

# HALOCHOSCOPE

Congregation Shaaray Teffillah, Pittsburgh, PA

Correction to last week's issue: Section C, par 1 should end "... for him, possibly even without his consent."

This week's question:

Assuming that regular betting is forbidden, is a friendly card-game, where there is betting, albeit a small amount, permissible?

What are the issues?

- (A) Betting - What is *Asmachta*, and is it considered "robbery"?
- (B) *Mesachek Bekubia* - playing with dice - the original betting game.
- (C) *Aino Osek Beyishuvo Shel Olam* - not practicing a productive occupation.
- (D) *Moshav Leitzim* - the objection to being preoccupied with aimless distractions.
- (E) Is there anything intrinsically wrong with the playing cards themselves?

(A) Is Betting Considered "Robbery" - illegal gain

We must assume that the only way one may legally obtain money from someone else is when he is willing to part with it or legally bound to pay for something. This includes a gift, or sale, damages and other legitimate financial obligations. It also includes a self-imposed obligation, such as a pledge, and even a conditional pledge, since ultimately the person is willingly parting with his money. The problem arises when, although one has said he would part with his money, he does not believe that he will actually give it up. For example: If someone pledges an unreasonably high amount of money conditional on something unlikely happening. "I'll give you a million dollars if you jump over the moon!" In the unlikely event that the condition is fulfilled, he will feel obligated to pay, although he is unwilling because when he "agreed" he did not really think he would ever have to pay. This agreement is called *Asmachta*, and is not considered legally binding, either *Mideoraisa*, Scripturally, or *Midrabanon*, Rabbinically. Taking the money in this instance is forbidden and constitutes *Gezeil* - robbery. [See Baba Metzia 66a, etc. See Sde Chemed, *Asmachta*. Shul. Aruch Choshen Mishpat 207.]

There is a Talmudic dispute whether betting falls into this category. One opinion is: the person placing the bet does not expect to lose, so he has not "agreed" to part with his money. The other opinion is: he entered into the deal fully aware of the possibility of losing because fulfillment of the condition given was beyond his own control, or, according to other interpretations, because he stood to possibly gain himself and therefore was willing to risk his own loss on the chance. [See Tosafos Sanhedrin 24b, Shul. Aruch C.M. 207,13, Rema and 370 and commentaries.]

According to the first opinion, betting is forbidden and taking the money

is a form of Gezel. According to the second opinion, betting is not considered Asmachta and is therefore not robbery. With one or two exceptions, the authorities have decided the Halacha in accordance with the second opinion. [See Bais Yosef C.M. 34,207,307 commentaries Aruch Hashulchan 207,23. only Magid Mishneh and Kesef Mishneh Hil. Edus 10,4 say that Rambam rules like the first opinion.]

#### (B) Mesachek Bekubia

*Kubia* (cube) is dice. Gambling with dice, chips of wood, pebbles, even pomegranate peels, is a sufficient crime to disqualify a witness in Jewish law. Any form of gambling is included in this category such as the modern game of cards, or board race-games such as backgammon when playing for money, or betting on competitive sports events. [See Mishneh Rosh Hashana 22a Sanhedrin 24b Rambam Edus 10,4 Aruch Hashulchan Choshen Mishpat 370,5.]

#### (C) Aino Osek Beyishuvo Shel Olam

One reason given in the Talmud for the disqualification of Mesachek Bekubia is that it is Asmachta which is a form of robbery. The other reason given is that the gambler is not in a meaningful occupation, or in the pursuit of knowledge and wisdom. According to this second reason one who has another occupation but gambles as well would still be a valid witness. Various interpretations are given for this. One reason given is that the Sages forbade gambling even if it does not actually meet the guidelines of Asmachta but, because the loser only grudgingly conceded, it is considered *Avak Gezel* - the "dust" of Gezel. Although it is therefore forbidden under all circumstances, only if someone benefits from the proceeds of a Rabbinic violation is he disqualified as a witness. Therefore, if his income is from a legitimate source, he is not subsisting on the proceeds of his gambling and remains kosher. However, if he needs to supplement his income with his gambling profits, he is, after all, subsisting on them, and would be disqualified. Another explanation is that a person who has never had to struggle for his livelihood, but has won it easily is unlikely to appreciate the consequences of his false testimony causing someone a monetary loss. According to this reason, one whose main income is earned, even if the supplementary income is from gambling, is still qualified to testify. On the other hand, if he has independent means and does not need to work to earn a living, nor does he need to supplement his income, he would still be disqualified according to this reason. [See Sma C.M. 34,40 and 370,3.] Does speculation in the stock market count as gambling? Firstly, an educated guess or expert prediction requires wisdom and can be considered commercial activity. In addition, investing in a business enterprise, although risky, is not a bet or gamble.

Rambam and Shulchan Aruch rule that gambling is Gezel and totally forbidden. Rema, based on Mordechai, rules that occasional gambling is not forbidden, but only if all the money being gambled is first placed on a table or board belonging to both or all the players who thereby collectively make a *Kinyan*, acquisition, on all of it. Chips or counters which are used as a substitute for money must likewise be collectively owned before the game begins. [See Shul. Aruch C.M. 207,13 and 370,3.] Thus, it is similar to participating in a lottery. [See Shabbos 149b, Rashi.]

