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STATE OF THE UNION REVISITED:

A follow-up on credit unions and cooperatives.

Adapted from a shiur by Rav Shmuel Honigwachs

Our recent article following the *kol korai* on credit unions ("State of the Union: May One Join PenFed or First Atlantic?") prompted many questions from readers regarding other entities with similar structures to credit unions, particularly mutual whole life insurance companies.

A mutual company, also known as a cooperative, is one in which the customers or clients are also the owners. In the case of insurance, a mutual company is one owned by its policyholders, each of whom is therefore both insurer and insured.

In a traditional whole life insurance policy with a guaranteed return, the policyholder is guaranteed, as long as he continues to pay the premiums, a payout of the policy's face value to his beneficiaries upon his death. In addition, a cash value accrues within the policy, and it is guaranteed to grow at a designated annual rate. A policyholder may borrow money from the insurance company against this cash value at low interest. Should he die having never paid back the loan, what he owes is deducted from the death benefit paid out to the beneficiary. If a policyholder chooses at any point to surrender his policy, he receives the accrued cash value less fees.

If credit unions are forbidden because the members are viewed as partners lending to each other with interest, readers asked, would a mutual life insurance company be viewed this way, too? And if so, would an insurance policy like this be forbidden, because the Jewish policyholder is giving money to the partnership, which includes other Jews, in exchange for the promise of a return with interest?

In my opinion, this is not a problem at all. Since every policyholder receives equal treatment, none of them is lending to another. Were the company to go bankrupt, no policyholder would personally have to pay any other policyholder. The promised rate of return is nothing more than the company declaring that it is doing so well and on such strong financial footing that the cash value of each policyholder's stake will certainly increase by that amount. I presented this argument to R' Shlomo Miller and he concurred.

Another issue that was raised, concerns the right of a policyholder to borrow money at interest from the company, using the cash value accumulated within his policy as collateral. Wouldn't this present a *ribbis* problem? As a policyholder, isn't my money potentially going to be loaned to other Jewish policyholders at interest?

I believe that this is generally not a problem either, because this loan facility appears not to be a true loan but simply the right to partially cash out the policy with the opportunity to buy back in at a slightly higher rate (the "interest"). This is how literature from New York Life explains the feature. Presented with this literature, R' Shlomo accepted this argument as well. Of course, it may be different with other insurers, so check with the company and a *posek*.

R' Shlomo Miller on credit unions: an update

Corporations were created as a means to shield participants in a business venture from personal liability. It has shareholders, but shareholders are not owners. A corporation has its own identity and legal "personhood"; what the corporation does is not attributable to its shareholders or its employees personally. As Leon Metzger, adjunct Professor of Finance

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The Bais Hava'ad on the Parsha
Bring the Parsha to Life!

Adapted from a shiur by Rav Yechiel Biberfield on Parshas Ki Sisa

Violating Shabbos to Save a Life

ושמרו בני ישראל את השבת לעשות את השבת לדורותם לברית עולם

The Gemara cites eight *pesukim*, including the *pasuk* above, to prove that one may violate Shabbos to save a life. But the Gemara says *v'chai bahem* is the best, since it includes even cases of *safek sakanah*, while the others only allow for definite danger.

Is the permission to violate Shabbos *hutra* or *dechuya*?

Rosh/Maharam: It is *hutra* like cooking on Yom Tov, and better than violating other mitzvos.

Chasam Sofer: This is because *v'shamru* teaches that Shabbos is *hutra,* but v'*chai bahem* teaches that other mitzvos are only *dechuya.*

Vyaan Yosef and Emes Lyaakov: They explain based on the Rambam that *v'chai bahem* is based on *oness* (with no choice), while *v'shamru* is the preferred choice – *hutra* to violate

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GENERAL HALACHA

A Kosher Keurig?

By: Rabbi Baruch Fried

Introduction

In this week's Parsha [31:21-23] we are introduced to the requirement of purifying utensils acquired from a non-Jew. The Gemara in Avoda Zara 75B tells us that each "kashering" must include immersion in a Kosher Mikva. Although the process is fairly straightforward, modern application can be quite complex.

WHAT COULD BE WRONG...?

Over the past few years, the coffee industry has been transformed with the advent of the Keurig. These single serve coffee packets [K-cups] and their brewers can almost instantly provide a cup of always fresh perfectly brewed hot coffee, in an endless variety of flavors. For the true coffee lover, it's the answer to most of life's problems.

As with every new fad, the observant Jew has more on his mind. While the various agencies have successfully taken on the kashrus angle, some other areas are left to the consumer. Chief among them is the issue of *tevila*. The Torah mandates that a Jew's utensils used in food preparation [provided they actually come in contact with food] must be immersed in a Kosher Mikva. The Mishna [ibid] tells us that this includes a pot used for heating water. As such it would seem that a Jewish owned Keurig brewer would require immersion prior to use.

