

THE BAIS HAVAAD

HALACHA JOURNAL

Family, Business, & Jewish Life Through the Prism of Halacha



VOLUME 5779 · ISSUE XIII · PARSHAS SHEMOS · A PUBLICATION OF THE BAIS HAVAAD HALACHA CENTER

LABOR PARTY:

The Year-End Challenges of a Jew in Office

Adapted from a shiur by Rav Yosef Greenwald

Professional party politics, properly played. Thanksgiving opens the American “holiday season,” which culminates in New Year’s Day. For a Jew working in a non-Jewish office, this period often features events and practices that occasion Halachic quandaries. Chief among those are office holiday parties and gift exchanges.

We are commanded in the Torah, “Like the deed of the land of Egypt, in which you lived, you shall not do, and like the deed of the land of Canaan, to which I am bringing you, you shall not do, and in their statutes you shall not go.” (Vayikra 18:3)

The *issur* at the end of this *pasuk*—*uv'chukosaihem lo sailaichu*—prohibits practices in which the nations engage because they are *ovdei avoda zara* (Tosfos and Ran, *Avoda Zara* 11). Something that idolaters do for no reason as an expression of their culture, even without a clear *avoda zara* connection, is included in the *lav*. Something they do for a non-*avoda zara* reason is not prohibited according to Maharik (Rama, Shulchan Aruch Y.D. 178), because only when we follow our host culture blindly is there a risk of being drawn after their behavior and morals. Where there is a reason for the activity, we may safely engage in it.

The Vilna Gaon (ibid.), however, based on Sanhedrin 52, forbids understandable practices as well.

To understand the Gaon’s position, it helps to see the Rambam in *Hil. Avoda Zara perek* 11, who explains the above *pasuk* together with the *pasuk*, “and I have distinguished you from the nations to be Mine” (Vayikra 20:26).

The message, says the Rambam, is that a Jew is to be distinct from a gentile in his dress, hairstyle, and deeds just as in his views. This, the Rambam implies, is a desired end in itself for Hashem’s ambassadors to the world, quite apart from the fear of adverse influence. This buttresses the Gaon’s position.

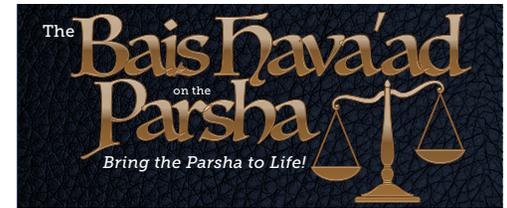
Chazal forbade a host of foods and activities *mishum chasnus*, to prevent intermarriage. Where our *galus* hosts welcome us and we mingle with them freely in social settings, intermarriage is the logical result. In this country, the most kind and welcoming in our long history of exile, the vast majority of those Jews that don’t subscribe to these Halachic constraints have intermarried.

If one works in a non-Jewish office, may he participate in an office gift exchange program?

The Christmas holiday is associated with Christianity, which most *poskim* hold to be idolatry. If the gift exchange takes place at a holiday-themed party with a red and green motif, a tree, and the singing of carols, there is a clear *avoda zara* association. Participation in that ceremony is *assur min haTorah*, so one must find a way to absent himself, but he may leave a gift on the assigned co-worker’s desk with an appreciative note.

To give or receive a gift *b’yom aidam*, on the actual *avoda zara* holiday, is forbidden. Terumas Hadeshen and other Rishonim state that the *issur* to do so within three days of the holiday applied only in an earlier time when the gentiles clung more fervidly to their deities. In America today, the culture is generally more secular and less devout. But on December 25 itself, gift giving is to be avoided (*poskim* citing Or Zarua), though it might be permitted where required *mishum aiva*, to avert enmity, as in *Avoda Zara* 6b.

(continued on back)



Adapted from a shiur by Rav Chaim Weg on Parshas Shemos

Halachos of Reading the Shem Hashem

זה שמי לעלם וזה זכרי לדור דור (שמות ה:)

According to *Pesachim* 50a, the word לעלם is written without the *vav* to show that the *Shem HaMeforash* (YKVK) is not pronounced, and the word זכרי refers to how we read the *Shem*, as *Ad-nai*, the *Shem Adnus*.