#### (D) Moshav Leitzim

The pursuit of trivial distractions which have no intellectual value is

considered *Moshav Leitzim* - a "gathering of scoffers", (where people sit around wasting their time scoffing at the Torah.) It is forbidden to sit in the company of scoffers under the Scriptural commandment "Al Tifnu El Haelilim". It is forbidden under this law to read silly books that likewise have no intellectual value and certainly to stay away from books that have a negative influence(!) [See Shul. Aruch O.C. 307,16.] It follows that games which are purely dependent on luck and chance, such as dice, are likewise included in the above prohibition. The consensus is that chess which is intellectually stimulating is permitted, and presumably other war games, and likewise certain card games which do have an element of chance, but also require thought and skill. Even so, one should not spend time on these intellectual distractions except when one would anyway be resting and relaxing, but not while one would be otherwise learning or davening. As to playing with "knucklebones" or jacks, or chamesh avanim, there is a question whether it is a game of skill. Playing chance games is discouraged even when not playing for money. [See Shiltei Giborim on Rif Eruvin 38b,3 Leshon Riaz. Otzar Dinim Uminhagim under "Shach" and under Kubia. Raishis Chochma, Shaar Hakedusha,13.]

It appears that card-playing in particular was banned in many communities, and only permitted on "Nitel", the night of the gentile holiday. [See Otzar Dinim Uminhagim under Nitel.] It is easy to understand why such a strong and passionate stand was taken against card-playing on account of its addictive nature. Subsequently, it seems that some communities allowed card-playing on Chanuka only, but that this was also not acceptable. Ironically, one version says that card-playing with a thirty-six or seventy-two deck was introduced through the forces of evil by the Greeks to distract the Jews from learning Torah, yet we find that this very card-playing was popular at Chanuka. [See Raishis Chochma Kedusha 13, Aruch Hashulchan O.C. 670,9. Machane Yisroel (by Chofetz Chaim) 21. Taamei Haminhagim 849, Bnai Yisoschor Kislev 2,12.]

Even though Dreidel that the children play with on Chanuka is itself a Kubia, not only is it not forbidden when playing without money, but reasons are given for the origin of this Minhag. [See Bnai Yisoschor Kislev 2,16.]

#### (E) The Actual Playing Cards.

The element of luck in playing cards takes on a mystical significance when they are used to divine one's fate. Tarot reading is not allowed under the Scriptural command "Tamim Tihyeh" - you shall be perfectly trusting about your destiny. Although there is an opinion that foretelling the near future is a *Chochmah*, a wisdom or science, it is still a violation of this command; moreover, fortunetelling further into the future is a violation of one or more commandments against using the services of sorcerers and diviners. Since the cards used in both regular decks and tarot decks can be used in this way, with a great measure of accuracy in certain people's hands, the cards themselves are objects of a prohibited practice. This alone might not render them unfit to play an innocent game, but the pictures and symbols of the original game of "trumps" or tarot have pagan origins which is most likely where their power lies. The original four symbols on playing cards were based on an Indian four-armed goddess holding these four articles. All authentic Avoda Zora is linked to the forces of Tum'ah which can be manipulated by sorcerers. Although fortune-telling is not used to manipulate, but only foretell the future, the cards are still connected to the original Avoda Zora. Today's cards have, by and large, replaced the original card-game symbols with others, presumably unconnected to

Avoda Zora, but they are still possibly Avoda Zora and a *Sofeik* - a question - of paganism must also be avoided. We do find strong condemnation of looking at the figures on the cards themselves in our esoteric literature which might be referring to the Tum'ah associated with the older versions previously used in European countries. [See Taamei Haminhagim 849 citing Lev Dovid, etc. See Shul Aruch. Yore De'ah 179, commentaries especially Darkei Teshuva.]

In conclusion: It is considered at the very least undesirable to play cards for money, or even just to "kill time" playing for fun. The Chofetz Chaim rules that when money is involved it is a *Chashash Gezel* - a possible case of Gezel; the Aruch Hashulchan says it involves "a number of serious prohibitions." Even the Rema, who permits it occasionally, says that the money has to be owned collectively before the game begins in the manner described in section C.

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## ANNOUNCEMENTS

### SCHEDULE:

SHABBOS MINCHA	7:45 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY - THURSDAY	8:00 PM
CANDLE-LIGHTING Acharei Mos-Kedoshim	7:56 PM
MINCHA EREV SHABBOS Acharei Mos-Kedoshim	7:00 PM

### SHIURIM:

GEMORO MAKOS	SUNDAY	7:15 AM
HALACHA B'IYUN	MONDAY	9:00 PM
HILCHOS SHABBOS	SHABBOS	8:15 AM

#### Special Announcement

The JCC has added additional men-only and women-only swimming hours.  
Men-only - Tuesday night 9:00-10:00 pm; Women-only Wednesday night 9:00 -  
10:00 pm. If you are interested, please attend within the next few weeks, as it  
will not be continued if there are not enough participants.

This Issue of HALOCHOSCOPE has been sponsored by Abby and Judy Mendelson in loving memory of Reuben and Yetta Levine and Nathan and Esther Newman, Zichronom Livrocho.

Any and all comments and suggestions are welcome and can be addressed to :  
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