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 HaRav Yosef Grossman zt"l

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CRYPTO-JUDAISM: IS BITCOIN MONEY?

Adapted from the writings of Dayan Yitzhak Grossman

Several months ago, Peter Kacherginsky and Rebecca Rose "got married on the blockchain":

In addition to a traditional Jewish ceremony, we wanted to solidify our vows in a more personal way. Since we both work at @Coinbase, @_iphelix (Kacherginsky) wrote an @Ethereum smart contract for our marriage that issued digital artwork as tokens (#NFTs) to our cryptocurrency wallets. The name of the token is Tabaat, the Hebrew word for ring....

As part of the ceremony we exchanged #NFTs, much like rings, by sending them to each other from our #cryptocurrency wallets....

In this article, we explore the halachic validity of *kidushin* performed via the transfer of cryptocurrency or non-fungible tokens (NFTs).¹

PAPER MONEY

Two centuries ago, *poskim* debated the halachic status of a then-novel form of money: banknotes—negotiable promissory notes, issued by a bank or other licensed authority, payable to the bearer on

demand—the precursors of modern paper money. The primary question was whether they were considered money (*ma'os* or *matbeia*), have inherent value (*gufo mamon*), and are the equivalent of the metal coins which had been traditionally used as money. Alternatively, perhaps they are only considered notes (*shtaros*), which are not *gufo mamon*. Most *poskim* considered them *ma'os* and *gufo mamon*, albeit for a variety of different reasons:

- R' Meshulam Igra argues that the defining characteristic of *shtaros* is that even if they are destroyed, the value they represent is still accessible if the underlying facts can be established. This is not the case with banknotes, where the issuer is exempt from payment if the notes have been destroyed, even if witnesses testify to the destruction.^{2,3} (continued on page 2)
- R' Meshulam Igra's successor as the *rav* and

² Shu"t R' Meshulam Igra C.M. *siman* 16, and cf. Shu"t Maharsham *cheilek* 2 *siman* 100.

³ Note that this is not the case with modern paper money, at least U.S. currency; see Redeem Mutilated Currency. U.S. Bureau of Engraving and Printing, <https://bep.gov/services/currencyredemption.html>; Turning damaged dollars into crisp cash. USA Today, <http://usatoday30.usatoday.com/news/nation/2001/06/2001-06-03-money.htm>; Susan Tompor. Dog chewed up your cash? What to do. USA Today, <https://www.usatoday.com/story/money/columnist/tompor/2014/12/13/tompor-your-money-damaged-money/20265791/>.

¹ We will not deal here with the question of the validity of double ring ceremonies.



PARSHAS KI SEITZEI HALF AND HALF DRESSING

Excerpted and adapted from a shiur by
 HaRav Yechiel Biberfeld

A man's attire shall not be on a woman, nor may a man wear a woman's garment, because whoever does these [things] is an abomination to Hashem, your G-d.

Devarim 22:5

According to the Shulchan Aruch (Y.D. 182), this mitzvah prohibits a woman from wearing a turban or a suit of armor. The Rama adds that even if only one article of the opposite gender's clothing is worn, and the wearer's gender is recognizable from the other garments, the prohibition applies.

The Shach (*ibid.* 7), citing the Bach, writes that two criteria are necessary for the *issur* to apply: the garment must be made and worn for beauty, and one must be wearing it in order to appear to be of the opposite gender. Therefore, a man may wear a woman's raincoat to shield himself from the rain or women's sunglasses to protect his eyes from the sun. The Shach accepts this ruling in the case where the person is wearing only (continued on page 2)

Hay Kilayim!

Q A local petting zoo offers free hayrides for children. They use a wagon drawn jointly by a horse and a bull. May I send my little kids on the ride?

A The Torah forbids plowing with *kilayim*, meaning two animal species working together. Other forms of labor are also included in the prohibition, including pulling a wagon filled with people.

