

Corporate Gift Giving in Halacha

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THE ISSUR OF MATNAS CHINAM: BACKGROUND

The Gemara (Avodah Zarah 20a) states that the *pasuk* of *lo sechoneim* (Devarim 7:2) teaches that it is *assur de'oraisa* for a Jew to give a *matnas chinam* (free gift) to an *akum*. Tosafos rules that this *issur* applies to any *nochri*, not only to those who worship *avodah zarah* (though some Rishonim disagree), and this is the *psak* given in the *Shulchan Aruch* as well (Y.D. 151, C.M. 259).

Based on this, one might think that the contemporary phenomenon of corporate gift giving by a Jewish employer to non-jewish employees is always forbidden. Nevertheless, there are two leniencies given that may permit such a practice in many cases.

Matnas Chinam in Cases of Makiro and Darkei Shalom

- **Makiro** – Tosafos (s.v. Rabbi Yehudah) suggest that it is permitted to give a gift to one termed “*makiro*” (an acquaintance), a position that is accepted by the *Shulchan Aruch* (Y.D. 151). The Taz explains that the *issur* of *matnas chinam* does not apply in the case of *makiro* since Chazal view such a gift as a transaction, similar to giving money to receive an item in return. Since the Jew expects to receive some benefit in return, such as a reciprocal gift or improved work output from him, it is not considered to be giving a “free gift.” Instead, it is treated as an action done with one’s personal interests in mind, and is therefore permitted.
- **Darkei Shalom** – The *Shulchan Aruch* also allows gift giving for reasons of *darkei shalom* (lit. keeping the peace), ensuring that good relations are maintained with the general community. This is

based on the Mishna and Gemara in Gittin (61a) that permits supporting the poor, regardless of whether the individual is a Jew or an *akum*, due to *darkei shalom*. The Rashba explains that the permission applies specifically in cases where *eivah* (enmity) may exist, meaning that the *akum* may be resentful if he does not receive the same support as a Jew.

DARKEI SHALOM ANALYZED FURTHER

Tosafos (Avodah Zarah 20a ad loc.) cites the Gemara (Eruvin 64b) that relates that Rabban Gamliel was traveling, met an *akum*, and instructed his partner to give him some bread. Why is this not considered a violation of *matnas chinam*, given that Rabban Gamliel did not know this person (as the Gemara explicitly states)? Tosafos explain that it was permitted since Rabban Gamliel was accompanying him temporarily while traveling. The Tosafos Rosh (Eruvin 64b) elucidates further that this was permitted due to *darkei shalom*. How do we understand this? Does this mean that any time one walks with an *akum*, one may utilize the leniency of *darkei shalom* and *eivah* to give a gift, even if they are together only for a short amount of time?

Although the logic and parameters of this approach are not entirely clear, perhaps the explanation is based on the Gemara later in Avodah Zarah (25a) that prohibits traveling with an *akum* due to the danger involved in being alone with him while traveling. Since serious concern existed that he may try to harm the Jew, it was permitted to give him a gift in order to mitigate the inherent danger involved.

MAKIRO AND DARKEI SHALOM IN CONTEMPORARY TRAVEL

It would seem that this consideration of *darkei shalom* would not apply regarding modern travel, where there are generally other people present, plus modern methods of communication allow for constant contact with others. As a result, there is not usually concern regarding one's safety.

It is possible though that the first leniency of *makiro* may apply in specific situations. For example, if one is flying and is given a meal or snack (that is not entirely *treif* – see below) and does not want to eat it, he may be allowed to give it to an *akum* sitting next to him in cases where he desires some element of reciprocation. For example, if one is sitting in a middle seat and gives the food to an *akum* sitting in the aisle seat, it may be permitted. This is because the person may reciprocate by allowing the Jew to go in and out multiple times during the flight. But it may be *assur* to give the food to the one sitting on the side towards the window, since one cannot expect any reciprocation from him, and one will likely never interact again with him after this flight. Thus, this issue of *matnas chinam* and the potential leniencies must be dealt with on a case-by-case basis.

