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THE FIX IS IN: PRICE COMPETITION IN HALACHA

Adapted from the writings of Dayan Yitzhak Grossman

Jury selection recently began for the third federal trial of executives from Pilgrim's Pride and Claxton Poultry Farms, whom the U.S. Justice Department has accused of conspiring to keep prices high. The executives

face charges related to what prosecutors say was a conspiracy to drive up prices of broiler chicken products from at least 2012 through early 2019... The executives engaged in a "conspiracy to suppress and eliminate competition by rigging bids and fixing prices," the indictment states... The accusations of price fixing in the poultry industry stretch much farther than this criminal case. Charges and investigations are underway for many corporate entities in the space... But the issue of potential price fixing—and federal government attention to executives—is not limited to chicken. There are also pending civil lawsuits about accusations of price fixing in the pork and beef sectors. Both of these have recently come under additional scrutiny as prices have increased and a few major players have dominated the markets.¹

¹ Megan Poinsky and Chris Casey, Why the chicken executive price-fixing

Price fixing is prohibited under federal antitrust law. The Federal Trade Commission explains:

Price fixing is an agreement (written, verbal, or inferred from conduct) among competitors to raise, lower, maintain, or stabilize prices or price levels. Generally, the antitrust laws require that each company establish prices and other competitive terms on its own, without agreeing with a competitor...When competitors agree to restrict competition, the result is often higher prices...An agreement to restrict production, sales, or output is just as illegal as direct price fixing, because reducing the supply of a product or service drives up its price.²

In contrast to U.S. law, halacha has no concept whatsoever of a crime of price fixing; in fact, the Gemara explicitly allows "agreements among competitors" to restrict output.³ It is true that in order for such

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case is a priority for prosecutors. <https://www.fooddive.com/news/chicken-price-fixing-case-executive-prosecution/624909/>

² Price Fixing, Federal Trade Commission. <https://www.ftc.gov/advice-guidance/competition-guidance/guide-antitrust-laws/dealings-competitors/price-fixing>

³ Bava Basra 9a.

לע"נ חנה בת ר' מאיר ישראל ע"ה
Mrs. Arlene Balgley
ולע"נ גיטל בת הרב ישראל ע"ה
Mrs. Gittel Balgley
Dedicated by Mr. and Mrs. Avrohom Dov Balgley



PARSHAS SHLACH

CAPE OF GOOD HOPE

Excerpted and adapted from a shiur by
Dayan Yehoshua Grunwald

Speak to the B'nei Yisrael and say to them that they shall make themselves tzitzis on the corners of their garments throughout their generations...

Bemidbar 15:38

If one removes his tallis for a short time to go to the bathroom, does he recite another bracha when he puts it back on?

The Shulchan Aruch (O.C. 8:14) rules that every time one removes a tallis and puts it back on, he must recite a new bracha, because while it was off there was a *hesach hada'as* (a lack of focus on the mitzvah), so the bracha is no longer valid. The Rama says some hold that since he intended to put the tallis back on shortly after removing it, there is no *hesach hada'as*. The Rama cites a third view that if he removed the tallis without specific intent about whether he would put it back on,¹ then as long as he was still wearing his tallis *katan*, there is no *hesach hada'as*.

As is usually the case, the halacha for Ashkenazim follows the Rama, that one need not recite a new bracha.² Sefardim should theoretically recite a

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¹ This is how the Mishnah Brurah (38) and many Acharonim understand this view. The case of a lack of clear intent when removing the tallis is uncommon.

² Some Acharonim, like the Shulchan Aruch HaRav, hold that one need not recite a bracha up to two or three hours later.

Q&A from the
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The Right of Return

Q As a retailer, am I obligated to refund a purchase of defective merchandise if I know I will not be reimbursed, in turn, by my supplier?

A A seller is required to accept, for a full refund, a return of faulty merchandise. This obligation is independent of the seller's ability to get his own purchase of the item refunded. Even if the seller told the buyer at the time of the sale that there could be no returns, the seller would

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agreements (and their accompanying sanctions for violation) to be binding and enforceable, certain conditions must be met,⁴ but to the best of this author's knowledge, there is no indication that such agreements are actually prohibited in the absence of those conditions.

As we have previously discussed,⁵ the Gemara and later halachic authorities do prohibit and excoriate price gouging and profiteering, at least with regard to staple foodstuffs, but price gouging (which is prohibited in most states by emergency regulations or price-gouging statutes)⁶ is entirely distinct from price fixing; the former occurs "when a seller increases the prices of goods, services, or commodities to a level much higher than is considered reasonable or fair,"⁷ whereas the latter is not dependent on notoriously vague⁸ and economically dubious⁹ notions of reasonableness and fairness, but focuses entirely on agreements between sellers, as explained above. This latter prohibition against agreements between sellers per se has no analogue in halacha.

