

S·E·P·H·A·R·D·I·C HALACHA JOURNAL

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



VOLUME 5779 · ISSUE XIII · PARASHAT SHEMOT · A PUBLICATION OF THE SEPHARDIC 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 prohibition at the end of this *Passuk*—*Uv’Hukotehem Lo Telechu*—prohibits practices in which the nations engage because they are *Ovdei Avoda Zara* – idol worshippers (Tosafot 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 prohibition. Something they do for a non-idolatry reason is not prohibited according to *Maharik* (Rama 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 Gaon of Vilna (ibid.), however, based on *Sanhedrin* 52, forbids understandable practices as well.

To understand the Gaon’s position, it helps to see the *Rambam* (*Hil. Avoda Zara* 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.

Hachamim forbade a host of foods and activities *Mishum Hatnut* – to prevent intermarriage. Where our *Galut* 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 Edam*, on the actual *Avoda Zara* holiday, is forbidden. The *Terumat 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 Eiva*, to

(continued on back)



Notes from a Parasha & Halacha Shiur on Parashat Shemot by Rabbi Yehoshua Sova

TAINTED MILK

Drinking milk from improper sources

In our Parasha, Batya, daughter of Pharaoh, finds Moshe and asks his sister whether she should fetch an Egyptian nursemaid for him, to which the sister refuses. The Midrash writes that the reason she refused was because Moshe Rabbenu would grow up and speak to the Shechina, and it is inappropriate that he nurses from a non-Jewish source.

Nevertheless, Maran writes that since we must always be concerned with a child’s physical well-being, we shouldn’t prevent him from drinking or eating what he needs. Still, the *Gemara* in *Sanhedrin* writes that eating non-kosher can cause someone to have an impure nature.

[The *Maharsha* even writes that it may implant murderous tendencies in the person, perhaps because eating something as a predator is murderous behavior unless it is done in the proper way, in which case it brings purity and holiness.]

The *Rishonim* discuss why nursing from non-Jewish milk should be

(continued on back)

spotlight

Bet HaVaad
beginning Business
Halacha Series for Lawyers

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

These and other real estate questions are the focus of the upcoming Bet 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.

GENERAL HALACHA

RUNNING INTERFERENCE:
Can you intrude before a business deal is finalized?

By Dayan Dovid 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 capitalizing 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 HAMEHAPECH BAHARARA

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 *Hachamim*, who ruled that the *Halacha* is that in a case of an *Ani HaMehapech BaHarara* – 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 B'ROSH HAZAYIT

In an apparently similar case, the *Gemara* in *Gittin* describes a case of *Ani HaMenakef B'Rosh HaZayit* 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 HaMehapech BaHarara*, one who interferes with the business transaction violates the commandment of "ועשית הישר והטוב בעיני ה' אלקיך," "And you shall do the right and the good in the eyes of Hashem your G-d" (*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 "steal" the deal from the *Ani*.

In the case of *Ani HaMenakef B'Rosh HaZayit*, 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 Ribbit Awareness Initiative:
Ribbit and Heter Iska



WHAT IS A HETER ISKA? PART I

The *Mitzva* to lend is fulfilled 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 *Ribbit*. However, the *Hafetz Hayim* 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 an 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 *Mitzvot* involved with lending and minimizes the perpetuation of *Hessed* 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 *L'Chat'hila*, 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 *Bet 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.

HALACHOT OF DAILY LIVING

Topics From The Gerald & Karin Feldhamer Ou Kasher Halacha Yomis

Laws related to Birkat HaMazon



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

Maran in *Shulhan Aruch* (O.H. 182:1) quotes three different opinions as to when a *kos* is required for *Birkat HaMazon*:

One opinion holds that anytime one recites *Birkat HaMazon* one must recite it with a *kos*. This entails holding a full cup of wine during *Birkat HaMazon*, reciting *Bore P'ri HaGefen* at the end of *Birkat HaMazon* 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 reciting *Birkat HaMazon*

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 *Birkat HaMazon* 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 recites *Birkat HaMazon* 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 recite *Birkat HaMazon* with a *kos*. However, if one is reciting *Birkat HaMazon* without a *Zimun* then the *Minhag* is not to use a *kos*.

Do Sephardim recite the first Beracha of Birkat HaMazon out loud?

There is a difference between *Ashkenazim* and *Sephardim*. The custom of *Sephardim* is in accordance with *Maran* (O.H. 183:7) who writes that everyone should recite *Birkat HaMazon* quietly word by word together with the leader, including even the end of each *Beracha*. The *Rama* adds that everyone should hurry to finish the *Beracha* 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 *Maran*, it is inappropriate for the leader to say the end of the *Beracha* out loud and cause the others to answer *Amen*, since this would constitute a *Hefsek* (interruption) in the middle of one's *Birkat HaMazon*. According to *Maran*, *Birkat HaMazon* is similar to *Shmone Esre* and one is not permitted to interrupt in the middle of *Birkat HaMazon*

even to answer *Amen*. However, if a *Sephardi* is leading a *Zimun* for *Ashkenazim*, then the *Yalkut Yosef* writes that he should end the *Beracha* out loud, so that the *Ashkenazim* can answer *Amen* in accordance with the ruling of the *Rama*.