MATNAS CHINAM VS. HASHAVAS AVEIDAH: THE KIDDUSH HASHEM FACTOR

It is interesting to note that the mitzvah of *hashavas aveidah* concerning an *akum* has certain similarities to the halacha of *matnas chinam*, but differs in several important aspects. The Shulchan Aruch (C.M. 266) rules (based upon the Gemara) that a lost object belonging to an *akum* is *mutar* for a Jew to take, since the Torah limits the mitzvah to “*aveidas achicha*” (the lost object of your brother, i.e., a Jew). Moreover, one who does return a lost object of an *akum* transgresses an *aveirah* as well. One explanation for the *aveirah* is given by Rashi (cited by the Sma) that one who returns a lost object in cases where no mitzvah exists demonstrates that he is returning the item for purposes other than complying with Hashem's command. The Shulchan Aruch qualifies that if one returns the lost item of an *akum* as a *kiddush Hashem*

and to show that we are good, caring people who are *ba'alei Emunah* (people of faith), that is considered praiseworthy and not degrading to the mitzvah.

In this case of returning a lost item of an *akum* due to *kiddush Hashem*, there does not seem to be any problem of *lo sechonem* concerning returning the lost object of an *akum* for purposes of *kiddush Hashem*. This seems interesting; shouldn't that be similar to giving a free gift? The answer (based upon a comment of the Ohr Sameach in Hilchos Avodah Zarah, ch.10) may be that if one does not have *kavanah* to be *koneh* (acquire) the object as one's own, it is not his. If so, the *issur* of *lo sechonem*, which applies to giving a free gift from one's own possessions, would not apply.

Conversely, it seems that the factor of *kiddush Hashem* is not a permissive consideration concerning *matnas chinam*. Perhaps we can explain that the *ratzon Hashem* (Hashem's desire) is not to give an *akum* a free gift while receiving nothing in return. So it wouldn't make sense to proactively give a gift to create a *kiddush Hashem* when Hashem said specifically not to give gifts. This differs from the two leniencies that are mentioned of *makiro* and *darkei shalom* which are both reasons why the gift will not be considered giving for free, since one will receive some sort of benefit in return.

PRACTICAL APPLICATIONS OF MATNAS CHINAM

We mentioned above that the *heter* of *makiro* may apply in certain cases of travel as well as any case where one expects to receive some benefit in exchange for giving a gift. For this reason, it is generally permitted for a Jewish employer to give a gift to non-Jewish employees or colleagues because one wants to maintain a positive business relationship with them or to encourage them to work harder. If a colleague is organizing a retirement party, the consideration of *makiro* may not apply, since one will no longer be interacting with him in a business setting. Giving a gift might still be permitted though based upon the element of *darkei shalom* if one gives a small gift (not more valuable than a standard gift given in the situation) where the *akum* may feel slighted otherwise.

THE ISSUR OF BUSINESS WITH MA'ACHALOS ASSUROS

Even in cases where *matnas chinam* does not pose a concern, there is another important halacha relevant to the question of corporate gift giving, namely, engaging in commerce with non-kosher foods. The Gemara in Pesachim (23a), codified in the Shulchan Aruch (Y.D. 117), rules that it is forbidden to buy and sell non-kosher foods. [This *issur* does not depend upon whether a specific food product has a reputable *hechsher* or not (as perhaps the ingredients are kosher but it is not certified); rather, it depends entirely upon whether the food in question contains non-kosher ingredients on a *de'oraisa* level.]

Thus, the Beis Yosef states that giving a gift of non-kosher food in a case of *makiro* is forbidden because this type of gift is considered like a transaction (as discussed above), which is equivalent to engaging in commerce with non-kosher food. Consequently, it would be *assur* for one to purchase non-Kosher food to give to an *akum*, even if it is *makiro*.

