



halachipedia

Halacha meets wiki

Halachos for Professionals

Table of Contents

<i>Preface</i>	1
<i>Balancing Hishtadlut and Bitachon in the Workplace (Ike Sultan)</i>	1
<i>Earliest Time to Daven (Judah Kerbel)</i>	4
<i>Entering a Non-Kosher Restaurant (Ariel Schreier)</i>	5
<i>Paying Workers on Time (Judah Kerbel)</i>	6
<i>Shmitat Kesafim and Pruzbul (Dani Yaros)</i>	7
<i>Ribbis for Corporations (Ike Sultan)</i>	9
<i>Hasagat Gevul and Unfair Competition (Dubbin Hanon)</i>	11
<i>Onaa (Dubbin Hanon)</i>	13
<i>Tearing Keriya for a Patient (Natie Elkaim)</i>	16
<i>Negiah and Yichud Issues (Alex Mermelstein)</i>	17
<i>Taking Money for Learning and Teaching Torah (Robbie Schrier)</i>	18

Preface

With Hakadosh Baruch Hu's kindness we succeeded in compiling an interesting and extensive collection of articles on halachos for professionals. In an effort to spread Torah and understand the complex topics of halachos for professionals in a new light, we have chosen to share this packet with you. As we reach this milestone, it is without doubt due to certain individuals who deserve proper recognition. Firstly, we would like to thank Rosh Yeshiva, Rabbi Mordechai Willig for reviewing the Halachos of this packet. We would like to thank the editors who spent a lot of time researching the topics and working on the articles. Our editors include: Ariel Schreier, Dubbin Hanon, Russell Spiewak, Ike Sultan, and Jeremy Perlow. Ben Sultan designed the cover. The printing was thanks to SOY and its prestigious board members including: Tuvya Miller, President, Shua Brick, VP, Jonah Sieger, MYP VP, Ben Barel, JSS VP, Michael Levy, BMP VP, Gavriel Rudansky, IBC VP.

Balancing Hishtadlut and Bitachon in the Workplace (Ike Sultan)

Please note: The concepts underlying Bitachon and how it integrates with a person's life are, on the one hand, equally relevant to every individual and guided by the timeless values of Torah,¹ while, on the other hand, need to be applied by each person according to his intellectual and emotional temperament.²

¹ The Meshech Chochma (Devarim 10:20) points to the pasuk "וְיָבוֹר תְּדַבֵּק" as the source for having Bitachon. Rabbi Mayer Twersky ("[Bitachon - Lema'aseh Applications](#)") added that perhaps some Rishonim considered Bitachon to be encapsulated in the mitzvah of Tefillah, which critically hinges upon recognizing our dependence on Hashem. For sources about hishtadlut, see Beresheet 3:19 and note 5.

² The Gemara Taanit 21a tells the story of Ilfa and Rabbi Yochanan, who learned together.

When their situation seemed financially unsustainable they went to go into business. When Rabbi Yochanan overheard an angel threatening to kill them, he returned to learning and said that instead he wanted to fulfill the pasuk that says there will be poor people in your midst. He asked his friend Ilfa if he also heard the angel and when got a negative response he decided that the message was only for him. It seems that the solution for one person isn't necessarily the correct one for everyone;

1. If a person is presented with a decision to move for prospects of work to a town with a Jewish community that he deems may not be conducive for his spiritual growth, he should consult with his rebbe about the cost-benefits involved.³
2. Should a person interrupt a chavrusa for a business opportunity?⁴ A person should create a fixed period of time to learn each day during which he wouldn't interrupt even for a business deal.

sometimes Hashem sends us individualized messages.

³ The Chovot HaLevavot (Shaar HaBitachon Introduction) speaks about an ascetic who traveled to a distant place to earn a livelihood. He met an idolater there and told him how foolish serving idols was. In response, the idolater told the ascetic "your actions contradict your words. If you trust Hashem, couldn't He provide for you in your hometown?" With that, the ascetic went home and didn't leave for the purposes of earning a livelihood. The Chovot HaLevavot goes on to point out that the person with Bitachon who decides not to travel for a livelihood benefits in increased peace of mind and avoids physical difficulties (though the difficulty of travel has changed over the last thousand years). [See Mishneh Halachot 8:247 who uses this story from Chovot Halevavot to argue against going to college for parnasa purposes]. This idea of not traveling in order to earn a livelihood is echoed by Rav Yitzchak Elchanan Spector advising against moving for increasing one's parnasa (Orchot Petachya p. 16, Rav Mordechai Eliyahu on harav.org).