Does reading the *Shem Adnus* have the halachic status of having read the *Shem HaMeforash*, or do we not read the *Shem HaMeforash* at all, and the *Shem Adnus* is simply a replacement? There are two *nafka minas* for this:

If a *baal korei* read Hashem’s name without looking inside at the word (which is usually required).

If wax drips from an old chandelier and falls on the *Shem Hashem*.

This question is subject to a *machlokes*:

Brisker Rav (*Shemos* here and in *Devarim* 4) – It is considered reading the actual *Shem*, and it must be read

(continued on back)

Who is considered the *muchzak* on funds in escrow?

These and other real estate questions are the focus of the upcoming Bais HaVaad series for lawyers entitled *Common Pitfalls in the Lifecycle of Real Estate Transactions*. Lawyers earn their CLE’s while expanding their knowledge of business halacha.

spotlight

Bais HaVaad beginning Business Halacha Series for Lawyers

GENERAL HALACHA

RUNNING INTERFERENCE: Intruding into a deal

Rabbi David Grossman



Whether you are selling groceries, wholesale supplies or healthcare services, all businesses are built upon relationships. If a businessman is in the process of developing a relationship with a customer, and a second businessman swoops in to take the deal, has he done anything wrong? If the deal has not yet been finalized, can a second party interfere?

The question of interfering in another person's business transaction may differ according to your perspective. The original businessman may be mourning the loss of his potential profits. Meanwhile, the second businessman may be congratulating himself on seizing the opportunity and capital-

izing on a new deal. According to Halacha, which is the correct perspective?

TWO EXAMPLES WITH DISTINCT DIFFERENCES

The *gemara* presents two situations in which it is not permitted to interfere with someone else's business transaction. These cases may seem similar, but they have distinct ramifications in terms of practical Halacha.

CASE 1: ANI MEHAPECH BECHARARA

The *gemara* in *Kiddushin* describes that one of the *Amora'im* wanted to purchase a particular property, but before he had a chance, another *Amora* purchased it. They brought the case to the *Chachamim*, who ruled that the *halacha* is that in a case of an *ani mehapech becharara* – a poor person who is pursuing an ownerless item with the intent of acquiring it for himself – one who grabs the item first is considered a *rasha*, even though the *ani* has not yet made a *kinyan* on the object and is therefore not yet the halachic owner.

CASE 2: ANI HAMENAKEF BEROSH HAZAYIS

In an apparently similar case, the *gemara* in *Gittin* describes a case of *ani hamenakef berosh hazayis* a poor person who is striking the top of a *hefker* olive tree with the intent of collecting the olives that fall to the ground. In this case, the *gemara* concludes, one who collects the *hefker* olives before the *ani* violates a rabbinic injunction of *gezel*, even though the *ani* did not yet make any *kinyan* on the olives.

WHAT IS THE DIFFERENCE?

The *Rishonim* discuss the difference between these two cases. In the case of *ani mehapech becharara*, one who interferes with the business transaction violates the commandment of “ועשית הישר והטוב בעיני ה' אלוקיך,” “And you shall do the right and the good in the eyes of Hashem your God” (*Devarim* 6:18). Even though there is nothing halachically wrong with interfering *per se*, as no actual transaction has taken place, it is not “right and good” to pursue a property or item that is already the subject of serious discussion or oral agreement. This is because there are likely many other similar deals available; there is no need to pursue specifically the one that the “*ani*” is pursuing.

The implication of this explanation is that if the deal that the *ani* is pursuing is unique and unavailable elsewhere, it would be permissible for someone else to make the deal first. If there is a special reason that the deal is worthwhile to the second person – perhaps the property is near his other properties or the price can't be matched elsewhere – than it would not be a violation of ועשית הישר והטוב to “steal” the deal from the *ani*.

In the case of *ani hamenakef berosh hazayis*, the person has made extensive effort and spent time in order to attain a certain object. Perhaps he even risked his life to do so, climbing a tree to reach the *hefker* olives. In this case, the *Rishonim* explain, even if the deal is unique and cannot be attained anywhere else, it is considered *gezel* to interfere with the *ani's* deal.