Although the Torah's prohibition is stated in terms of the farmer who pulls or guides the animals, the (continued on page 2)

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rosh yeshiva of Pressburg, the Chasam Sofer, also maintains that banknotes are considered money, but on different grounds: Money is whatever the government decrees to be legal tender, and there is no difference between paper and metal. If a certain medium of exchange is mandated to be accepted by everyone as payment, and refusal to do so is a capital offense (!), that medium is considered money and has the status of *gufo mamon*.⁴

R' Moshe Teitelbaum (of Újhely, a contemporary of the Chasam Sofer) maintains that in our context, the status of *gufo mamon* hinges on something being a universal medium of exchange: It is possible to buy anything with it. Since banknotes have this property, they are *gufo mamon* and are not *shtaros*.⁵

While there is a minority view that banknotes are indeed *shtaros*,⁶ the halachic consensus is that they are not.⁷

CRYPTOCURRENCY

Turning to cryptocurrency, the first question to consider is whether it is even recognized in halacha as property at all, since it is intangible and consists of nothing more than mere information! R' Asher Weiss raises this possibility, but summarily rejects it, because cryptocurrency's reality is obvious given the amount of money invested in it and the seriousness with which it is taken. In light of the latter two of the aforementioned defining characteristics of money, however, he concludes that since cryptocurrency is not deemed legal tender by governments⁸ and is only very rarely accepted as payment, it does not currently have the status of money, and it is thus a mere asset or commodity. If one stole it (if that were possible), he would be liable for the theft, but it does not have the status of money in contexts such as *kinyanim* and *ribbis* (with regard to the prohibition of *se'ah bes'ah*, which generally for-

bids loans of assets other than currency—where the original assets are spent or consumed, and equivalent ones are later repaid—unless denominated in currency).⁹

R' Shlomo Ishon (the head of *Mechon Keter*, an Israeli institute devoted to developing halachic resolutions to modern economic questions) reaches a similar conclusion: “in the current situation, [cryptocurrency] would be not be considered money, but rather merchandise or a *shtar chov*.”¹⁰ (He does not explain the logic of considering it the latter; perhaps the resemblance to *shtaros* is in the fact that the digital keys—mere numbers—are worthless in and of themselves, and only obtain their value within the consensus of a given cryptocurrency framework.) R' Shlomo Aviner also adopts a similar position, that cryptocurrency could in principle be considered money were it to become widely used as such, but this is not currently the case, so it is currently considered an ordinary asset, and it may not be loaned.¹¹

KIDUSHIN

According to these contemporary *poskim*, it would seem possible at least in principle to perform *kidushin* with cryptocurrency, since currency is not required (and indeed, is not normally used) for *kidushin*.¹²

NFTs, however, raise additional questions of valuation: *kidushin* performed with “an item in whose valuation people are not proficient, and they sometimes err greatly” in assessing its value are problematic,¹³ and there are surely few things to

9 HaBitcoin Bahalacha (audio).

10 *Matbeia Virtualli* (Bitcoin)—Ha'im Nechshav *Matbeia Al Pi Halachah* (also available here).

11 Bitcoin—Zeh Kessef? Kipa. <https://www.kipa.co.il/%D7%97%D7%93%D7%A9%D7%95%D7%AA/%D7%93%D7%A2%D7%95%D7%AA/%D7%91%D7%99%D7%98%D7%A7/%D7%95%D7%99%D7%9F...%D7%96%D7%94-%D7%9B%D7%A1/%D7%A3/>

Cf. R' Shlomo Gintzler. *Shekel Kessef: Kessef Digitali Bahalacha, Vehogdaraso Shel Kessef HaTorah*. Yeshurun 33 (Elul 5775) pp. 606-26. R' Avraham Meir Rabinowitz. *Crypto, Bitcoin, Blockchain BaHalacha: Mah Hama'amad Hahilchasi Shel Matbeios Virtuallim?* R' Yehudah Odesser. *Keniyah Umehchirah Im Bitcoin*.