Rabbenu Tam (cited by the Mordechai Shabbat no. 258 and Hagahot Mordechai no. 444) writes that earning a livelihood is certainly a mitzvah and therefore livelihood necessities warrant leaving before Shabbat on a ship that will travel on Shabbat. The Ravyah (ibid.) and Rama 248:4 agree. The Bet Yosef 248:4 argues that the Rambam and Rif don't seem to hold of this as a sufficient mitzvah to allow for such a leniency. He explains that the leniency to leave on a ship that travels on Shabbat that departs beforehand for a mitzvah purpose is that if one is involved in performing a mitzvah, one is exempt from other mitzvot at that time (*osek b'mitzvah patur min hamitzvah*). That is, if a person leaves to make Aliya, he is exempt from Oneg Shabbat while traveling on a boat on Shabbat. However, being involved in a livelihood doesn't qualify to

be considered *osek b'mitzvah*. Aside from the explanation of the Beit Yosef regarding travel on Shabbat, during the week, potentially all of these rishonim could agree that traveling for the purpose of a livelihood is appropriate.

Rabbi Twersky in a shiur on Bitachon and Parnasa mentioned that even if we can't draw upon the Chovot HaLevavot for direct application today, perhaps a relatable example is moving to a small community where there is no Orthodox Jewish presence (i.e. in a shul or school) for the purposes of work.

⁴ Beit Shamai (Avot 1:15) famously stated "עושה תורתך קבע" - make your Torah learning fixed. Rashi ad loc explains that a person should specify an amount of learning to do each day, such as 4 or 5 perakim. Rav Acha would make up whatever he didn't learn of his regular quota each night (Eruvin 65a).

The Tur and Shulchan Aruch 155:1 rule that before going to work a person should set aside a time to learn each day and not miss it. Even if a person thinks he will miss a valuable business opportunity during that time, once he designated a time to learn, he shouldn't give up his scheduled learning. While the Bet Yosef cites no source for this ruling, the Biur HaGra points to Sanhedrin 99b which states that a person who learns inconsistently won't have clarity or success in learning. Mishna Brurah 155:5 supports this approach from the Yerushalmi Sotah 9:13, which states that a certain teacher turned down a business opportunity in order to keep to his set time for learning and proclaimed that if Hashem wanted him to have the money Hashem would give it to him another way. The Yerushalmi praises this person as being a man of Emunah.

Similarly, Rav Safra (Rashi Macot 24a s.v. Rav Safra) once was in the middle of saying Kriyat Shema when he was offered to sell one of his merchandise. In his concentration, he didn't answer at all. By the time he finished, the buyer

3. Does buying life insurance show a lack of Emunah?⁵ The consensus of the poskim is that it is permitted to buy life insurance, and that is considered a normal measure of effort and doesn't express a lack of faith in Hashem.

thought he wouldn't sell it unless he offered a higher price, so he offered a higher price. Rav Safra, however, took the lower price because he didn't plan on negotiating. The gemara praises him for being honest. It is also noteworthy that Rav Safra didn't interrupt the mitzvah even though he potentially could have lost out on the business deal.

⁵ Kiddushin 30b derives from a pasuk in Kohelet that there is an obligation to teach one's son a trade. This is strengthened by the Mishna Avot 2:2 which, according to Rashi, Rambam, Rabbenu Yonah, and Rav Ovadya M'Bartenura, endorses both working and learning in order to overcome the distractions of the yetzer hara (See Chatom Sofer ad loc for a homiletic explanation of the mishna.) Additionally, that seems to align with the opinion of Rabbi Yishmael in Brachot 35b, which was successful for most people. See further the gemara Brachot 8a, which puts work for a living in an extremely positive light. Shulchan Aruch 156:1 rules like the opinion of Rabbi Yishmael and the Mishna Avot according to the above explanation.

It is important to note that the Mishna Brurah 156:2 explains that in order to ensure that one's Torah learning is primary one should only work to the point that is absolutely necessary for his expenses. In order to avoid overworking, he advises thinking about how much a person would work to finance the minimal living expenses of someone who couldn't work and make the same amount for yourself. Though the Mishna Brurah cites no source for this explanation, perhaps it was clear to him. Additionally, it seems that this is in line with the teaching of Chazal (Sotah 48b) that a person who has sufficient money for sustenance today

and is worried about tomorrow's lacks emunah! Lastly, the stories told about the author of the Mishna Brurah indicate that he personally fulfilled his understanding of balancing hishtadlut and Torah learning (Michtav M'Eliyahu v. 1 p. 35).

