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IF THE PRICE IS WRONG May Government Impose Price Controls?

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article on exorbitant drug pricing considered the issue primarily from the perspective of the drug companies, and we addressed a number of different prohibitions that might apply to such pricing. In this article, we consider the issue from the perspective of government, and we survey various legislative and judicial mechanisms that could potentially be used to prevent or counter exorbitant drug pricing.

HAFKA'AS SHE'ARIM

Our previous article noted that unreasonably raising prices is prohibited. The Gemara cites a debate over whether "agardimin" are appointed to supervise

prices,¹ and the halacha follows the opinion that they are. The Rashbam understands *agardimin* as officials authorized "to whip and punish"; the Rambam, too, rules that those who raise prices improperly are subject to corporal discipline:

The court is obligated to appoint police in every city and town to...set the prices.

Whenever a person raises prices and sells at a higher price, he may be beaten and compelled to sell at the regular market price.²

It is unspecified, however, how prices should be set, and what principles and

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¹ Bava Basra 89a.

² Yad Hachazakah Hilchos Geneivah 8:20. See Tur and Shulchan Aruch C.M. 231:20.

לע"נ הרב יוסף ישראל
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Dedicated in loving memory of
 HaRav Yosef Grossman zt"l



PARSHAS TOLDOS HUNTING GROUNDS

Excerpted and adapted from a shiur by
 Dayan Yitzhak Grossman

And the youths grew up, and Eisav was a man who knew hunting, a man of the field, whereas Yaakov was a simple man, dwelling in tents.

Bereishis 25:27

The Noda Bihudah discusses the permissibility of hunting and initially argues that it is not technically forbidden. It does not violate the *issur* of *tza'ar ba'alei chayim* (causing pain to animals) because *tza'ar ba'alei chayim* does not include cases of killing the animal or where it is used for a productive purpose. It also does not violate *bal tash'chis*, because a) the hides can be sold for profit, b) the hunter is not acting in a destructive manner, and c) *bal tash'chis* only applies to things that could potentially be useful to people, while the wild animals in question are of no use to people while they are alive. Their usefulness comes only after death, when people can benefit from the hides and flesh, so a prohibition to kill them would not make sense. Nevertheless, he insists that hunting is wrong from a mussar perspective and observes that only Nimrod and Eisav, who were deemed *resha'im* by Chazal, are (continued on page 2)

Q&A from the
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Month to Month

Q The yearzeit of my father a"h is the 30th of Cheshvan, but this year Cheshvan has only 29 days. On which day do I observe the yearzeit?

A A lunar cycle, a single orbit of the moon around Earth, takes 29 days, 12 hours, and 7931080ths (*chalakim*) of an hour, or 44 minutes and 3-1/3 seconds. Because this figure is between 29 and 30 days, and a

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procedures are to guide the process.

PRICE CONTROLS

As we have previously discussed,³ the residents of a city are permitted to set prices for products sold there, and members of a profession are permitted to regulate their profession. The Gemara qualifies that this authority exists only when there is no “important person” in the city (but if there is, he must be consulted).⁴ Some authorities maintain that this qualification applies only to the latter case of members of a profession but not to the former case of the residents of a city,⁵ although many authorities extend it even to that case.⁶

As we have previously discussed,⁷ however, some contemporary authorities maintain that in modern cities, there is not considered to be an “important person” present, and some writers suggest that an organization such as a nonprofit, government-funded watchdog agency can serve the function of an “important person.”

SUSPENSION OF INTELLECTUAL PROPERTY PROTECTION

In many cases, what enables a drug company to charge an exorbitant price for its product is the monopoly granted to it by patent law. There is a great

diversity of halachic opinion on the issue of intellectual property; while some authorities apparently consider intellectual property to be actual property and accordingly grant a creator the inherent right to exclude others from the use of his creation,⁸ many others root a creator’s right to his creation either in secular law, via the principle of *dina demalchusa dina* (the law of the government is recognized by halacha as valid)⁹ or in prevailing custom (*minhag*).¹⁰ If this is not a matter of fundamental property rights but mere societal arrangements, society may obviously modify its rules as it sees fit.