MATTERS OF INTEREST

Avissar Family Ribbis Awareness Initiative: Ribbis and the Heter Iska



HETER ISKA I

The mitzvah to lend is achieved when one lends without charging interest. If one's business lends with interest he must ensure to structure a valid *heter iska*. Assuming the *heter iska* was executed in a proper fashion, he does not transgress an *issur* of *ribbis*. However, the Chofetz Chaim gives two reasons why it is preferable to lend without using the *heter iska* to permit charging interest:

Many don't fully comprehend the intricacies of the *heter iska*. The *heter* is not merely a prayer. It is a intricate deal structure. Merely signing the *heter* is not sufficient. One must fully understand the entire concept in order for it to be effective.

When one charges interest he is giving up on

the mitzvos involved with lending and minimizes the perpetuation of *chesed* that the *Ribbono Shel Olam* commands us to infuse into this world.

Most *halachic* authorities maintain that lending with a properly executed *heter iska* is clearly permissible, even *lechatchilah*, as a first choice.

The concept of an *iska* agreement is to establish the interest payments as “investment” payments where profits may be taken, as opposed to simple interest payments. The difference between a loan and an investment lies in the responsibility for the monies in case of loss. In a loan, the borrower is responsible to repay the money in the event of a loss, while a manager of an investment would be absolved

from responsibility.

Additionally, an investment, by its halachic definition, involves an element of risk and does not guarantee any profits. Therefore, if the party that advances the funds would be willing to be responsible in cases of loss, he would then be able to collect from profits generated by the loan funds.

Under a *heter iska* agreement, the lender would be able to receive profits from his investment, but would be responsible for loss

as well. In the typical event where the lender would not be willing to undertake such a responsibility, he may stipulate that the managing partner must verify through two witnesses as to whether or not there were indeed losses. He then stipulates that all claims regarding profit amounts must be verified under oath in *beis din*. However, the investor offers to waive his right to require an oath from the managing partner if he pays a presumed profit (i.e., 5 percent of the entire money) regardless of the

investment's success.

Since Jews today are very reluctant to swear, the potential risk to the investing partner is negligible and he would therefore be willing to accept such an agreement. On the other hand, since the managing partner has an option to swear and not pay the presumed profits, these profits are not considered guaranteed. This contract allows the transaction to be considered an investment, while the investor is comfortable that his money won't be lost.

OU DAILY LIVING

Weekly Questions

Laws related to Benching



What is the proper way to hold the *kos shel bracha* (cup of wine used e.g., for Kiddush, Havdalah or Benching)? I have seen some people hold the cup from the bottom while I have seen others hold it from the middle. Which is correct?

The Mishnah Berurah (183:14-16) writes that one should hold the cup in one's right hand, and lift the cup at least a *tefach* (approximately 3-4 inches) off the table. One should not support the cup with one's left hand. Mishnah Berurah quotes the Shelah who writes that according to Kabbalah the proper way to hold the cup is on the palm of the right hand with the fingers extending upwards around the cup. The source for this is the Zohar. However, the Magen Avrohom (183:6) writes that the

wording of the Zohar is inconclusive. It can also be interpreted to refer to wrapping one's fingers around the middle of the *kos*. The Bach (183:6) maintains that one may hold the *kos* in the middle. Indeed there were great *tzadikim* who specifically held the *kos* in this manner (see Va'yaas Avrohom p. 445). We see that both customs have a valid basis in *halacha* and everyone should follow his *mesorah* from his parents and ancestors.

In a previous Halacha Yomis you wrote that the *mezamen* (leader of the *zimun*) should recite the first *bracha* out loud. I am almost certain that Sephardim do not have this custom. Can you please clarify this point?

You are correct that there is a difference between Ashkenazim and Sephardim. The custom of Sephardim is in accordance with the Mechaber (OC 183:7) who writes that everyone should *bench* quietly word by word together with the leader, including even the end of each *bracha*. The Rama adds that everyone should hurry to finish the *bracha* before the *mezamen* so that they can answer Amen, which is the basis for the Ashkenazi practice.