Based on these sources, Rav Moshe Feinstein (Igrot Moshe OC 2:111) was asked whether it would constitute a lack of emunah to buy life insurance, since it is effectively ensuring one has assets for family and descendants not only tomorrow, but years later. He explains that since it is forbidden to rely on miracles we have to work for a parnasa, and since buying insurance is like any other business investment, there's no issue.

Yechave Daat 3:85 points out that the Maharsha (Sotah 48b s.v. pasku) writes that this gemara is speaking about the level of someone who goes above and beyond the letter of the law in his emunah, but even the tzaddikim would sometimes worry about this. He also garners support from Tosfot (Kiddushin 41a s.v. asur) who permits marrying off a minor girl if a person can afford it today, because who knows whether he'll be capable tomorrow. Teshuvot V'hanhagot 4:325 and Rav Elyashiv in Kovetz Teshuvot 1:19 agree also permitted buying insurance.

Yet, the Chazon Ish is quoted (in his biography Pe'er Hador v. 4 p. 96) as having advised against buying life insurance because it might remove a motivation for Hashem to extend his life. While he is necessary for the finances of his family Hashem might extend his life, but with insurance that reason is diminished.

Earliest Time to Daven (Judah Kerbel)

1. The earliest time to put on *Tzitzit*⁶ and *Tefillin*⁷ with a *berakha* and to recite *Shema*⁸ is at the time at which one could recognize an acquaintance from a distance of four *amot* (*misheyakir*). This time is around 50 minutes before sunrise.⁹
2. While some say that one can make a *berakha* on *Tzitzit* from *alot hashachar* onwards,¹⁰ it is preferred to wait until *misheyakir*.¹¹ If one puts on *Tzitzit* before *alot HaShachar*, he should not recite a *berakha* until the proper time, and should feel the *Tzitzit* after making the *berakha* once the proper time arrives.¹²
3. One who will incur significant loss by not donning *Tefillin* earlier than *alot hashachar* may do so,¹³ and seemingly in any situation in which one would not be able to do so the rest of the day.¹⁴
4. One who needs to travel before *alot hashachar* should wait until the proper time to don *Tefillin*.¹⁵
5. If one begins to daven before *misheyakir* with *Tallit* and *Tefillin* on, one should wait to make the *berakhot* until between *Yishtabach* and *Kaddish*.¹⁶
6. One should avoid saying *Yotzer Or* before *misheyakir*.¹⁷

⁶ Mishnah Berurah 18:9. Although the Shulchan Arukh 18:3 writes that the proper time is when one can distinguish between the blue and white of the *Tzitzit*, the Mishnah Berurah explains that this is the same time as the time for *Tefillin* and *Shema*.

⁷ Shulchan Arukh Orach Chayim 30:1. It is important to note that the reason for this is that Chazal forbade one from wearing *Tefillin* at night out of concern that one would fall asleep while wearing them (see 30:2), as this will impact the possibility of leniency in some situations.

⁸ Shulchan Arukh Orach Chayim 58:1.

⁹ Piskei Teshuvot 30:1. Myzmanim.com lists the earliest time for *Tallit* and *Tefillin* as approximately 50 minutes before sunrise. Some are lenient and allow one to do so an hour before when there is a pressing need. Rav Hershel Schachter (Zmanim in Halacha on yutorah.org, min 68-70) says that Rav Moshe held *misheyakir* is between 35-40 minutes before sunrise and seems to agree with him, although he mentions that some say it's 55 minutes before sunrise.

¹⁰ Rama OC 18:3. The Arukh HaShulchan (OC 18:9) seems to agree with this view without reservation.

¹¹ Mishnah Berurah 18:10.

¹² Rama OC 18:3.

¹³ Igrot Moshe OC 1:10. Rav Moshe Feinstein writes here that one who will lose more than one-fifth of his income by not

accepting work that requires such early hours ought to put on *Tefillin* with a *berakha*, since it is not worth losing a positive commandment due to a rabbinic prohibition. In this situation, the reason for Chazal's ruling does not apply since there should be no reason to be concerned that he will fall asleep. Rav Hershel Schachter (in personal conversation) noted that this *teshuva* was written during the Bolshevik regime, in which work opportunities were severely limited, so this dispensation may have a limited application in contemporary times.