R' Itamar Warhaftig considers possible halachic responses to price fixing by sellers:

Although an agreement among merchants... will usually concern only internal affairs, there may also be external ramifications. This is true where merchants fix a minimum price beneath which no merchant is permitted to sell. The possibility exists that they will fix a high price without economic justification.

This problem is more severe today when the consumer is apt to find himself facing a giant corporation, perhaps a monopoly, and therefore is in need of protection from arbitrary

price fixing...

This question also exists where there has not been a formal enactment by the members of the guild, as they can always form a monopoly or voluntarily cooperate among themselves in order to fix minimum prices, at the expense of the community. There are many forms that this can take, and it is quite prevalent today.

The halachic remedy to this situation is to take countermeasures, either by inviting merchants or tradesmen from the outside to break the monopoly, or by organizing a consumer strike. Practically, this is very difficult to organize successfully. The halacha is able to enforce a consumer strike by use of a compulsorily binding agreement among the townspeople. We therefore must consider the power of the community to regulate itself...

The members of a community have the power to regulate the financial life of the community, including the fixing of prices and wages. This need not be done by the townspeople directly but can be effected through elected or appointed representatives.

This power can be used to protect the consumer by acting against arbitrary price fixing by merchants or tradesmen, as mentioned above. An example of such a regulation is found in Responsa Maharashdam (Y.D. 117). In response to price fixing by the wool dealers,¹⁰ the community fixed a maximum price. This remedy was endorsed by the respondent.

Another example is quoted in a responsum of Rav Yosef Shaul Natansohn (Sho'el Umeishiv mahadura tinyana cheilek 4 siman 89): "The butchers in our community have raised the prices of meat and are selling more dearly than [is common] in the area.¹¹ We have decided that this is opposed to honesty and justice and wish to make a firm agreement that no one shall buy meat from the butchers until they sell at the price prevailing in other communities of this area."¹²

In a follow-up to this article, we shall discuss, *bl'n*, how according to some opinions, not only does

10 This seems to be a serious misunderstanding of the Maharashdam's case, which did not involve price fixing by the wool sellers, but on the contrary, unfettered and unregulated competition between Jewish wool buyers, which drove up the price of wool and accordingly resulted in the gentle wool sellers "consuming our toil, effort, and labor," and "much damage and financial loss to Jews."

11 The wording indicates that the objection was to what was considered to be the demonstrably unfairly high price, rather than to any improper agreement among the butchers.

12 Crossroads: Halacha and the Modern World, Vol. I. Cf. our articles A Guilded Age: The State of the Union in Halacha. May 6, 2021; To Form a More Perfect Union. May 13, 2021; Raising the Minimum Wage: Halacha and Minimum Wage Regulation. Undated.

O&A from the
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still be obligated to provide a refund, because that declaration is not assumed to apply to defective merchandise. The sale of a defective product is voided retroactively: Once it emerges that a deficient item was sold, no sale ever took effect.



DAYAN BARUCH MEIR LEVINE

The halachic test of the severity of a defect is whether the average buyer, upon discovering it, would seek to return the item. In such a case, the seller must offer a full refund. A partial refund (i.e., discounting the item) or store credit is insufficient, unless such alternatives are satisfactory to the purchaser. These rules are generally overridden by accepted community practice or a prominently posted store policy.

The buyer's right to return a bad product persists even after he has used it, and even if that use devalued it severely, provided that a) the use was a typical one, and b) he stopped using it after discovering the defect, as the halacha requires. (If he continues to use it afterward, he has waived his right to return it.) However, if the buyer benefited from the use, the value of that benefit would be deducted from his refund.

If the buyer suffered indirect damages as a result of the purchase of bad merchandise, e.g., he paid to transport furniture or to alter a suit before becoming aware of the deficiency, the seller bears no liability for such costs unless he knew or should have known about the problem. In such a case, he would at least have a moral obligation to pay.

halacha not prohibit agreements between sellers to stabilize prices, it actually requires sellers to cooperate in the maintenance of price stability, and prohibits cutthroat competition.

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new bracha, in accordance with the Shulchan Aruch. Indeed, R' Shlomo Zalman Auerbach (cited in Ma'adanei Shlomo) initially maintained that an Ashkenazi should not ask to borrow

a Sefardi's tallis, because the Sefardi cannot make a bracha when he puts it back on. But he later retracted and said that the accepted custom among the Sefardim

also follows the Rama, and R' Ovadia Yosef writes similarly in Yabia Omer.³

3 Where the tallis fell off, see Shulchan Aruch (O.C. 8:15), Mishnah Brurah (39), and R' Akiva Eiger (Hagahos to Shulchan Aruch).

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