

# S·E·P·H·A·R·D·I·C 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 *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'iroi* (178). 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'iroi*. Firstly, he main-

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*By Dayan David 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. The Maharsham (ח"ב סי' קנ"ד) 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.*

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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.

# The Daf in Halacha

Bring the Daf to Life!

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

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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.



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