S·E·P·H·A·R·D·I·C
HALACHA JOURNAL
Family, Business, & Jewish Life Through the Prism of Halacha

VOLUME 5779 · ISSUE XII · PARASHAT VAYEHI · A PUBLICATION OF THE SEPHARDIC HALACHA CENTER

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 Mishna in Tractate *Bava Metzia* (60a). Ribbi Yehuda 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. However, *Rabbanan*, 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, *Rabbanan* 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 1700's a dispute between two merchants over liquor selling rights came before Rav Meir Eisenstadt (1670-1744), the author of *Shu"t Panim Me'irot* (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 *Mishna* praised, Rav Eisenstadt made two distinctions. He asserted, based on *Rashi's* explanation, that the high prices in the *Mishna* were due to merchants who 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 Rav 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, Ribbi Hayim Palaggi (1788-1868) of Izmir, Turkey, dealt with the same question, just this time with craftsmen. In his response, *Semicha L'Hayim (HM 16)* he discusses whether a dyer may cut his prices and draw business away from other dyers. Rabbi Palaggi took a more permissive position than the *Panim Me'irot*. Firstly, he main-

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By Dayan Dovid Grossman shlit"a, Rosh Bet HaVaad

Expired Directives – The Obligation to Fulfill the Deceased's Wishes

The Ramban and R' 'Ibn Shou'ib write (as does the Midrash) that we learn from Yaakov's actions in our Parasha that there is an obligation to uphold the will of the deceased –**מצוה לקיים דברי המת** (**ח"ב סי' קכ"ד**). The Maharsham writes that we see that it is a Torah-level obligation.

When people write up a last will and testament they may often not consult with a Halachic authority, and is invalid (i.e. if one writes that his wife will inherit his estate). One must draft a carefully crafted and Halachically valid "Halachic Will". However, some *Poskim* maintain that a civil will would still be respected after the fact, as this was the deceased's will.

The nature of this obligation

There is a debate among the *Poskim*:

The Tashbatz understands that the fulfillment of the deceased's wishes is a form of bequeathing (a Yerusha), a power that Hachamim give him.

The Ramban (ibid.) understands it is a Torah obligation.

The Sho'el U'Meshiv

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spotlight

The law and The Law

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.

GENERAL HALACHA

STEAL OF THE DEAL: What to do when your investor cuts you out

By Dayan Benzion Spre

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 be *Mekadesh* a wife on behalf of another and instead decides to marry her himself, is classified by as a "deceiver". And as the *Shulhan 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].

ACTING ALONE

However, just because he claims that he didn't buy it on your behalf doesn't mean that a *Bet Din* will accept this as the truth. In fact, *Maran* rules that because such an act is so deceitful, we cannot believe one who claims to have done such. Instead we will 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 two witnesses testify that they heard him state clearly at the time of the sale that he was purchasing it only for himself, the purchase would take effect as per the original agreement[4].

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

There are some exceptions to these rules, though. Firstly, according to the *Netivot,* 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].

RUNNING TITLE

In this case, as opposed to that of the *Shulhan Aruch*, the name recorded on the title may be a legitimate indicator of what your "investor's" intentions were. Hence, if you made up to purchase the property under a 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 *Bet Din* would force him to make you (or rather keep you as) a partner.

FINDER'S FEE

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].

To conclude, while it may be difficult to get in on the deal under the usual circumstances, one must ensure when dealing with others that his interests are protected according to Halacha. On the deceiver's end, betting on making a few more dollars while being dishonest and unfair, is seriously frowned upon by Hachamim, and is not befitting of an observant Jew.

Sources:

[1] חו"מ קפ"ג ס"ב, ומקורו מסוגיא דקדושין נ"ח ע"ב.

[2] כדכתב המחבר שם, דאם קנה השליח במה עותיו מה שעשה עשוי. וכן הוא ברמ"א שם ס"ד.

[3] שם ברמ"א (ס"ב) דבקרקע מיוחד הואיל והוא מנהג רמאות ודאי מעיקרא קנאה למשלח (פירוש דאינו נאמן לומר שחזר מהשליחות וקנאה לעצמו).

[4] עי' בט"ז (שם על סעיף ד') שכתב דהא דפסק המחבר בס"ב דנאמן לומר שלקח לעצמו, מיירי שאמר בהדי בפני עדים שקונה 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 הוי סתירה מהרמ"א בס"ד שכתב דנאמן (ושם איירי בסחורה מיוחד), דשם מיירי שאמר כן לפני עדים. והנה המחנה אפרים (סימן י"ט הל' 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 כשיטה זו מאחר דהוא דעת יחידאה נגד כל הני פוסקים שהבאנו.

[5] יש לעיין אם זה הוי אומדנא דמוכח כמו עדים, דאפשר משום סיבה אחרת רשם על שמו ואע"ג דהוי אומדנא דלא הוי אומדנא דמוכח כ"כ כמו עדים.