Some authorities derive protection for intellectual property from the prohibitions against improper competition (*hasagas gvul*).¹¹ There is a dispute over whether such prohibitions are Biblical or Rabbinic;¹² according to the latter view, it can be argued that they do not apply in the case of improperly high pricing, based on the doctrine that economic protections granted by Rabbinic edicts do not cover improper conduct.¹³ (It should be noted, however, that the Chasam Sofer, a prominent proponent of the idea that the prohibitions against infringing on the intellectual property

8 Shu”t Sho’el Umeishiv mahadura kama *cheilek 1 siman 44*.

9 Shu”t Bais Yitzchak Y.D. *cheilek 2 siman 75* os 5, and cf. C.M. *siman 80*; Shu”t Hisorerus Teshuvah *cheilek 1 siman 232*; Shu”t Sha’arei Ezra *cheilek 2 C.M.* end of *siman 147* p. 390 s.v. *Od yesh ladun mitzad dina demalchusa dina*.

10 Sha’arei Ezra *ibid.* p. 389 s.v. *Vehinei beyameinu eileh*.

11 See Shu”t Chasam Sofer C.M. *siman 79* from s.v. *Mizeh nireh li* (and cf. in particular s.v. *Ve’im kein besh’a’arei madpisim*).

12 See Bais Yosef C.M. *siman 156* s.v. *Hacheilek hashlishi*; Chasam Sofer *ibid.* s.v. *Psik hashem harevi’*.

13 See Shu”t HaRan *siman 44* os 7; Shu”t Tshuras Shai tinyana *siman 159* s.v. *Nireh li*; Shu”t Ramatz C.M. (*Chazakos simanim 11, 12* (os 4) (and cf. *siman 26* os 12).

3 Raising the Minimum Wage: Halacha and Minimum Wage Regulation.

4 Bava Basra 8b-9a.

5 Shu”t Rivash *siman 399*, cited by Kessef Mishneh *Hilchos Mechirah 14:11*; Shu”t Maharam al-Ashkar *siman 49*, cited by Sma *ibid.* s.k. 45.

6 Piskei HaRosh *ibid.* *siman 33*; Tur *ibid.*; Rama *ibid.* *se’if 28*; Shach *ibid.* s.k. 4.

7 A Guilted Age: The State of the Union in Halacha.

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called hunters by the Torah (Nimrod in Bereishis 10:9). Moreover, hunting for fun is considered *achzariyus* (cruelty) and is wrong; hunting for a living is permitted. He adds that it may also be dangerous to hunt, as even Eisav claimed he was going to die (Bereishis 25:32), which the Ramban and

others attribute to the dangers he faced as a hunter.

A second position is taken by the Avi Ezri (Ra’avyah), cited by the Tur and the Bais Dovid, who says that pulling a horse and dogs to hunt with may violate *kil’ayim*, implying that the hunting itself is entirely permitted.

A third position is that of the Or Zarua and the Shemesh Tzedakah, among others, that hunting is forbidden. The Or Zarua argues that it

violates the *issur* of *moshav leitzim* (being in the company of scoffers—see Tehillim 1:1 and Avodah Zarah 18b with Rashi), while the Shemesh Tzedakah maintains that it also violates *tza’ar ba’alei chayim* and *bal tash’chis*.

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single day cannot be part of two months, all months have either 29 or 30 days. Since the establishment of our current calendar nearly 17 centuries ago, the months are fixed in duration, with the exception of Cheshvan and Kislev, each of which is 29 days in some years and 30 in others.



DAYAN YOSEF GREENWALD

The Magein Avraham rules that in your case, where the passing was on 30 Cheshvan, the timing of the *yahrzeit* depends on the structure of the calendar in the year of the first *yahrzeit*. 30 Cheshvan is both the last day of Cheshvan and the first day of Rosh Chodesh Kislev. If the first *yahrzeit* falls in a year with a 29-day Cheshvan, the 29th, being the last day of Cheshvan, is the *yahrzeit*, and in all subsequent years, the last day of Cheshvan—be it the 29th or the 30th—is the *yahrzeit*. But if the first *yahrzeit* is in a year with a 30-day Cheshvan (which means there are two days of Rosh Chodesh Kislev, 30 Cheshvan and 1 Kislev), the *yahrzeit* is permanently fixed as Rosh Chodesh Kislev, and the *yahrzeit* will always be either 30 Cheshvan or 1 Kislev, depending on the length of Cheshvan.

The Sha’arei Teshuvah disagrees, but the *minhag* follows the Magein Avraham. As a result, two people who each lost a parent on 30 Cheshvan can have different *yahrzeits*, depending on the length of Cheshvan in the year of each one’s first *yahrzeit*.

of another are rooted in *hasagas gvul*, maintains that such *hasagas gvul* is Biblically prohibited.)

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