¹⁴ Piskei Teshuvot 30:1. An example given here is if one must undergo surgery and will not be able to fulfill the mitzvah later. One should not make a *berakha* before *misheyakir* in such situations.

¹⁵ Mishnah Berurah 30:14. While the Shulchan Arukh allows donning *Tefillin* before *alot hashachar* and making the *berakha* at *misheyakir* for one who needs to travel, this would only seem to apply when one is travelling by foot. However, as we tend to travel by vehicle, there is still a concern that one may fall asleep when sitting while wearing *Tefillin*. The Arukh Ha-Shulchan (OC 30:5) agrees with this view.

¹⁶ Rama OC 54:3, Piskei Teshuvot 30:1.

¹⁷ Mishnah Berurah 58:17. Piskei Teshuvot (58:10) notes that some are lenient when it is unavoidable. However, Beur Halakha (s.v. Zeman Kriat Shema) notes that this discussion

7. One who cannot avoid reciting *Shema* before *misheyakir* may do so after *alot hashachar*.¹⁸ This applies to one who needs to do so in order to make a living.¹⁹
8. The most preferable time to say *Shemoneh Esrei* is at sunrise.²⁰ However, one may do so from *alot hashachar* at the earliest.²¹ One may certainly say *Shemoneh Esrei* after *misheyakir*, even if it is before sunrise.²²
9. It is preferable for one to daven with a minyan before sunrise than to daven alone after sunrise. Even if one can daven with a minyan after sunrise, but must begin work before sunrise, it is better to daven before sunrise.²³ If presented with no other choice, one may daven in order between *alot hashachar* and *misheyakir*, while having in mind to fulfill the mitzvah of *Shema* after *misheyakir*, and to put on *Tallit* and *Tefillin* at that point as well.²⁴

Entering a Non-Kosher Restaurant (Ariel Schreier)

Is it permissible to enter a non-kosher restaurant for a business meeting or the like?

1. There are two issues to consider when entering a non-kosher restaurant: people seeing you might think that the food must be kosher or they might think that you aren't careful about halacha.²⁵
2. For these reasons, some poskim hold that it is forbidden to enter a non-kosher restaurant. Other poskim hold that it is permissible since everyone will know that a religious Jew entering a non-kosher restaurant isn't going in to eat non-kosher, he is probably just going in for a drink or for business.²⁶

may be irrelevant for men if they are going to only say *Pesukei D'zimra* before *misheyakir* and say the *berakha* on *Tzitzit* and *Tefillin* before *Yotzer Or*, and certainly it is preferable to not begin davening until one can make the *berakha* on *Tzitzit* and *Tefillin*.

¹⁸ Shulchan Arukh OC 58:3.

¹⁹ Rav Hershel Schachter (in his daily halakha chabura).

²⁰ Shulchan Arukh 89:1 from Gemara Berachot 26a.

²¹ Shulchan Arukh 89:1, 8. Mishnah Berurah (89:4) notes that this may be *lekhatchila* for those who have no other choice, but for one who could say *Shemoneh Esrei* later he would only fulfill his obligation *b'diavad* by davening early.

²² Piskei Teshuvot 89:4.

²³ Piskei Teshuvot 89:4, Chazon Ish (Ishei Yisrael 13:note 21)

²⁴ Piskei Teshuvot 89:4. Wherever possible, Piskei Teshvot stresses, one should daven in the proper times. The Mishnah Berurah (89:42) and Arukh Ha-Shulchan (89:31) affirm that our practice is not to daven *Shemoneh Esrei* (before *misheyakir*) before *Shema* (after *misheyakir*), since it is preferable to connect the blessing of

redemption (*ga'al Yisrael*) with *Shemoneh Esrei*.

²⁵ Gemara Krisos 21a says that drinking fish blood technically is permitted. But once it is gathered in a bowl it is forbidden since it looks like animal blood. Rashi explains that if a person is seen drinking fish blood people will assume that it is permitted to drink any type of blood.

The gemara Shabbos 64b states that it is forbidden to let your cow out on Shabbat wearing a bell because people will think that it is being brought to be sold in the marketplace on Shabbat. The gemara also says that whenever *marit ayin* is forbidden it is forbidden even indoors and in private. Rashi s.v. "Kol" explains that *marit ayin* is essentially a concern that others will think that you aren't keeping halacha. Similarly, see Avos DeRabbi Natan perek 2 which says that it is forbidden to converse with one's sister or daughter in the marketplace so that people don't suspect one of wrongdoing.

