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PRICE SUPPORT: MAY A MERCHANT LOWER PRICES UNILATERALLY?

Adapted from the writings of Dayan Yitzchak Grossman

Our previous article explained that while halacha does excoriate and even prohibit, at least in certain contexts, price gouging (increasing prices to a level much higher than is considered reasonable or fair) and profiteering, it has no clear objection to price fixing (a pact among competitors to stop competing on price and charge the same agreed-upon amount), at least as long as the fixed prices are not inherently unreasonable. On the contrary, it may even require sellers to cooperate in the maintenance of price stability. In this article, we explore a major dispute among the *Acharonim* about this latter question.

The Mishnah says:

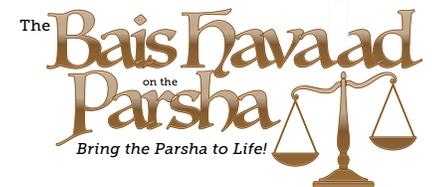
R' Yehudah says...one may not reduce his prices below the market rate. The Chachamim say, he should be remembered positively.¹

(The halacha follows the view of the Chachamim.²) The Gemara asks what their reason is, and it answers that by lowering his own price, a seller can ease the market price.³

The Panim Me'iros raises an obvious problem. It is self-evident that lowering the price is good

(continued on page 2)

¹ Bava Metzria 4:12.
² Shulchan Aruch C.M. 228:18.
³ Bava Metzria 60a-b.



PARSHAS KORACH

OUT OF THE BLUE

Excerpted and adapted from a shiur by
Rav Moshe Yitzchok Weg

They arose before Moshe with two hundred and fifty men from the B'nei Yisrael, princes of the congregation, those summoned for meeting, men of renown.

Bemidbar 16:2

Rashi quotes the Midrash that Korach and his assemblage came to Moshe wearing garments made entirely of *techeiless*. They asked him if these garments require tzitzis, and Moshe responded that they did. Korach and his group exclaimed in scorn that if an ordinary garment requires only one string of *techeiless*, a garment made entirely of *techeiless* should need no tzitzis at all.

Korach's point is difficult to understand. Why should a garment made of *techeiless* be exempt from tzitzis?

R' Chaim Kanievsky suggests that he did not mean that a *techeiless* garment should not require tzitzis, but that its tzitzis should not require *techeiless*.

Another answer is that Korach was referring to the idea in the Gemara

(continued on page 2)

Q&A from the
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Lend-Lease

Q I would like to make a deal with my brother: He would use my apartment the first two weeks of August in exchange for me using his bungalow the last two weeks of August. Considering that a stay in his bungalow is more valuable than a stay in my apartment, is this a violation of *ribbis*?

Also, my lease says I'm not allowed to sublet. Does that mean I can't allow my brother to borrow or rent my apartment for two weeks?

A This sort of *ribbis* isn't mentioned in the Gemara or Shulchan Aruch. Its source is the Tosefta (Bava Metzria perek 6), and it is cited as halacha by all the contemporary *poskim* (continued on page 2)

(continued from page 1)

for consumers, so why does the Gemara inquire about the Chachamim's reason? He answers that it was obvious to the Gemara that the damage to the livelihoods of the sellers that would be caused by an individual seller lowering his price outweighs the benefit it would bring to consumers, and so the Gemara maintains that a price cut by an individual seller would generally be prohibited. It is only permitted when this could ease the market price, which means (as explained by Rashi) that the hoarders of produce will see that the price has dropped and they will sell cheaply. In other words, an individual seller may lower his price only where hoarders are keeping produce out of the marketplace (thus artificially constricting supply), and his doing so will induce them to release their produce into the marketplace at a lower price.⁴

(The Mahariaz Enzil explains that in this scenario, the sellers, i.e., the retailers who purchase produce from suppliers and sell it to consumers, will not suffer, because although they are lowering the retail price they receive, the wholesale price they pay will be correspondingly lower as well. He writes that we certainly do not care about the losses that the hoarding suppliers will suffer, because these market manipulators are the ones to whom Chazal applied the *psukim*, "Break the power of the wicked"⁵ and "The wicked are estranged from the womb."^{6,7})

It is evident from the analysis of the Panim Me'iros, however, that he is assuming some sort of command economy, where prices are established by "law and regulation," and the principle of *dina demalchusa dina* (the law of the government is recognized by halacha) supports maintaining the initial price even at the expense of the interest

of the consuming public.⁸ It is thus not clear that he would prohibit unrestrained price competition in a modern market economy with a free price system.