The problem however, is that the said machines generally have a computer chip which most technicians fear would get destroyed if immersed in water, rendering it useless (and voiding the warrantee). This leaves us with the difficult decision of giving up this advantageous machine altogether, or finding some other solution.

SUGGESTED SOLUTIONS

The first thing to clarify is whether or not it really needs *tevila*. The Torah only enumerates metals in the *chiyuv* of *tevila*, and the *Rabbanan* added glass. Plastic is customarily not *toveled*. In general the Keurig [i.e. the parts that touch water] is almost entirely plastic, with the exception of the two pins that puncture the coffee packet, and an internal metal bowl that actually heats the water. Since, however, those metal parts are intrinsic to the preparation and come in contact with the water, according to most poskim the entire machine is considered to be of a material that needs *tevila*.

Another consideration is that it needs electricity to function, which requires a connection to an outlet at all times. Therefore some Poskim suggest that we can consider it attached to the ground and thus not obligated to be *toveled*. It is very difficult to rely on this for two reasons. First, many early Poskim are of the opinion that attaching a utensil to the ground does not absolve its *chiyuv tevila*. Secondly, many Poskim think it outright ridiculous that plugging in an appliance would be considered attaching it to the ground [see *Shevet HaLevi* Vol 2, 57].

WHEN THERE IS NO SOLUTION...

A different line of reasoning contends that since it cannot be immersed without breaking it, that itself absolves you from doing so. There are two ways to understand this leniency. One, since it is a positive mitzva, it is similar to all positive mitzvos that an *"Onais"* [lit. Coerced] is exempt. For instance, we find that someone whose tzitzis tear in a public domain on Shabbos may continue wearing them for the time being because they cannot be repaired anyway on Shabbos. However that proof is self-contradictory, for we only allow wearing the tzitzis while he is in a public domain. As soon as a private place is reached he must remove them, despite his inability to repair them till after Shabbos.

A second understanding is that any utensil whose immersion will be ineffective does not need *tevila*. The precedent for this is the Rema [YD 120:11] who rules that a utensil owned by a partnership of a Jew and non-Jew is exempt from *tevila*. His source is the sefer *Issur VeHeter*, who explains that since it will remain [partially] a non-Jewish utensil, *tevila* (which is in essence to purify it from its previous non-Jewish ownership) will always be ineffective and thus exempt. Based on this, some suggest that if the utensil will break by immersing it, it too will be exempt. However the comparison is definitely disputatious, for while in the case of Rema the *tevila* is ineffective, in the case of the Keurig the *tevila* is just fine. It's the machine that is ineffective.

ALMOST BUT NOT QUITE...

This does however lead us to a possible solution, and that is to sell a share of the machine to a non-Jew, rendering him a partner and thus gaining the heter of the Rema. Although this seems like a great idea, there are various earlier *teshuvos* discussing utensils that were too big to be *toveled*, and we don't find this solution given. The question is why? Some present day Poskim suggest that even the Rema never meant that you may do so *l'chatchila*, rather if you already bought it together with the gentile then by default you are exempt.

Ok, so let's go a step further and sell the whole thing to a non-Jew, and just borrow it back indefinitely. Certainly everyone agrees that something belonging to a non-Jew is exempt even *l'chatchila*? The catch there is that by borrowing it back for that long it would seem to fall under the category of a non-Jew's collateral entrusted indefinitely to a Jew. In this instance the Gemara tells us it must be *toveled* despite its non-Jewish ownership. In fact even if lent for a mere 30 days the *Taz* already requires *tevila*, if only *miderabanan*. [Although we do find this idea of sale to a non-Jew to exempt from *tevila* in earlier sources, it is generally only used together with other factors].

A WAY OUT...

There is one solution that seems to be accepted by all poskim, though it does seem unconventional. That would be to have the machine dismantled or broken to an extent that it cannot be used at all without a professional repair. At that point it is Halachically not a *Kli* altogether. It would then be repaired or re-assembled by a Jewish technician, thereby regarded to be a Jewish made utensil. A utensil made by a Jew and sold to a Jew [without non-Jewish ownership in between] is certainly exempt from *tevila*. Not surprisingly, "kosherizing" Keurigs has already become a business in some Frum communities. On the other hand, since this process is quite complicated both technically and halachically, many Rabbanim prefer the "partnership" option mentioned above. As always, check with your Rav for guidance.

MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE:

USING A BORROWER'S CD OR MP3 PLAYER

Reuven owes Shimon money. May Shimon use Reuven's CD or MP3 player without permission if he is knows Reuven lets others use it without permission?

