

THE BAIS HAVAAD

HALACHA JOURNAL

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



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STEPPING ON THE GAS:

Is it Permitted to Increase Supply to Drive Down Prices?

Adapted from the writings of Rav Micha Cohn

One of the many practical ramifications of sanctions in the middle east relates to the price of crude oil. This drop or increase is attributed to many factors: increased U.S. production of oil, lower demand from a slower China and Europe, manipulation of the oil market by traders, and rhetoric from Saudi Arabia that it is not going to cut output. Indeed, the law of supply and demand has played a great role in economics from ancient to modern times. In this article we will discuss a question that has spanned centuries and continents but in essence remains the same. Is it permitted to increase supply or lower prices at the expense of other merchants? Does the welfare of the community play a role?

We begin with a *Mishnah* in *Tractate Bava Metziah* (60a). Rebbe Yehudah taught, it is forbidden for a merchant to give out walnuts to children to attract them to his store or slash his prices because this is unfair competition. The Rabbis, whose opinion is the final halacha, disagreed. They maintained that distributing sweets is permitted and the merchant who slashes his prices should be blessed. The Talmud explains, just as this merchant attracts customers by giving out walnuts, other merchants could give out almonds or use similar tactics. Furthermore, the price reducer is blessed because he will lower the market prices. Apparently, the Rabbis viewed lowering market prices favorably even at the expense of the vendors.

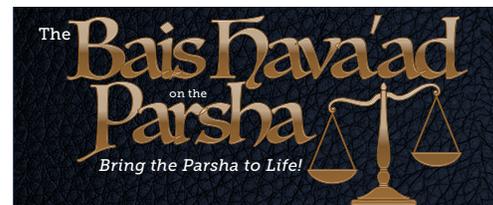
For hundreds of years Jewish people made a living by buying a liquor license from the municipality and selling whiskey primarily to non-Jews. In the early 1700s a dispute between two merchants over liquor

selling rights came before Rabbi Meir Eisenstadt (1670-1744), the author of *Shu"t Panim Mei'ros* (1,78). One merchant slashed his prices and was diverting all the business to himself. The other merchant claimed that this was unfair competition. While it would seem that this case is exactly what the above *Mishnah* praised, Rabbi Eisenstadt made two distinctions. He asserted, based on Rashi's explanation, that the high prices in the *Mishnah* were due to merchants hoarded produce to keep supply low and demand high. By a merchant lowering his prices it would force the other merchants to release their stock pile into the market so they could earn a profit. This is praised because the merchant is reversing the artificial lack of supply created by the merchants. However, being that whiskey in the 1700's was scarce and highly regulated, lowering prices was creating an unsustainable situation and would simply be driving the other merchants out of business. This, reasoned Rabbi Eisenstadt, the sages never permitted.

Furthermore, the sages praised the merchant who lowered his prices because of the communal good. This would make sense for staple items like grain and produce where the Jewish community can benefit. However, liquor is a different story. It is far from a staple item and primarily purchased by gentiles. For these reasons Rabbi Meir Eisenstadt ruled that the price cutting was unfair.

A hundred years later, Rabbi Chaim Palaggi (1788-1868) of Izmir, Turkey, deals with the same question, just this time with craftsmen. In his responsa *Smicha LeChaim* (CM 16) he discusses whether a dyer may cut his prices and draw business away from other dyers. Rabbi Palaggi took a more permissive position

(continued on back)



Adapted from a shiur by Rav Yitzchak Grossman

To Make Up The Dead: Is Embalming Permitted?

ויצו יוסף את עבדיו את הרופאים לחנט את אביו ויחנטו הרפאים את ישראל (בראשית נ:ב) וימת יוסף... ויחנטו אותו וישם בארון במצרים (בראשית נ:כ)

What exactly was this *chanata*/embalming that was done to Yaakov and Yosef and was it permitted?

Midrash Rabba/Abarbanel — Involved an invasive procedure of cutting the stomach open and removing the intestines, liver, etc. Spices and other chemicals were then added to prevent decay. The body eventually hardened and retained its form for an extended period of time.

Radak/Tosafos Yom Tov in Pesachim – Agree and add that this embalming was done to other Jewish kings as well (*serefa* referred to elsewhere in Tanach).