Sefer Chasidim (siman 44) says that it is lifnay iver to do suspicious activity because this will lead others to be choshed b'kasherim when people wrongly suspect you of violating halacha.

²⁶ Igrot Moshe OC 2:40 writes that it is forbidden to enter a non-kosher restaurant even

Paying Workers on Time (Judah Kerbel)

1. Paying workers in a timely fashion is a biblical *mitzvah*.²⁷
2. The obligation to pay an employee who finishes the work during the day commences at the beginning of the night, and the employee must be paid by dawn. Conversely, if the employee finishes the job at night, the obligation commences at the beginning of the morning, and the employee must be paid by sunset.²⁸ However, if the employee who works during the day finishes before the day ends, the employee must be paid by sunset.²⁹
3. When the employee earns a salary at the end of agreed upon periods, the employer must pay by that date.³⁰
4. If the employee does not expect or demand the payment at the specified period, the employer is exempt from paying.³¹

to get a drink of water because of the *marit ayin* that a person is going to eat non-kosher. However, he adds, if a person is very thirsty it is permitted if there are no Jews around, like the Gemara Ketubot 60a allows certain cases of *marit ayin* to avoid pain or hunger.

See Rav Moshe OC 1:96 who writes that it is totally permissible to ride in a car to shul within the 18 minutes of candle lighting as long as there is ample time before sunset to arrive at shul and not violate Shabbat. Even though some people might mistakenly think that it is forbidden even for men to do *melacha* after the women light candles, there is no *marit ayin* since they can learn the truth. However, nonetheless Rav Moshe took upon himself *bli neder* not to drive within the 18 minutes to avoid people getting the wrong impressions about the gravity of Shabbat. In this context, Rav Moshe felt that something that was widely known to be permitted wasn't *marit ayin*.

Rav Asher Weiss (Minchat Asher responsa YD 1:67) is lenient to allow Jews to go to business meetings in non-kosher restaurants based on two factors: 1) We shouldn't invent new cases of *marit ayin* that *chazal* didn't forbid and perhaps this would constitute a new case of *marit ayin* (See Pri Chadash OC 461 and YD 87:7) 2) *Marit ayin* is relative to the time and place. Since everyone knows that a religious Jew wouldn't go into a non-kosher restaurant for a meal, and he is likely just going in for a business meeting, there is room to be lenient. This is based on the Shulchan Aruch YD 298:1 who permits wearing garments made from wool and silk and there's no *marit ayin* of *shatnez* because

everyone knows that silk is different than linen, even though in the days of *chazal* this was forbidden because of *marit ayin*.

²⁷ Shulchan Arukh Choshen Mishpat 339:1. The *Sema* there explains that the Talmud (Bava Metzia 111a) derives this from the verse, "At his day you shall give him his hire, nor shall the sun go down upon it; for he is poor and sets his heart upon it; lest he cry against you to the Lord, and it should be sin to you" (Devarim 24: 15). While there are potentially five biblical prohibitions in delaying pay, the *Sema* notes that the Rambam, Tur, and Shulchan Arukh only list one, as five only apply when one does not plan to pay at all (see 339:2). There is also the verse "the wages of he who is hired shall not remain with you all night until the morning" (Vayikra 19:13). Thus this *mitzvah* is often known as *bal talin*.

It is important to emphasize that the reason for the *mitzvah* is integral to the *mitzvah* itself. A guiding factor in this topic should be that people work to make a living, and withholding that living is unfair and immoral, unless, as we will see, the employer and employee operate on consensual terms.

²⁸ Shulchan Arukh Choshen Mishpat 339:3. Although the technical obligation is to pay by dark, since it is not precisely clear when it first gets dark *halakhically*, it is best to pay by sunset (Rabbi Ari Marburger, *Business Halacha*, p. 176).

²⁹ *Ahavat Chesed* 9:2.

³⁰ *Business Halacha*, p. 176.