[6] עי' נתיבות (שם סק"ו) דאם הוא סחורה בזול לא הוי רמאי כדמצינן בעני המהפך דלא מקרי רשע בכה"ג, וגם ליכא חזקה שליח עושה שליחותו כיון דקנאה במעותיו דנאמן לומר דחזר מהסכמה להלוות לו מעות דאפשר שנתוודע לו שאינו בטוח. ועי' במשפט שלום שהקשה על הנתיבות דהא הרמ"א (ס"ד) כתב להדיא "ואינו אלא רמאי". ועי' באולם המשפט שחולק על הנתיבות מכח קשיא זו. ולכאורה יש לתרץ דאה"נ דהוי רמאי אבל לא הוי רמאי כ"כ דאינו נאמן.

[7] עי' שך (שם סק"ז) שמביא דברי הב"ח.

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

MATTERS OF INTEREST

Avissar Family Ribbit Awareness Initiative:
Corporations & Ribbit

Being that the *Issur Ribbit* is only applicable *Bein Yehudi l'Yehudi*, dealing with large banks or public corporations is usually not a *Ribbit* 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 *Halachot* that depend on a company's status. One example is *Hametz*. Only *Hametz* owned by a Jew becomes *Hametz She'Avar Alav HaPessah*. If a company with Jewish shareholders is considered Jewish, any *Hametz* that it owns over *Pessah* is forbidden to eat. *Ribbit* is another common example. If a bank is considered "Jewish", every deposit or mortgage with the bank would have a *Ribbit* issue.

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

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 Shulhan 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 *Sho'el U'Meshiv* (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.

HALACHOS OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kosher Halacha Yomis

Benefitting from Melachot done by a non-Jew on Shabbat

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

One is not permitted to benefit on *Shabbat* 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.)

If the electricity went off on *Shabbat* and was subsequently restored a few hours later by non-Jewish workers, what is the status of the reheated food?

Shemirat Shabbat K'Hilchata (32:{174}) and *Teshuvot B'Tzel HaHochma* (4:137) write that if there is a power outage on *Shabbat*, 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 *Shabbat* because 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 *Hazara* (the prohibition of reheating food on *Shabbat*), since the Jew is passive, and it is treated as if everything happened on its own. While the *Hazon Ish* is strict in this case, the consensus of the *Poskim* is to be lenient.

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tained that the *Mishna'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 *Mishna* 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 Ribbi Hayim Palaggi ruled that the dyer may charge lower prices.

Along the same lines, Rav Hayim Halbestam of Sanz maintained that if lowering prices benefits the public it is permitted even if it will drive the competition out of business *(Divre Hayim 2 HM 54,58,).* He based his position on a ruling of the *Ba"ch (Shu"t 60)* that the communal good outweighs the individual. Parenthetically, the *Levushe Mordechai* (1, *HM* 12) used the logic of Rav Halberstam and the *Ba"ch* to defend a community which built a public *Mikve* when there was already a private one in existence (although he then worked out a compromise). However, the *Maharam Shick (HM 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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Parasha and Halacha

asks how we see from Yaakov that all people have to fulfill the deceased's wishes, maybe only children have to fulfill Kibbud Av Va'Em? Furthermore, we cannot derive Halachot from what happened before Mattan Torah? Additionally, he asks, the opinion of Rabbenu Tam is that only money that is in escrow is subject to the rule of Mitzvah L'Kayem Divre HaMet – that the deceased's directive must be respected. The Poskim follow Rabbenu Tam, how then can they derive this Halacha from Yaakov where there were no assets in escrow? The Sho'el U'Meshiv concludes that it must be only rabbinic, as a kindness with the deceased – Gemilut Hassadim.

The Simhat Yom Tov (Mahari"t Elgazi) writes that it is to give peace of mind to someone who is on his deathbed (just as whatever a deathly-ill person is halachically binding, without a Kinyan).

A case of non-monetary directives or respecting the wishes of a deceased by non-children or non-heirs would seem to depend on these opinions.

THE SHEVUT YAAKOV

The Shevut Yaakov discusses a directive of a woman who passed away who that any dispute must be adjudicated in a specific Bet Din. He concludes that although there is no real obligation in non-monetary issues, since it is a parent one should comply- **לפנים משורת הדין** – beyond the letter of the law. However, he proves from the Bet Yosef and Shulhan Aruch in a few places that there are two levels of obligation: fulfilling the will of the deceased with regards to assets in escrow, in which case Bet Din can exert their executive powers, and the obligation to do anything in one's ability to fulfill the deceased's wishes - even in other matters. This however cannot be enforced by the Bet Din.

The Daf in Halacha

Bring the Daf to Life!

מסכת חולין

This Week's Topics

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