Rashba – Cites the Midrash and allows chemical cremation in specific cases.

Zohar cited by many achronim (e.g. Chasam Sofer,

(continued on back)

A fundamental objective of our Even Haezer Chabura is ensuring that all procedures and agreements are both halachically and legally binding, given the broad implications in a secular court. To that end, the Chabura is in contact with lawyers where they expand their knowledge regarding reconciling civil law with halacha.

spotlight

The law and The Law

GENERAL HALACHA

STEAL OF THE DEAL

When your investor cuts you out

Rabbi Benzion Sprei



Q. As a property manager in the Central Jersey area, I came across a good deal on a bank owned (REO) 2-family rental property. Being that it was a "cash only" deal, I approached an investor and proposed partnering up with him for this investment. He liked the idea and after working out the details, we left off that he would go down and close the deal. A few weeks later he called me and apologetically told me that he had changed his mind and ended up just buying the property for himself. He said that he didn't think the property would've worked out so well for me in the long run anyway. Is there any way I can require him to include me in the purchase?

A. Certainly the actions of your "investor" were improper. The *Gemara* tells us that one who is sent to acquire a wife for another and instead decides to marry her himself, is classified by *Chazal* as a "deceiver". And as the *Shulchan Aruch* states, this applies to one who is sent to make any specific purchase as well(1).

Nevertheless, if indeed the investor had in mind, at the time of the sale, that he was purchasing the property on his own behalf, unless he actually used your money, it would belong to him and there would be no way you could require him to let you in on the purchase(2).

However, just because he claims that he didn't buy it on your behalf doesn't mean that a Bais Din will accept this as the truth. In fact, the *Shulchan Aruch* rules that because such an act is so deceitful we cannot believe one

who claims to have done such. Instead we assume that he indeed purchased it as per the original agreement and only later, after the purchase, decided to keep it for himself(3). Consequently, unless we have two witnesses that heard him say at the time of the sale that he was purchasing it for himself, the purchase takes effect as per the original agreement(4).

In your case, as opposed to that of the *Shulchan Aruch*, the name recorded on the title may be a legitimate indicator of what your "investor's" intentions were. Meaning, that if you made up to purchase the property under an LLC and instead he purchased it under his own name, his claim would then be substantiated(5). However, if your original agreement also called for it to be purchased under his name with you being a silent partner, his having done so would not substantiate his claim and Bais Din would force him to make you (or rather keep you as) a partner.

Of course it is possible that he specifically mentioned, at the time of the closing, either to the seller, or the lawyer, paralegal, etc., that he was purchasing the property solely for himself. If he did so and two of these people are kosher witnesses for a Bais Din, his claim would be accepted.

There are some exceptions to these rules, though. Firstly, according to the *Nesivos*, if the property was an exceptionally good deal, then although it would still be considered somewhat deceitful for your investor to buy it for himself, we would accept his claim that he did so as the truth(6). Secondly, according to the *Bach* and others, if you had not finalized all the details of the purchase together but only generally discussed buying the property in partnership, we would also believe his claim(7).

However, even if you do not end up gaining a share in the property, there may still be a consolation prize for you. Since you were the one who found the deal and possibly negotiated some of the details, you may be entitled to a finder's fee or real estate commission. The halacha is that one who provides a service for another, even when not hired to do so, is generally entitled to be compensated for it by the beneficiary. If, and how much, the investor would

be required to compensate you in your specific case is beyond the scope of this article(8).