But regardless of whether the Panim Me'iros himself would limit his position to a command economy, some *Acharonim* endorse his general position without any such limitation, and rule generally that

To lower the price of merchandise is strictly prohibited, and this ruins the ways of commerce and causes the loss of others' money.⁹

Other *Acharonim*, however, reject the basic premise that a seller is only permitted to lower the price where this will induce hoarders to release their wares, explaining that even if we accept this interpretation of the Gemara's criterion of "easing the market price," this condition is not necessary for price lowering to be permitted, only for it to merit the approbation of "he should be remembered positively." When the Gemara sought the reason of the Chachamim, it was only asking why an individual who lowers his price should be remembered positively, not about the fundamental permissibility of lowering prices.¹⁰

Some authorities distinguish between minor price cuts and major ones;¹¹ some distinguish between price cuts that will not cause the sellers loss of principal (but only cut into their profits) and those that will;¹² and some prohibit cutting prices "to a degree that merchants do not typically tolerate."¹³

8 See Shu"t Divrei Chaim cheilek 1 C.M. *siman* 18 "Vehinei be'emes bePanim Me'iros..."

9 Aruch Hashulchan C.M. 228:14 (and cf. 156:11). Cf. Mahariaz Enzil *ibid.*

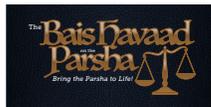
10 Shu"t Bais Efraim C.M. *siman* 27 from s.v. *Ve'od nlan'd pashut*; Divrei Chaim *ibid.*; Shu"t She'eilas Shalom *kama siman* 13 s.v. *Uve'emes, Ella al karchach*; Chochmas Shlomo C.M. 228:18. Cf. Erech Shai C.M. 156:5 (and 228:18 s.v. *Yachol*), and the same author's Shu"t Teshuras Shai *tinyana siman* 4); Shu"t Maharya HaLevi *cheilek* 2 *siman* 130; Shu"t Karnei Re'em (Ankava) *siman* 135 s.v. *Urmeiatav havo navo*; Shu"t Magein Sha'ul (Katzenellenbogen) *siman* 89 s.v. *Vegam bezilzul gufa and siman* 113 s.v. *Venidon zilzul*; Shu"t Vaya'an David *cheilek* 2 *siman* 228; Shimru Mishpat *cheilek* 1 p. 142, 145-6.

11 Divrei Chaim *ibid. siman* 19. Pis'chei Choshen *Hilchos Geneivah Ve'onah perek* 9 n. 6 argues that in light of this responsum, it must be assumed that the aforementioned one in *siman* 18 that allows a seller to lower his price is referring to a minor price cut.

12 Shu"t Chasam Sofer C.M. *siman* 79 s.v. *Mizeh nireh li.*

13 Pis'chei Choshen *ibid.*, par. 3

(continued from page 1)



(Menachos 43b) that *techeiless*, of all the colors, is in tzitzis because it resembles the sea, the sea resembles the heavens, and the heavens resemble the Throne of

Glory. Tzitzis are to remind us of the mitzvos, as the *pasuk* says, and Korach was arguing that an entire garment of *techeiless* provides this reminder, obviating the need for tzitzis.

R' Elya Baruch Finkel says that Korach's intellect was impaired by his jealousy, so his arguments indeed made no logical sense.

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(continued from page 1)

(see Bris Yehuda II footnote 2, Nesivos Shalom 160:9, Mishnas Ribbis 19:7, et al.).



The reason for the prohibition is that your brother's use of your apartment without paying is considered a loan from you to him, which he will later pay back with interest by allowing you the more-valuable use of his bungalow. Therefore, it is only a problem if the second stay is more valuable than the first. Also, it is only forbidden when the second stay began only after the first one concluded, since halachically a renter is only obligated to pay upon completion of the rental term.

There is a simple solution you may employ: Rather than structuring the arrangement as a swap, structure it as an agreement to rent each other's property for the same fee. Then you may each pay that fee during your respective stays.

As to the question of violating your lease terms, the standard clause that prohibits subletting does not refer to short-term lending or renting. But if the landlord stipulated that he disallows such activity, or where there are indications that he disallows it, it would be forbidden. An example would be a very valuable furnished apartment whose owner is very particular about his choice of tenants.