May Shimon take some of Reuven's Taster's Choice coffee in the coffee room without permission, if he is sure Reuven doesn't mind?

Shimon may not use the CD or MP3 player without Reuven's knowledge. This is a unique limitation even between friends, aimed at preventing a lender from dominating a borrower. Therefore, *although Reuven would definitely allow* Shimon to use the CD or MP3 player without permission just as he allows anyone else, nevertheless since Shimon has the status of a lender he is required to ask permission first.[1]

In instances where Reuven has *previously* allowed Shimon to use his CD or MP3 player *(ragil)* without permission, most *poskim* permit Shimon to use them now even though he currently has the status of a lender. The same would apply to taking coffee without permission.

In the case of the coffee, aside from the laws of ribbis there is an issue of *gezeila* according to some *poskim* (who differentiate between consumption and borrowing) although he knows his friend would let him take.

One should therefore be stringent and ask permission, unless specifically granted permission to take whenever they want.

1 מפורש במחבר (קס, ז) דבלא דעת הלוה חמיר טפי, דאפילו יודע דבלא"ה היה מתיר לו להשתמש בה אסור. ועש"ך הטעם משום דנראה שסומך עליו שבשביל מעותיו שבידו יסבול לו.

ואולם נראה בעזה"י דכל זה רק בדבר שלא התשמש בה מעולם, רק שיודע ששמעון היה מתיר לו להשתמש בה. אבל היכא דרגיל להשתמש בה כבר שלא מדעת הלוה יש להתיר. דיש לומר דרגיל עדיף טפי מהך דאילו היה נותן לו הני"ל. ושו"ר שב"כ הגר"ז בהדיא. ומ"מ כ"ז בצנעא אבל בפרהסיא אסור אפילו ברגיל כמבואר בפוסקים (עש"ך קס, סק"ט ועוד). גם נתבאר דהיכא שעושה כן באופן "אדנות" על חבירו ר"ל שמ־ תפאר עליו בגלל שהוא המלוה שלו ולכן משתמש בשלו, יש איסור רבית דברים (עיין ט"ז קס, סק"ה). וזה מצוי במי שאומר "אני יודע שמותר לי להשתמש בזה בגלל שאני עוזר לו תמיד בהלואות וטובות וכדומה".

ואגב יש להעיר דמדין זה שכתב המחבר ז"ל נ"ל בעזה"י להביא ראיה לשיטת הש"ך בחו"מ סימן שנ"ה שהתיר לאדם לשאול חפץ בלא רשות כל שיודע ודאי שאין חבירו מקפיד ע"ש, ואף שיש פוסקים החולקים עיין בסוגיא ריש פ"ב דמ־ ציעא, מ"מ מדברי המחבר משמע דיתכן ד"ז ואין בו איסור, וק"ל. ואף שיש לדחוק ולפרש דברי המחבר בע"א מ"מ פשטא דמלתא נראה כמש"כ. שו"ר ת"ל בספר הל"י שהבין ג"כ כנ"ל דדברי המחבר מתפרשים עפ"ד הש"ך בחו"מ שם. ומה שכ־ תבתי להחמיר בלוקח קפה ולא בלוקח חפץ, אף שגם מצינו חולקים לאסור לקחת חפץ בלא רשות דלא כש"ך, הוא משום ששמעתי מהגר"ש פירסט שליט"א שהמנהג להקל כהש"ך בחפצים אבל באוכלים דמכליא קרנא נהיגי כדעת הגר"ז לה־ חמיר.

OU DAILY LIVING

Weekly Questions

Laws Related to Brachos

What bracha should one recite on dried cranberries?

Most dried cranberries are sugar infused. This means the cranberries are soaked in sugar water and then dried to look like raisins. Rav Belsky, zt"l ruled that the bracha on dried cranberries is Ha'odama. Although the cranberry plant survives from year to year, and in fact can live for over a hundred years, since the berries grow on or near the ground, the bracha is Ha'odama. The Mishnah Berurah (203:3) writes that there is a dispute as to which bracha to recite on berries that grow on low bushes that are within three tefachim (9 to 12 inches) of the ground, and the minhag ha'olam (the accepted practice) is to recite Ha'odama.

Individuals who grow their own cranberry bushes may have cranberries that grow higher than 3 tefachim. On berries that grow on those bushes, one should recite Ha'eitz. However, commercially grown cranberries are grown in bogs, on or near the ground, so their bracha is Ha'odama.

Does the obligation to recite one hundred brachos apply even on Shabbos?