(1) ח"מ קפ"ג ס"ב, ומקורו מסוגיא דקדושין נ"ח ע"ב.
(2) כדכתב המחבר שם, דאם קנה השליח במר עותיו מה שעשה עשוי. וכן הוא ברמ"א שם ס"ד.
(3) שם ברמ"א (ס"ב) דבקרקה מיוחד הואיל והוא מנהג רמאות ודאי מעיקרא קנאה למשלח (פירוש דאינו נאמן לומר שחזר מהשליחות וקנאה לעצמו).
(4) ע"י בט"ז (שם על סעיף ד') שכתב דהא דפסק המחבר בס"ב דנאמן לומר שלקח לעצמו, מיירי שאמר בהדי' בפני עדים שקר' נה לעצמו. ועיין בביאור הגר"א (ס"ק ט"ז) שציין על הרמ"א בס"ד דמיירי שאמר כן קודם משיכה כמבואר בס"ב. ולפ"ז פשוט דהרמ"א בס"ב אינו חולק על המחבר וגם לא הו"י סתירה מהרמ"א בס"ד שכתב דנאמן (ושם איירי בסחורה מיוחד), דשם מיירי שאמר כן לפני עדים. והנה המחנה אפרים (סימן י"ט ה"ל' שלוחין) כתב דהרמ"א בס"ד שכתב דהשליח נאמן הוא דעת בעל העיטור וחולק על דעת הר"ן שהביא הרמ"א בס"ב. וכן כתב באולם המשפט. אולם נראה דאין יכול לומר קים לי כשי"ט זה מאחר דהוא דעת יחידיאה נגד כל הני פוסקים שהבאנו.

(5) יש לעיין אם זה הו"י אומדנא דמוכח כמו עדים, דא"כ פשר משום סיבה אחרת רשם על שמו ואע"ג דהו"י אומ"ד נא אפשר דלא הו"י אומדנא דמוכח כ"כ כמו עדים.

(6) ע"י נתיבות (שם סק"ו) דאם הוא סחורה בזול לא הו"י רמאי כדמצינן בעני המהפך דלא מקרי רשע בכה"ג, וגם ליכא חזקה שלוח עושה שליחות כיון דקנאה במעותיו דנאמן לומר דחזר מהסכמה להלוות לו מעות דאפשר שנתודע לו שאינו בטוח. וע"י במשפט שלום שהקשה על הנתיבות דהא הרמ"א (ס"ד) כתב להדיא "ואינו אלא רמאי". וע"י באולם המשפט שחולק על הנתיבות מכח קשיא זו. ולכאורה יש לתרץ דה"ל דהו"י רמאי אבל לא הו"י רמאי כ"כ דאינו נאמן.

(7) ע"י שך (שם סק"ז) שמביא דברי הב"ה.

(8) ע"י רמ"א רס"ד ס"ד "וכן כל אדם שעושה עם חבירו פער' לה או טובה וכו' אלא צריך ליתן לו שכרו" וע"י שם בביאור הגר"א דחייב מדין יורד. לכאורה כן הדין כאן כיון שגילה לו פרטי העסק לא גרע מסרטור שבאה מעצמו דחייב לשלם לו מדין יורד. ויש לעיין אם זה מקרי מתכיון להשביח לעצמו דאין בו חיוב משום יורד (ע"י ש"ך סי' שצ"א ס"ב), דכאן לא בא לעשות פעולה של סרטור רק בא למצוא שותף, וכדי למצוא משהו להשקיע בעסק צריך לגלות לו כל הפרטים, וכיון שלא בא בתורת סרטור ואפילו אם השני היה קונה לשניהם לא היה משלם לו כלום על סידורתו ממילא אינו מקרי מתכיון להשביח לחבירו רק לעצמו ואינו חייב משום יורד, ויש עוד לעיין בה.

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MATTERS OF INTEREST

Avissar Family Ribbis Awareness Initiative: Corporations



Being that the *issur ribbis* is only applicable *bein Yehudi leYehudi*, dealing with large banks or public corporations is usually not a ribbis problem. However, if a Jew is guaranteeing the loan, in many instances halachah views his obligation as if the guarantor himself is the lender and would therefore be prohibited.

There are a surprising number of halachos

that depend on a company's status. One example is *chametz*. Only *chametz* owned by a Jew becomes *chametz she'avar alav ha-Pesach*. If a company with Jewish shareholders is considered Jewish, any *chametz* that it owns over Pesach is forbidden to eat. Ribbis is another common example. If a bank is considered Jewish, every deposit or mortgage with the bank would have a ribbis issue.

Another concern is how shareholders are affected. May one purchase shares in a food chain store knowing that it will own *chametz* on Pesach? For that matter, many companies run cafeterias that serve *chametz*. Is it permitted to own their shares? May one be a shareholder of a corporation that operates on Shabbos?