12 Performing *kidushin* with a debt against a third party is discussed in Shulchan Aruch E.H. 28:13, but the issues discussed there would not seem to apply to cryptocurrency even if it were to be considered *shtaros*.

The Chasam Sofer (Y.D. 134) writes that according to his legal tender criterion for something to have the status of money, “there is no doubt that these banknotes are fully considered to be money, even to be *mekadeish* a woman with them, and they are perfectly like [the money Avraham paid to] Efron.” The Chasam Sofer is referring to the derivation of *kidushei kesef* from the purchase of Efron's field (Kidushin 4b), but the implication of his comments that according to the opposing view that banknotes are not considered money, they could not be used for *kidushin*, is puzzling, since as noted, all assets, even (at least in principle) *shtaros*, can be used for *kidushin*.

13 See Shulchan Aruch E.H. 31:2.

4 Shu"t Chasam Sofer Y.D. *siman* 134 from s.v. *Vesu kvar he'elah* and C.M. *siman* 187 from s.v. *Venidon habanki*.

5 Shu"t Heishiv Moshe (Y.D.) *siman* 55.

6 See Shu"t Bais Shlomo C.M. *siman* 34; Chochmas Shlomo beginning of *siman* 292 (and cf. end of *siman* 74) and Shu"t Ha'elef Lecha Shlomo C.M. *siman* 6. Cf. Shu"t Machanei Chaim *cheilek* 2 E.H. *siman* 26.

7 Minchas Pitim C.M. end of *siman* 303; Shu"t Zekan Aharon *cheilek* 1 (C.M.) *siman* 98 end of s.v. *Ulefi ha'amur*, Aruch Hashulchan C.M. 68:9 (with regard to negotiable banknotes usable as currency).

8 El Salvador recently became the first country in the world to make Bitcoin legal tender: see Bitcoin: El Salvador makes cryptocurrency legal tender. BBC News. <https://www.bbc.com/news/world-latin-america-57398274>.

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one garment designed for the opposite gender.

The Chochmas Adam challenges the Bach's leniency from the Gemara in Nazir (59a) that says women may not wear weapons or armor,

as these are *kli gever*. These items are clearly worn for protection, so this Gemara appears to contradict the Bach's assertion.

We can answer based on R' Moshe Feinstein (Igros Moshe 4:75:3), who explains that weapons and armor are intrinsically considered *kli gever* regardless of the purpose for wearing them, but the status of other clothing de-

pends upon the purpose for which one is wearing it: if for beauty, it is forbidden; if for protection, it is permitted.

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Shulchan Aruch (Y.D. 297:12, based on Kilayim 8:3) rules that even a passenger in a wagon drawn by *kilayim* violates the prohibition.



Poskim debate whether the rider's violation is *deOraisa* (Rambam) or *deRabanan* (Ri cited in Tur *ibid.*) The Gra appears to adopt the position of the Rambam.

The *Acharonim* (see Da'as Torah Y.D. *ibid.*) say that the rider only transgresses if his weight can be sensed by the animals, because if it is, he causes them to go. (Apparently, the animals subtly tug at the wagon to detect that it has been loaded and then go.) If the wagon itself is large and heavy, or if the passenger is slight, his extra weight is undetectable to them. But the Chavos Yair (150) maintains that the prohibition persists even in such cases due to *mar'is ayin*. (In the case of an *issur deOraisa*, *mar'is ayin* applies even if no other Jews are present; see Mishnah Brurah 301:165).

Although there is a view that children under bar mitzvah are not subject to *mar'is ayin*, this leniency should only be used in time of need, which is inapplicable here (see Mishneh Halachos 16:3).

If the hayride is done exclusively for Jews, there's an additional *issur* of *amirah lenachri* (instructing a non-Jew to perform any *issur* for one's benefit (Shulchan Aruch *ibid.* 4).

which this description applies as well as it does to NFTs. A more detailed discussion of this issue, however, is beyond the scope of this article.