Yes. Although on Shabbos the tefillos contain fewer brachos, one must still fill the quota of 100 brachos. On Friday night, one recites 11 brachos during Maariv, and an additional 47 brachos are recited during Shacharis, Musaf and Mincha. One must eat three meals on Shabbos which adds another 18 brachos, and there are a few additional brachos recited for Kiddush, HaMapil and after using the restroom. Still, on an average Shabbos, one will find themselves about 18 brachos short. Therefore, Shulchan Aruch (OC 290:1) writes that one should eat sweet fruit and smell various fragrant spices to accumulate extra brachos throughout the day. Bedieved one can rely on answering Amen to the brachos of Krias Hatorah and Haftara (an additional 27 brachos). There is also an opinion that reciting the prayer "Ein Kelokainu", which has in it all the components of a bracha, is equivalent to having recited 12, and some say 20, brachos.

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at NYU's Stern School of Business, writes: "It is a myth that shareholders own corporations. Corporations own themselves. Shareholders, however, have certain rights."

But the corporation doesn't exist in Halacha. In Halacha, only people can own things. Given that the corporation exists under *dina d'malchusa,* how does Halacha treat it?

R' Chaim Pinchas Scheinberg is reputed to have held that Halachically, what's owned by a corporation is not viewed as having an owner at all. But most *poskim* rule that it is not logical to view the assets as ownerless, so the shareholders are considered the Halachic owners. *Talmidim* of R' Aharon Kotler say in his name that a corporation with a majority of non-Jewish shareholders is seen as non-Jewish for Halachic purposes like *ribbis*. R' Shlomo Miller maintains that the case is somewhat akin to that of an animal descended from three *chaya* and one *behaima* "grandparents," which the Pri Megadim rules is treated like a *chaya* in that its *chailev* is permitted to be eaten.

The original article explained R' Moshe Feinstein's view of corporate shareholders: A shareholder is not Halachically an owner unless he is a major owner with a real say in the operation of the company.

R' Shlomo Miller doesn't fully accept this view. However, he is concerned that perhaps a credit union is not legally viewed as an entity independent of its members in the same way as a corporation and is fundamentally just a partnership—which *is* a valid Halachic structure. And, if it is in fact a partnership, it is forbidden for a Jewish partner to lend or borrow at interest from a different Jewish partner. He feels that further research into the matter is necessary, including consultation with legal authorities, and that at present one may continue to make payments and take interest from a credit union. However, because the issue is not settled, one should consult with his *posek*. Some authorities on secular law feel that the defining feature of a corporation is liability protection, which credit unions have, and that this would suggest they are more like corporations.

The credit union on the Lower East Side

A reader of the article called to say he had information about the credit union that was the subject of R' Moshe's *teshuva*, having discussed the matter with R' Moshe at the time, and that it was founded by Jewish socialists and had virtually all Jewish members.

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The Bais Havaad on the Parsha — Bring the Parsha to Life!

Shabbos to keep Shabbos again in the future.

There are a number of other *nafka minos* between these two derivations:

Beur Halacha 329:1 — *V'shamru* applies if he can continue to keep mitzvos (even not Shabbos), but *v'chai bahem* shows we violate Shabbos even if he won't live long enough to keep more mitzvos.

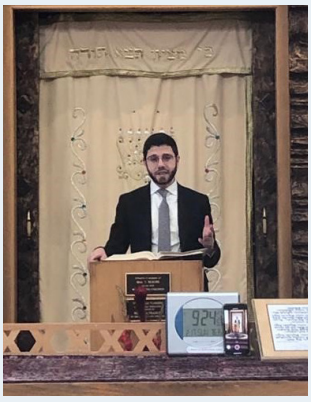
Shulchan Aruch 330:5 – If a woman dies during childbirth before the baby emerges, we may violate Shabbos to save the baby.

Mishna Berura (8) - Even if the baby is not yet alive, we still violate Shabbos. This is based on *v'shamru*, because *v'chai bahem* applies only if it's alive.

Tosafos -- Eliyahu was allowed to approach a dead child in *Sefer Melachim* even though he was a Kohen because he was sure he could resurrect him, so it was *pikuach nefesh*. Although *v'chai bahem* applies only to a live person, *v'shamru* allows violating mitzvos for the potential to do future mitzvos even for one currently dead.

EVENTS & HAPPENINGS
AT THE BAIS HAVAAD

When is it permissible to sue in court? Can you go to an industry arbitration group? Can you send a lawyer's letter threatening a lawsuit?



These and other questions were the topic of the recent Business Halacha Breakfast this past Sunday in Shaare Ezra Congregation in Long Branch, NJ. The event began with introductory remarks from Rabbi Yosef Kushner, shlit"a, followed by Rabbi Ariel Ovadia, shlit"a, and ended with a lively Q&A hosted by Rabbi Dovid Grossman, shlit"a. These halacha seminars provide participants with practical halachic guidance on contemporary issues in business halacha.