

HALOCHOSCOPE

Congregation Shaaray Tefillah, Pittsburgh, PA

The question:

May one invest in a company on the stock market which sells non-kosher food products?

The issues to be discussed:

- (A) *Sechorah Bidvar Issur* - dealing in non-kosher foods.
- (B) The Halachic status of stock- and bond-holders.
- (C) *Berairah* - retrospectively deciding the Halachic status of something or someone.
- (D) *Kavanah* - Does intent play a role?

(A) *Sechorah Bidvar Issur*

Anything forbidden to eat may also not be sold even if not as food. This means that those animals in the category of *Shekatzim* (*Beheima Teme'ah* such as pig, *Of Tamei* such as eagle and *Dag Tamei* such as lobster) may not be dealt with commercially. *Shaatznez*, a mixture of wool and linen, although forbidden to wear is not a food, and may be traded. This prohibition is derived by the Talmud from Pesukim. [Parshas Shemini. See Pesachim 23a. Mishna & Yerushalmi Shevi'is 7:3-4.]

Many commentators and Poskim consider this a *Mideoraisa*, forbidden Scripturally, but some say that it is *Miderabonon*, and that the Rabbis merely linked it to the verse (by *Asmachta*). The reason for the prohibition is to reinforce the original prohibition against eating the food. If it is *Miderabonon*, this is a straightforward *Gezaira*, a safeguard or precautionary ordinance. If it is *Mideoraisa*, it would normally be a prohibition in its own right, rather than a precaution against violating another prohibition. However, we do find limitations to this Halacha that appear to have been placed there by the Rabonon. The explanation given here is that it is indeed a *Mideoraisa* but, since the Torah did not detail the applications of its prohibition, it was left to the Rabonon to decide how it should be applied. [See Pesachim 23a, Tosafos and Rosh. Baba Kama 82b Tosafos. Shvi'is 7:3. Tosafos YomTov. Rambam Hilchos Maachalos Asuros 8:16-18, commentaries, Terumas Hadeshen 200. Taz Yoreh De'ah 117:1. Torah Temimah Parshas Shemini, 142. Teshuvos R. Akiva Eger Vol 1 No 74. Vol 2 No 32. etc.]

Included in this prohibition is the trapping and/or sale of living or dead animals. However, if a hunter or trapper who usually tries to catch kosher animals, sometimes lands a non-kosher species, he may sell his catch. For example, if a fisherman tries to catch tuna fish and lands some dolphin, he may sell the meat, but if he purposely catches non-kosher species, he may not sell them. One may sell a live donkey or camel because, although they can be eaten, they are sold primarily as working animals, and their use as meat is a secondary function. If a trapper catches

rabbits for their hides, or if a dealer buys rabbits for their hides, it is questionable if he may sell the meat after skinning them. If, when buying the rabbits, he calculates his profit to include the sale of the meat, he is clearly doing business with Devar Issur. If, however, he knows that he will make a profit by selling the hides alone, then the meat is just an extra, and he may sell it. The reason here is that, although one may not intentionally deal in *Nevaliah*, meat from animals slaughtered incorrectly, if one happens to have a *Nevaliah*, he is clearly allowed by the Torah to sell it to a gentile. Similarly, if one unintentionally came into possession of any other unkosher food, it may be sold. Furthermore, food-products, which Scripturally are permissible but forbidden Rabbinically, may be sold.

In addition to actually profiting from unkosher food, some other forms of benefit are also forbidden. Buying unkosher food to feed one's gentile employees or taking it as security or collateral for a debt are not permitted. If a gentile debtor cannot pay cash and wishes to pay with these items, one may accept them as payment and subsequently sell them. However, if the item is *Assur Behana'ah*, forbidden Scripturally to benefit from, such as a mixture of meat and milk, one may not use it on any account. [See Shulchan Aruch Yoreh Deah 87 & 117]

(B) Stock- and Bond-holders in the Halachic Perspective

Halachically, there is a difference between a stock-holder and a bond-holder: a stockholder is a partner in the company to the percentage of shares that he holds. A bond-holder is only loaning money to the company to do with it as they see fit regardless of his obvious interest in that company. He himself is therefore not doing *Sechorah Bidvar Issur*. Nonetheless, there is an opinion that this kind of loan is plainly included in *Sechorah*. If he has a perfected security interest in a non-kosher item, he could be considered to be taking a security or collateral which would then be forbidden. A stock-holder, however, being a partner, is effectively doing business with Issur. It could be argued, somewhat tenuously, that the investor does not actually handle the Issur; in fact, he does not make a Halachically valid *Kinyan*, Halachic acquisition, on the Issur, so he is not actively violating the prohibition. However, we cannot disregard *Dina Demalchusa*, the Legal Code of the land, which recognizes him as an owner of the company's assets including its wares. There are opinions that say that when the Jew never even sees the non-kosher product, the prohibition is either only *Miderabonon* or totally lifted. This is because the reason for the prohibition is to prevent one from eating the food and here it is unnecessary to take such measures. [See Shulchan Aruch Yoreh De'ah 117. Taz 2 Pischei Teshuva 6. Darkei Teshuva 17,21-22,25.]