What is the proper way to hold the Kos Shel Beracha (cup of wine used e.g., for Kiddush, Havdalah or Birkat HaMazon)? I have seen some people hold the cup from the bottom while I have seen others hold it from the middle. Which is correct?

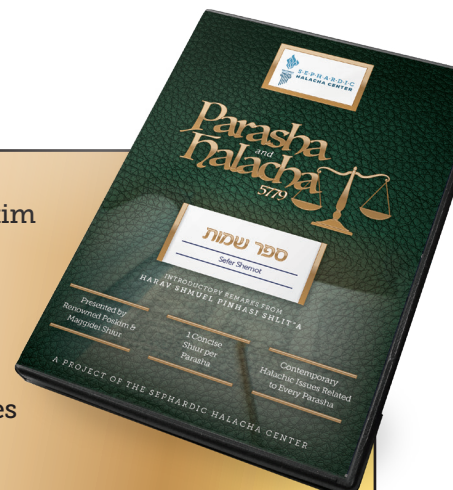
The *Mishnah Berurah* (183:14-16) writes that one should hold the cup in one's right hand, and lift the cup at least a *tefach* (approximately 3-4 inches) off the table. One should not support the cup with one's left hand. *Mishnah Berurah* quotes the *Shela* who writes that according to *Kabbalah* the 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 Avraham* (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 *VaYa'as Avraham* p. 445). We see that both customs have a valid basis in *Halacha* and everyone should follow his *Mesorah* from his parents and ancestors.



Presented by Renowned Poskim & Maggidei Shiur

1 Concise Shiur Per Parasha

Contemporary Halachic Issues Related to Every Parasha



(continued from front pg.)

avert enmity (see *Avoda Zara* 6b).

Lawyers and accountants often receive gifts of non-kosher wine from clients. We treat gentile wine, *S'tam Yenam*, as an *Issur Hand'a* (forbidden to benefit from) so one cannot pass these along to his secretary, because he would benefit from the goodwill that he created. He may, however, tell her to keep any such gifts that may arrive without showing them to him.

As *Hachamim* 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 (*Shulhan Aruch* Y.D. 114) if it is

Derech Akrai (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 *Maran* in *Bet 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.

(continued from front pg.)



avoided. The Ritva says that since the food that the nurse consumes is

non-kosher it transfers over to the child. However, the Rashba and the Meiri write that it is the person who is the source of the milk that is a problem. This would explain the story in the Talmud in which Rabbenu HaKadosh, author of the Mishna, and Antoninus, the Roman emperor, were switched when they were babies for a bit. Baby Antoninus nursed from the mother of Rabbenu HaKadosh, and he grew up to become close to Torah, study with Rabbenu HaKadosh and eventually convert. This, according to the Rashba and Meiri, can be attributed to his nursing from a holy person.

The Halachic difference between these two opinions is if a non-Jewish nurse would only eat kosher. According to the Ritva that would

not be a problem, however, according to the Ritva and the Meiri it would still be a problem. Similarly, if a Jewish woman does not keep kosher *rch"l*, according to the Ritva that would be a problem and not according to the Rashba and the Meiri.

The Helkat Yaakov writes, based on the Rashba and the Meiri, writes that one shouldn't receive a blood transfusion from an improper source (if possible).

The Ohel Moshe writes in the name of Rav Shach, that although the story about Moshe Rabbenu should be an exception because he was destined to become the greatest prophet, nevertheless, we should treat every child as though he is destined for the greatest heights.

Hacham Ovadia writes, that one who forgot that they just ate meat, and mistakenly made a Beracha on a dairy item, may take a small bite or sip of it so that the Beracha



מסכת חולין

This Week's Topics

RAV AVRAHAM YESHAYA COHEN

ROSH KOLLEL OF KOLLEL OHEL YITZCHOK OF LAKEWOOD

RAV ELIEZER COHEN

ROY 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. TUMA

דף ל"ו UNDERSTANDING KABBALAS TUMA

דף ל"ז THE POWER OF THOUGHT & SPEECH

shouldn't be in vain, since the item is not intrinsically not kosher.

EVENTS AT THE BET HAVAAD

Bet HaVaad to present at upcoming Business Halacha Summit

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



Business Halacha Services



Bet Din & Dispute Resolution



Zichron Gershon Kollel for Dayanut



Medical Halacha Center



Kehilla & Bet Din Primacy Initiative



Halachic Awareness & Education



S·E·P·H·A·R·D·I·C HALACHA CENTER

105 River Ave, #301, Lakewood, NJ 08701
732.9300.SHC (742)
www.theshc.org
info@theshc.org

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

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

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