³¹ Shulchan Arukh Choshen Mishpat 339:9-10. For example, if the employer is up front that he/she is unable to pay immediately and the

5. If the task has been completed, but the item has not been given to the employer/client, the obligation to pay is not yet in effect until the item is turned over to the employer/client.³²
6. Corporations are not subject to the prohibitions of delaying payment.³³ Managers are also not subject to this prohibition unless the wage is being withheld for personal purposes.³⁴
7. Paying by check would not subject one to any violations, unless the employer stipulates payment by cash and that is the norm in that profession.³⁵
8. Partial payments are subject to the prohibition of delaying payment.³⁶
9. If an employer delays payment illegally, the prohibition only applies at that moment and is not continuous. However, the employer still must pay as soon as possible.³⁷

Shmitat Kesafim and Pruzbul (Dani Yaros)

1. There is an obligation for one to forgive all of their loans upon the completion of the shmita year.³⁸ The most recent shmita year was 5775, the coming one will be 5782.
2. Unlike shmitat karka, the isur to work the land during the shmita year, which is only an obligation in Israel, the obligation of shmitat kesafim applies both in Israel and the diaspora.³⁹
3. There is a machloket amongst the Rishonim whether the obligation of shmitat kesafim nowadays is diorayta, dirabannan, or a midat chasidut (a stringency).⁴⁰ While most Rishonim hold it is dirabannan, we assume it is midat chasidut.⁴¹
4. If a borrower offers to pay back a loan after a shmita year has passed, the lender is obligated to say ‘mishameit ani’ (i.e. I forgive the loan). However, after technically forgiving the loan, the borrower is supposed to pay back the loan nonetheless.⁴² If the borrower does not agree to pay back after the lender says mishameit ani, the lender may

employee consents, the employer does not need to pay at the end of the period.

³² Shulchan Arukh Choshen Mishpat 339:6.

³³ *Business Halacha*, p.184.

³⁴ *Business Halacha*, p. 185, based on *Mishnas R' Aharon* (Volume 2, Responsa 73:3). Rabbi Marburger notes, though, that a manager is responsible so long as he or she has the ability to pay; the manager need not use personal money if the company funds are not available.

³⁵ *Business Halacha*, p. 186-187. There is a discussion among *poskim* about whether or not the bank has to be open in order for the prohibition of delaying payment to not be in effect (see Rabbi Moishe Dovid Lebovits, *Halachically Speaking*, Volume 4, p. 373-374).

³⁶ *Ahavat Chesed*, 9:10.

³⁷ Shulchan Arukh Choshen Mishpat 339:8, based on the verse “Say not to your neighbor, Go, and come back, and tomorrow I will give, when you have it by you” (Proverbs 3:28).

³⁸ The Torah (Devarim 15:1) and Gemara (Erchin 28:) state this obligation.

³⁹ Talmud Yerushalmi (Shviit 10:2)

⁴⁰ The Ramban (Milchamot to Gittin 36) writes that it is diorayta, the Rambam (Shmita 9:3) writes that it is a mitzva dirabannan, and the Raavad (to Gittin 36) writes that it is a midat chasidut.

⁴¹ The Shulchan Aruch (C.M. 67:1) writes that shmitat kesafim is dirabannan, but the Rama writes that, while most rishonim agree that it is dirabannan, the common practice is to assume that it is a midat chasidut. The Rama quotes a second suggestion, that the common leniency is based on the Terumat Hadeshen (304), who suggests that shmitat kesafim only applies in Chutz Laaretz in lands which are immediately adjacent to Israel (‘aratzot hasmichot’), however, as mentioned above, that is not commonly assumed.

⁴² Shviit 10:8-9, Gittin 37b

make it implicitly clear to the borrower that he wishes to receive the money. Some say that the lender may physically force the borrower to pay him back.⁴³

5. One may write a pruzbul document permitting the collection of loans even after the shmittah year has begun.⁴⁴
6. The pruzbul must be written before the end of the shmittah year.⁴⁵
7. For a pruzbul to be effective, the borrower of the money must own land.⁴⁶ If the borrower does not own land, the lender should give a small piece of land to him either as a gift or as a temporary loan⁴⁷ (until after Rosh Hashanna of the 8th year) so that the pruzbul can take effect.
8. A lender only needs one pruzbul for all loans, even for multiple borrowers.⁴⁸

⁴³ The Gemara (Gittin 37b) states that if after a lender says *mishameit ani*, the borrower does not pay back the loan, the lender may be ‘*tali lei*’ until he agrees to pay back. There is a *machloket* amongst the *rishonim* about what ‘*tali lei*’ means. Rashi (D”H *vitali lei*) writes that the lender may even hang the borrower from a tree (*tali*= hang [on a tree]), or use other physical force, to get back the loan. The Rosh (4:19) however, writes that the lender may merely make it clear that he wishes that the money be returned, he cannot however, physically force the borrower (*tali*=hang [his face in longing for the money]). Furthermore, the Rosh adds that if the borrower refuses to pay, the lender would have no recourse, and would have to suffer the loss of the money. The Shulchan Aruch (C.M. 67:36) paskins like the Rosh (as the Beit Yosef *ibid.* makes clear). The Shach (11) however, accepts Rashi.