Yalkut Yosef (Dinei Zimun 4-5) explains that according to the Mechaber, it is inappropriate for the leader to say the end of the *bracha* out loud and cause the others to answer Amen, since this would constitute a *hefsek* (interruption) in the middle of one's *benching*. According to the Mechaber, *benching* is similar to *Shmoneh Esrei* and one is not permitted to interrupt in the middle of *benching* even to answer Amen. However, if a Sephardi is leading a *zimun* for Ashkenazim, then Yalkut Yosef

writes that he should end the *bracha* out loud, so that the Ashkenazim can answer Amen in accordance with the ruling of the Rama.

Could you please clarify when a *kos* (cup of wine) should be used for *zimun*?

Shulchan Aruch (OC 182:1) quotes three different opinions as to when a *kos* is required for *benching*:

One opinion holds that anytime one *benches* one must recite the *benching* with a *kos*. This entails holding a full cup of wine during *benching*, reciting *borei pri ha'gafen* at the end of *benching* and drinking the cup of wine. According to this view if two people ate together, since there is no *zimun*, each person must have their own cup of wine.

The second opinion is that there is only a requirement of a *kos* when there is a *zimun*, i.e., three or more men *benching* together. Only the leader needs to hold the cup of wine.

The third opinion is that there is no obligation to have a *kos* even if one is *benching* with a *zimun*.

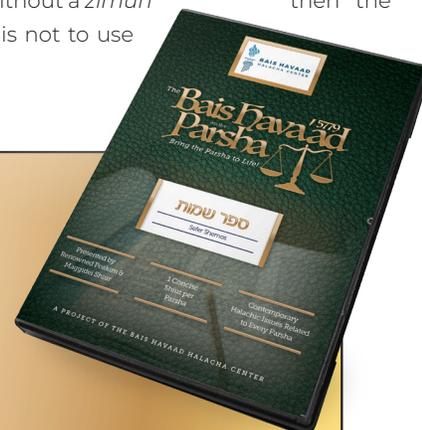
The Mishnah Berurah (182:4) writes that although the common custom is in accordance with the third opinion, that even if one *benches* with a *zimun* they are not obligated to have a *kos*, if one wishes to fulfill the mitzvah in the optimal manner, they should arrange to *bench* with a *kos*. However, if one is *benching* without a *zimun* then the *minhag* is not to use a *kos*.

The **Bais Havaad** 1578
on the
Parsha
Bring the Parsha to Life!

Presented by Renowned Poskim
& Maggidai Shiur

1 Concise Shiur Per Parsha

Contemporary Halachic Issues
Related to Every Parsha



(continued from front pg.)

Lawyers and accountants often receive gifts of nonkosher wine from clients. Our *minhag* is to treat gentile wine, *stam yaynam*, as an issur *hana'a*, so one could not pass these along to his secretary, because he would benefit from the goodwill that created. He may, however, tell her to keep any such gifts that may arrive without showing them to him.

As *Chazal* teach us (Sanhedrin 103b), drinking alcohol together has the power to bring people closer. It is forbidden, for this reason, to share a drink with a non-Jew. However, this is permitted (Shulchan Aruch Y.D. 114) if it is *derech akra'i* (by happenstance) and *arai* (not in a fixed manner). Drinking at a

party would be a violation. One may drink a nonalcoholic beverage.

There is also a prohibition (ibid. 152) to eat at a celebratory gentile feast, like a wedding. Even eating your own food, sitting alone, at such an event is forbidden by the Bais Yosef, though permitted by the Rambam. A holiday party in a gentile office would seem to qualify as celebratory, so one should not eat with them. One may, however, attend, circulate, and engage in conversation.

All this is likely to produce a feeling of unease at the party, a sense that one is present but doesn't really belong.

Perfect.

(continued from front pg.)



inside, and the Torah is *pasul* if it is covered.

Although the Rambam cites a *machlokes* whether one is *chayav* for cursing Hashem using the *Shem Adnus*, both opinions agree with his approach.

Igros Moshe – it is a *machlokes rishonim* whether one must read the *Shem* inside.