(C) Berairah

Usually a Halachic status must be predetermined. An example of this is if someone has two wives, by the same name, and he wishes to divorce one of them, but has not yet decided which one. There is a Halacha that a *Get*, bill of divorce, must be written *Lishmah*, specifically for the woman to be divorced. This means that the husband and scribe must have this woman in mind by name. In this case, may the husband say "I have in mind my wife Rochel bas Yaakov... the one I meet first when I come home"? He has not predetermined the status of the *Get* at the time of writing, but it will be decided in retrospect when he comes home. The Halacha is that *Bideoraisa Ein Berairah*, *Biderabonon Yesh Berairah*, in a question of Scriptural law we do not rely on retrospective determination, but in Rabbinic law we do rely on

it. When a partnership exists, each time the partners divide profits or goods, it is Halachically a division of the partnership. In that case a question arises as to the retrospective status of the goods taken by each party. Do we say that, in retrospect, what "A" received was always his? For example, a Jew and gentile own a food store selling *Chometz* over *Pesach*. If the goods were divided after *Pesach*, we say that the *Chometz* taken by the gentile was his all along and is not forbidden after *Pesach*, [See *Halochoscope* Vol 1 No 12] whereas that taken by the Jew is forbidden. The reason we say this is that, although during *Pesach* it was not decided, since the prohibition of benefitting from *Chometz* owned by Jews over *Pesach* is *Miderabonon*, we apply *Berairah*. Taken a step further, if the store sells both *Chometz* and non-*Chometz* goods, the Jew may benefit from his share of profits by saying that in retrospect the *Chometz* goods belonged to the gentile and all of his own profits came from the sale of the non-*Chometz* goods that were his in retrospect. In our case, if the company does business with both kosher and non-kosher products and has both Jewish and gentile shareholders, the Jewish shareholders may be able to claim that their share is in the kosher products. However, this only works according to the opinions that consider the prohibition of *Sechorah Bidvar Issur* as a *Miderabonon*. Since many authorities consider it a *Mideoraisa* we cannot easily rely on *Berairah* to permit stockholding in such a company unless we follow the opinion that it is no longer *Mideoraisa* once the Jew does not see the Issur. There is an opinion that a Jew may benefit from his partnership with a gentile after the gentile sold non-kosher items without the Jew's knowledge, but that any profits earned after the Jew found out are forbidden. Other methods are suggested by some *Poskim* which would permit someone profiting in a partnership situation, but they are not practically applicable in a shareholding situation. [See *Eruvin* 36b-37b. *Gittin* 25a. etc. commentaries & *Poskim*. *Mishneh Berurah* 448:2. *Darkei Teshuva* 117:17-19.]

(D) Kavanah

There is, however, one possible way out. We have mentioned that one may benefit from the proceeds of a non-kosher animal if one did not intend to trap or buy it but it came into his possession anyway. There is an opinion that even if a trapper intentionally traps both kosher and non-kosher species together, since it is very difficult to catch them separately, if his main intention was for the kosher species, he is also permitted to sell the others. A parallel can be drawn to our case where, even if a Jew protested the company's selling non-kosher products he would be overruled; it is therefore impossible to concentrate on only the kosher products and his main intention is, after all, on the kosher items, so he may take his profits. [See *Sh. Ar. Y.D.* 117 Taz 4. *Aruch Hashulchan* 27. *Darkei Teshuva* 46.]

In summary: If the Jew is a bond-holder in a company that only sells non-kosher items, since he is nowhere near the actual forbidden food and there is less reason to be concerned about his eating it, and the bond is really a loan, it appears to be permissible. If the company also sells kosher products, there is more reason to permit it. If he has a perfected security interest in the non-kosher items, it would appear that he may not profit from this enterprise. If he is a shareholder in a company that only sells non-kosher items, it is highly questionable if he may profit from this. If it is a company that deals with both kosher and non-kosher products, there appears to be a way to permit it.

ANNOUNCEMENTS

SCHEDULE:

SHABBOS MINCHA	8:25 PM
SHACHARIS SUNDAY	8:00 AM
SHACHARIS MONDAY - FRIDAY	7:00 AM
MINCHA SUNDAY - THURSDAY	8:35 PM
CANDLE-LIGHTING SH'LACH	8:28 PM
Plag Hamincha - Earliest time for candlelighting	7:16 PM
MINCHA EREV SHABBOS SH'LACH	7:00 PM

SHIURIM:

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

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