⁴⁴ The Gemara in Gittin (36) states that when Hillel saw the masses violating the rules of *shmitat kesafim*, he instituted that one may write a pruzbul. There is a *machloket* *Rishonim* on how to interpret the Gemara’s heter of pruzbul. Rashi (36b D”H *Rava amar*) writes that even if *shmitat kesafim* were *diorayta* pruzbul could work via the mechanism of *hefker beit din hefker* (which is a *diorayta* concept that allows *beit din* to declare any person’s property as ownerless). *Tosafot* (Gittin 36a D”H “*Mi*”) however, thinks that *shmitat kesafim* is only *dirabannan* nowadays, and thus Chazal were able to institute a mechanism to circumvent it (‘*heim amru viheim amru*’). Tangentially, it is important to emphasize that while Hillel did recognize a halacha which was challenging to keep, and identified a way to circumvent it, he did so by working through pre-existing valid

halachic principles. However, Hillel would not have been able to simply remove a halacha because people found it difficult, without working through halachic principles.

⁴⁵ There is a textual discrepancy (question of *girsat*) in the Tosefta (Shviit 8:11), and while the Rosh (Gittin 8:11) writes that a pruzbul must be written during the 6th year (a.k.a. before Rosh haShanna of the *shmita* year), the Rashba (*teshuva* 2:314) and others write that it can be written even during the seventh year. The Shulchan Aruch (C.M. 67:31) paskins like the Rashba. However, the Shulchan Aruch Harav (*Halvaah* 36) says that *lichatchila* one should be *machmir* like the Rosh. While some are stringent for the opinion of the Rosh, the common practice appears to be to follow the opinion of the Shulchan Aruch, to only write a pruzbul before the end of the *shmita* year itself.

⁴⁶ Mishna Shviit 10:6, Gittin 37a. The *Pitchei Teshuva* (C.M. 67:4) writes that practically, only a person who is literally homeless, or could be kicked out of his living quarters (such as a person who lives in a dormitory or by their parents) would be considered not to own land. Presumably, one who rents an apartment, and must be given fair warning before he can be removed, is considered to own land for the purposes of pruzbul.

⁴⁷ One way to perform such a sale is through a *kinyan sudar*, akin to the *kinyan sudar* performed when one appoints a rabbi to sell their *chameitz*. In this case the borrower (or his representative) would give an object (such as a pen, handkerchief, etc.) to the lender, for which the lender would give a small portion of land to the borrower.

⁴⁸ Mishna Shviit 10:5

9. Ashkenazim may write a pruzbul in any beit din, but Sephardim require real judges knowledgeable in monetary law.⁴⁹ There is a question whether the beit din has to be present when one writes the pruzbul.⁵⁰ To fulfill the maximum number of opinions, some nowadays write two pruzbuls when the one writing the pruzbal is unable to appear before a beit din of real judges knowledgeable in monetary law.⁵¹
10. An English⁵² translation of the text of the pruzbul⁵³ follows: “I declare to you, so-and-so the judges of such and such a place, that any debt that I have outstanding, that I may collect whenever I wish.” The judges sign the bottom of this document.⁵⁴ Practically, various batei din (such as the RCA) put out copies of a pruzbul before the end of the shmita year, which contains the necessary text for a pruzbul, and one needs to merely follow their instructions.

Ribbis for Corporations (Ike Sultan)

1. It is forbidden to charge or take interest from an individual Jew or group of Jews. Some poskim allow borrowing or lending on interest to a partnership of Jews and non-Jews if the non-Jews comprise at least half of the group to which one is lending or from which one is borrowing.⁵⁵

⁴⁹ The Gemara (36b) quotes Shmuel who adds that one may only write a pruzbul in a beit din like that of Sura and Naharada. There is a question amongst rishonim what qualifies as such a beit din. Rashi (ibid. D”H lo katvinan) writes that the beit din must be authoritative enough to extract money by force. Rabeinu Tam (Tosafot ibid. D”H dialimi) writes that one merely requires a preeminent beit din of a generation, even if they cannot extract money. The Sefer Haterumot though says that the beit din has to be knowledgeable in monetary law, hilchot shmitat kesafim, and must be officially appointed judges.