Logically, a company that has Jewish partners should be considered at least partially Jewish. Virtually every public bank has some Jewish shareholders, and yet it is customary to use credit cards, take out mortgages and make deposits with these banks. How do we justify this practice?

This is not a new issue. There are responsa dating back to the mid 1800's in which the *poskim* discuss whether banks may be used. The *Kitzur Shulchan Aruch* (65:28) forbids Jews from either investing with or borrowing money from *shpar kessa*, a primitive form of banks. Given that there may be Jewish investors, a portion of the money that one borrows from such an institution is considered a loan between two Jews. Investing money in these banks is also prohibited since a Jewish client may borrow that money.

The Shoel U'Meishiv (Vol. 1, 3:31) argued that these banks may be used. He wrote to Rav Gantzfried requesting that he change his ruling in future printings of his *Kitzur*. Apparently, Rav Gantzfried declined to do so.

It is beyond the scope of this introduction to present a detailed analysis of all the responsa that discuss this issue. In practice, contemporary *poskim* permit borrowing from banks when the majority of stockholders are non-Jews, unless the Jewish stockholders have a controlling share.

YOU DAILY LIVING

Weekly Questions

Laws related to benefitting from melacha



Q: The electricity went off briefly on Shabbos and I now have an alarm that is beeping loudly. It is very disruptive. Can I ask a non-Jew to turn off the alarm?

A: Ordinarily, one is not permitted to ask a non-Jew to do any *melacha* on Shabbos that one is not permitted to perform himself. Therefore, if one can close the door of the room or block out the noise with blankets, then this is the preferred method. However, if this is not effective and the alarm is causing one distress, they may ask a non-Jew to unplug it. This is because turning off an alarm is

at most a rabbinic prohibition. One is permitted to ask a non-Jew to violate a rabbinic prohibition (*shvus d'shvus*) in cases of great personal discomfort (See Magen Avrohom 276:15).

Q: If the electricity went off on Shabbos and was subsequently restored a few hours later by non-Jewish workers, what is the status of the reheated food, such as cholent?

A: Shmiras Shabbos K'Hilchaso (32:174) and Teshuvos B'tzeil Hachochma (4:137) write that if there is a power outage on Shabbos, it is permissible to enjoy the hot food even if the food cooled down and was then reheated when the power was restored. There is no problem of benefiting from the action of a non-Jew on Shabbos because, as was explained in an earlier Halacha Yomis, the non-Jewish workers restore the power for their own benefit, and therefore a Jew may benefit from the electricity as well. There is also no violation of the restriction of *chazara* (the prohibition of reheating food on Shabbos), since in this case, the Jew is passive, and it is treated as if everything happened on its own. On the other hand, the Chazon Ish disagrees and holds that *chazara* is violated even without any action. As soon as one notices that the power has returned, according to Chazon Ish, one is required to remove the crockpot.

Rav Schachter, *Shlita* felt it best to be strin-

gent and follow the position of the Chazon Ish. However, if the *cholent* is the main course of the meal, and one will not have enough to eat without it, Rav Schachter ruled that one may rely on the lenient opinion, and leave the *cholent* in the crockpot and eat it during the meal.

Q: Our electricity was restored on Shabbos. The lights in the house went back on. Are we permitted to benefit from these lights even though they were restored on Shabbos?

A: One is not permitted to benefit on Shabbos from a *melacha* that was done by a non-Jew for the sake of a Jew. This is true even if the Jew did not request the favor. The Mishna Berura 276:2 explains that this is forbidden because we are concerned that in a future situation, one might ask the non-Jew directly. However, if the majority of those who will benefit from the *melacha* are non-Jews, then a Jew may benefit as well. In most situations, the majority of people who will benefit from the restoration of power are non-Jews. However, even if a neighborhood is mostly Jewish, it is still permitted to benefit from the lights. The electric company restores power for their own benefit (they are legally required to do so), regardless of whether anyone asks. Since the workers are doing so for their own needs a Jew may benefit from the electricity as well. (See Mishna Berura 276:17.)