Chazal were lenient in a case where one happens to have non-kosher food in one's possession. In that case, it would be permitted to give it to an *akum*, as the prohibition is limited to an active purchase and sale of non-kosher foods. Therefore, if one happens to have received non-kosher food from somewhere, it is permitted to give it to an *akum* who is *makiro*. In the case of *stam yeinam* (wine made or touched by an *akum*), the halacha is stricter since an *issur hana'ah* also exists, according to many opinions. For this reason it is forbidden to give an *akum* a non-kosher bottle of wine that one received from somewhere else (though some are more lenient in cases of potential loss, for example if one received it as payment of a debt).

GIVING NON-KOSHER FOOD TO EMPLOYEES

In light of the above consideration, the Acharonim dispute whether it is permitted for an employer to

feed non-kosher food to a worker (who is an *akum*). According to the Shach, it is permitted because he does not consider this to be commerce, while the Rema holds it is *assur*. If we adopt the position of the Shach, it is difficult to understand why it would be forbidden to give non-kosher food as a gift to an employee. Shouldn't it be permitted in the same manner as an employer is allowed to feed his workers non-kosher food? The Machaneh Efraim (in Hilchos Maachalos Assuros) explains that even the Shach only permits giving non-kosher food in cases of *mezonos alecha* (their sustenance is incumbent upon you). In this case, it is permitted, just as it is permitted to feed a pet non-kosher food. Otherwise, though, the prohibition of *matnas chinam* applies.

This halacha is extremely relevant to a Jewish employer who wishes to buy lunch for *akum* workers. If the employer is not responsible contractually to provide food for them, it would be forbidden for him to pay for lunch for them, since this is considered a gift involving non-kosher food, which is equivalent to doing business with it. The same issue applies to sponsoring a corporate party. If *akum* employees wish to organize an end of the year party at a non-kosher restaurant, a Jewish employer may not directly pay for their bill.¹ Moreover, the Shulchan Aruch (Y.D. 132 and O.C. 450) writes that one may not even give advance payment to the storekeeper (Such as a gift card to the restaurant) to give non-Kosher food to an *akum* since that is considered as if the store owner sold the food directly from the Jew (see also Mishnah Berurah there, who rules that one may not give the money at the time the food is being eaten, either).

WAYS TO DO IT BEDERECH HETER

In these cases, the preferred course of action (as stated in the Shulchan Aruch, Y.D. 132) would be to have one of the employees pay for the food with their own cash or credit card, and the Jewish employer can compensate them afterwards. Alternatively, the Jew may give them cash to use to pay for the food. If these options are not viable, one may also buy the employees a cash gift card [e.g. Visa gift card] to

¹ One should be aware that many additional issues exist with these types of parties as well that must be addressed, but are beyond the scope of this overview. These issues include entering a non-kosher restaurant (even when not eating there), not recognizing non-Jewish holidays, and participating in a party together with an *akum* in which drinking takes place.

use. Putting the bill on a company credit card is more complex, since some opinions view this transaction as the Jew (who owns the company) directly paying for the non-kosher food, while others hold a credit card is considered to be paying the debt at a much later point, which might be permitted. It is best to avoid such *shailos* and utilize one of the methods suggested above.

SUMMARY

It is *assur* to give a *matnas chinam* to an *akum*. The two heterim for it are:

- **Makiro:** If one has an acquaintance such as an employee, colleague, or even a cleaning lady, and will get some sort of reciprocation through gifts or harder work.
- **Darkei shalom:** One is allowed to give a gift in a situation where if he does not give it will cause *eiva* (enmity), or the *Akum* may have complaints.

Ma'achalos Assuros: It is *assur* to engage in business with *ma'achalos assur*, which includes purchasing or selling any non-kosher food. This includes giving it as a gift as well, unless the food happened to come into the Jew's possession [and it isn't non-Kosher wine].

A Jewish employer may not pay for an *akum* to eat at a non-kosher restaurant directly. He may compensate the *akum* for it afterwards (if the *akum* pays) or give him a pre-loaded visa card to use.

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