah work to acquit an individual of blinding another Jew? He posits that perhaps in a case where both participants are mochel to one another there is added room for leniency. The Mishneh L'melech (Choveil umazik 1:11) explains the Rosh from a different perspective. He points out that the Rosh (as mentioned above) agrees with the Rif who says that one can even be mochel on an important limb and thus mechilah would work in our case. Furthermore, one need not even come on to mechilah because the entire case is an oneis. This psak of the Rosh is accepted by the Shulchan Aruch (421:5).

Does mechilah negate the issur?

At this point it would seem that all of the opinions cited in the gemarah and rishonim would allow for an individual to participate in a game such as paintball. Even those who hold that one cannot be mochel on an important limb seem to agree that for minor pain and damage, mechilah is effective. This is all regarding payment for damages. However, the question remains concerning the prohibition itself: does the fact that I allow someone else to wound me cancel the issur d'oraisah? On this matter, the poskim are divided. The Shulchan Aruch Harav (nizkei haguf s'if 4) is of the opinion that one has no right to allow others to harm him. One must remember that his body was given to him by Hashem and is not ours to do with as we please. Therefore, he holds that the issur remains intact. This opinion is shared by the Chavos Yair (163) and the Chazon Ish (C.M. 19:5). The Chavos Yair explains that even in monetary matters one must follow the laws of the Torah and if both parties agree to be mochel, they are still in violation of the prohibition. For example, lending with interest is prohibited even though the borrower consents to the loan. Similarly in our case, the victim's permission cannot override the issur involved. The Chazon Ish takes a slightly different approach. He differentiates between the obligatory payment, which like any payment can be overlooked, and the issur chavalah which is a prohibited action, irrelevant of the one who is being harmed.) On the other hand, the Minchas Chinuch (48:3) writes that if one permits his friend to strike him the friend violates no prohibition in doing so. (He extends this to a case of cursing one's friend as well. This is true even if the one's being hit or cursed are his own parents, an issur punishable by death.) The Turei Even (Megilah 28a) concurs with this opinion, based on the simple interpretation of the gemara, which implies that one can be mochel on any pain inflicted by another individual (he disagrees with the Minchas Chinuch's idea that a father or a Rav can be mochel to the point where it would be mutar to hit or to curse them. He assumes that while the gemarah allows for a parent or rebbi to overlook his own honor, it does not permit the child or student to assault or embarrass him.)

Even if one assumes that the Shulchan Aruch Harav, Chavos Yair and the Chazon Ish are correct, and one has no right to give another Jew permission to wound or harm him, there may be another possibility to permit playing paintball. Rav Elchanan Wasserman (Kobeitz He'aros 70) writes that the only time the Torah forbade any aveiros bein adam l'chaveiro is when they are performed in a destructive or harmful manner. If done for an objectively productive purpose, performing an action that might generally

constitute an issur d'oraisah would be completely muttar. Thus, one could argue that the type of pain inflicted during a game of paintball do not constitute destructive and harmful chavalah, but rather comprises good-natured and friendly fun. However, one might choose to reject this application of Rav Elchanan's chiddush (if he accepts it altogether) by claiming that the pain itself is neither pleasant nor productive and does not increase the enjoyment of the game. Accepting the pain as a necessary by-product that one must endure in order to enjoy himself implies the standard case of mechilah rather than the beneficial chavalah to which Rav Elchanan refers.

Conclusion

As we have seen, playing paintball carries with it a possibility of violating an issur d'oraisah. The only way to avoid violating this prohibition is if all of the players are aware of the situation and choose to be mochel on their personal harm. Even in this case, some achronim still prohibit harming a fellow Jew. Thus, one who wishes to play such a game must take all of these issues into account and consult with his Rav concerning how to pasken.