Must a regular case of *kri/kesiv* be read inside in the Torah?

Brisker Rav above and *Pri Megadim* (O.C. 141) – No

Igros Moshe (and possibly *Mishna Berura*,

who doesn't cite the above *Pri Megadim*) – Yes Is the word *איהיה* considered one of the *Shemos Hashem*?

Shulchan Aruch – Cites two opinions as to whether it is or not.

Onkelos (according to *Emes L'yaakov*) – Seems to hold it is *kodesh*

Targum cited by Ramban – Seems to hold it is not *kodesh*

Is the word *איהיה אשר* within the phrase *איהיה אשר איהיה* also *kodesh*?

Onkelos – Seems it is

Gra (according to the *sefer Mishchas Shemen*) – No

EVENTS AT THE BAIS HAVAAD

Bais HaVaad to present at upcoming Business Halacha Summit

Business leaders and Poskim gathered last week for the annual Business Halacha Summit in Chicago.

This prestigious event leading into the Midwest Agudah Convention, addresses the most pressing challenges facing today's halachic business world with practical solutions and halachic perspectives.

The Bais HaVaad's Rabbi Dovid Grossman, shlit"a, was one of the featured speakers at the event, presenting a shiur entitled: *Hilchos Shabbos: The Ins and Outs of Making Your Business "Shabbos Compliant"*

The Daf in Halacha

Bring the Daf to Life!

מסכת חולין

This Week's Topics

RAV AVRAHAM YESHAYA COHEN

ROSH KOLLEL OF KOLLEL OHEL YITZCHOK OF LAKEWOOD

RAV ELIEZER COHEN

ROV OF BAIS MEDRASH TIFERES ELIEZER

RAV YOSEF GREENWALD

DAYAN, BAIS HAVAAD YERUSHALAYIM

- דף ל"א IMMERSION WITH INTENTION
- דף ל"ב MOSTLY SHECHTED
- דף ל"ג KOSHER, FOR A NON-JEW
- דף ל"ד FOOD IMPURITY
- דף ל"ה FOOD MEASURES: ACHILA VS. TUM'A
- דף ל"ו UNDERSTANDING KABBALAS TUMA
- דף ל"ז THE POWER OF THOUGHT & SPEECH



Business Halacha Services



Bais Din & Dispute Resolution



Zichron Gershon Kollel for Dayanus



Medical Halacha Center



Kehilla & Bais Din Primacy Initiative



Halachic Awareness & Education

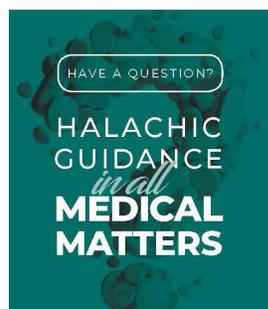
BAIS HAVAAD HALACHA CENTER

RAVBI YEHOShUA WOLFE, MENAHEL
RAVBI YEHOShUA GREENSPAN, SAFRA D'DAYNA
105 River Ave, #301, Lakewood, NJ 08701
1.888.485.VAAD (8223)
www.baishavaad.org

MIDWEST DIVISION
RAVBI DOVID ARON GROSS
A 3718 SHANNON ROAD
CLEVELAND, OH 44118
P 216.302.8194
E MIDWEST@BAISHAVAAD.ORG

BROOKLYN DIVISION
RAVBI DOVID HOUSMAN
A 2238 85TH STREET
BROOKLYN, NY 11214
P 718.285.9535
E RDHOUSMAN@BAISHAVAAD.ORG

SOUTH FLORIDA DIVISION
RAVBI YOSEF GALIMIDI, MENAHEL
RAVBI MEIR BENGUIGUI, SAFRA D'DAYNA
A SAFRA SYNAGOGUE
19275 MYSTIC POINTE DR
AVENTURA, FL 33180
E BD@BAISHAVAAD.ORG



המרכז לרפואה ע"פ הלכה שנינו בית הורעו

M·E·D·I·C·A·L HALACHA CENTER

Have a Question?

Hotline
732.276.2183

Email
INFO@THEMEDHC.ORG