(continued from front pg.)

than the *Panim Mei'ros*. Firstly, he maintained that the Mishnah's praise for lowering the market price is not limited to staple items but to anything that the community will benefit from, like cheaper dyeing fees. Secondly, he pointed out that if the Jewish community will not benefit it does not necessarily mean it is prohibited. The Mishnah allows distributing sweets not because it is a communal benefit but because the other merchants could do the same. Therefore, the dyer should be permitted to charge lower fees to woo customers because it is something the others could do as well. For these reasons Rabbi Chaim Palaggi ruled that the dyer may charge lower prices.

Along the same lines, Rabbi Chaim Halbestam of Sanz maintained that if lowering prices benefits the public it is permitted even if it will drive the competition out of business (*Divrei Chaim 2 CM 54,58*). He based his position on a ruling of the *Ba"ch* (*Shu"t 60*) that the communal good out-

weighs the individual. Parenthetically, the *Levishai Mordechai* (1, CM 12) used the logic of Rabbi Halberstam and the *Ba"ch* to defend a community which built a public *mikvah* when there was already a private one in existence (although he then worked out a compromise). However, the *Maharam Shick* (CM 20) strongly questioned how it could be permitted to directly ruin a person's source of livelihood. He argued that the public good could justify encroaching on a person's source of livelihood but not to devastate it.

In summation, halacha looks favorably at increasing supply or lowering fees in order to drive down market prices if it benefits the community. This is true with staple items like food and fuel and may even be true with other items as well. It is permitted to use tactics to attract customers like giveaways and sales as long as the competitor could do the same. However, if these practices will directly cause a fellow-Jew to lose his livelihood there could be a serious halachic issue involved.

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מסכת חולין

This Week's Topics

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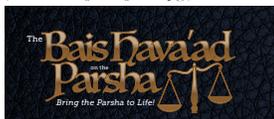
DAYAN, BAIS HAVAAD YERUSHALAYIM

- דף כ"ד THE MINIMUM AGE OF A CHAZAN
- דף כ"ה IS PLASTIC SUSCEPTIBLE TO TUM'AH
- דף כ"ו THE "YAKNEHAZ" HAVDALAH
- דף כ"ז SHECHITAS SIMANIM: FISH & FOWL
- דף כ"ח DEAD OR ALIVE?
- דף כ"ט MAKING THE CUT
- דף ל' A KOSHER ENDING

EVENTS AT THE BAIS HAVAAD

This week, on December 19th, Bank Leumi in Aventura, Florida, hosted the Bais HaVaad as part of their Torah event targeting their Jewish clientele. When Bank Leumi was seeking a nationally recognized organization to present a seminar on Business Halacha for their clients, the Bais HaVaad was the obvious choice, given their deep roots in the Aventura community. In fact, the Bais HaVaad is privileged to have Rabbi Yosef Galimidi, the Rabbi in the Safra Synagogue, as the Regional Director of the Bais HaVaad's South Florida Kehilla Division. Rabbi Dovid Grossman, shlit"u, Rosh Bais HaVaad, was the featured speaker, and he discussed the challenges and issues regarding Wills and Estates in Halacha. To set up a consultation on halachic wills, contact the Bais HaVaad.

(continued from front pg.)



R.Yedidya Diaville) — Yaakov's body would never have been mutilated.

Rather, they inserted the necessary elements through open passageways in the body.

Midrash – Some say Yosef was criticized for not having faith that Yaakov wouldn't decompose.

The above sources address embalming in-

directly, but what is the halacha concerning embalming? Contemporary *poskim* disagree why it is problematic:

Nivul (degrading to) the *meis* – It is demeaning to the deceased (*Kol Bo al Aveilus*).

Bitul Mitzvas Kevura (Rogatchover Gaon)

The deceased will not receive *kappara* (atonement) without decomposing (*Emek Halacha*).

Nevertheless, the *poskim* mention a number of situations where it may be allowed:

Inserting the chemicals without cutting open the body (Rogatchover Gaon)

If it is done for a case of *kavod hameis*, e.g., delaying the funeral legitimately (*Kol Bo al Aveilus* citing R.Bloch from Jersey City)

If the deceased is to be moved, and the heat will cause decomposition. However, body parts should not be removed (*Gesher Hachaim*), and blood removed is customarily subsequently buried.



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