There is also a question whether we paskin like Shmuel. While the Rambam (Shmita V’Yovel 9:17) paskins like Shmuel, the Tur (C.M. 67) writes that we do not paskin like Shmuel, and a pruzbul may be written in any beit din. The Shulchan Aruch (67:18) paskins like Shmuel, but accepts the version of the Sefer Haterumot. The Rama paskins like the Tur, so one may write a pruzbul in any beit din.

⁵⁰ This depends on two readings of a Talmud Yerushalmi (Shviit 10:2), brought by Rav Chaim Kanievsky in his peirush.

⁵¹ One pruzbul has the names of a beit din of great judges who are not present, satisfying the opinion that one needs a great beit din, but not the opinion that one needs to literally stand in front of the beit din. The second pruzbul

contains a beit din of three regular men, which does not fulfill the requirement of being the greatest beit din of the generation, but does fulfill the requirement of being in front of the beit din. Many rely on the Rama and write a pruzbul in front of three regular men.

⁵² Translation from www.emishnah.com

⁵³ Mishna Shviit 10:4

⁵⁴ How this declaration halachically works was described above in the previous halacha; why logically this should work is beyond the scope of this packet.

⁵⁵ The Shoel V’Nishal (Mahudra Kama 3:31) writes to Rav Shlomo Ganzfried, author of the Kitzur Shulchan Aruch, that he held that it was permitted to borrow or lend with interest from a partnership between Jews and non-Jews. He thought that since the partnership signs under the title of an entity and not individuals it is permitted according to Rashi and those who hold that lending on interest through a messenger is permitted. Further, even according to those who argue with Rashi, he thought that it was permitted if there are non-Jews in the group so that the Jews can say that they only profited from the non-Jewish borrowers and not the Jewish borrowers. Rav Yitzchak Schmelkes in Beis Yitzchak (v. 2 Kuntres Acharon no. 32) qualifies the Shoel V’nishal’s permit to cases where there are a majority or at least half non-Jews. Mishneh Halachot 6:145 and 13:130

2. Some poskim say that it is permitted to lend or borrow on interest from a corporation even if it is owned by Jews because halacha views the corporation as a dummy entity that isn't Jewish.⁵⁶ Others say that it is only permitted to lend on interest from the corporation but not borrow on interest from them, while others still forbid both borrowing and lending with interest from a Jewish corporation.⁵⁷

permits borrowing or lending from banks that have a minority of Jewish shareholders because the Jewish shareholders don't have a say in how the bank runs. The Maharam Shik YD 158 argues with the Shoel V'nishal's logic; see there for his leniency with other conditions.

⁵⁶ Rav Tzvi Pesach Frank in Har Tzvi YD 126 explains that since the national Israeli bank isn't backed by individuals, it may borrow or lend on interest because the Torah only forbade a lender from taking interest from a borrower, but here there is no owner of the bank funds. He draws support from the Maharit Y.D 45 who permits having someone donate money to charity so that the money is perpetually used to lend on interest and the interest is given to the poor because no one actually owns the money in the fund, neither the donor nor the poor.

The Rogachover (Tzafnat Pane'ach 184) wrote that the banks aren't considered partnerships of individuals, rather they are generally considered like a form without a body. In other words, the Rogachover thought that money of a corporation doesn't belong to any individual and as such there would be no issue of taking interest from the corporation.

⁵⁷ Igrot Moshe YD 2:63 thought that the prohibition of borrowing with interest does not apply to a corporation. Since no one person has personal liability for the loan, the corporation may pay interest. He based this contention on the opinion of Rabbenu Tam (cited by Tosfot Ketubot 85b) who says that there are two types of indebtedness: a lien on one's property and a personal one. Rabbenu Tam holds that if a person forgives the borrower and relinquishes the personal lien even if there still is a property lien that was sold to another person, that

property lien automatically falls apart. Accordingly, one may receive interest from a bank or invest in bonds or stocks of a corporation, though one still would not be allowed to borrow from a corporation.

Maharshag YD 3 brought a proof that there is no biblical ribbit to charge a corporation interest from the Gemara Gittin 30a that permits giving money in advance to a kohen so that the next time a person has a crop he can take off Trumah, sell it to kohanim, and then the proceeds are effectively given to the kohen and used to pay off part of the debt so that the owner can keep the proceeds of the sale. The gemara explains that even though there is a rabbinic prohibition of interest to pay in advance for food that hasn't grown and there's no market price, here it is permitted since the kohen borrower has no real obligation to pay out of pocket according to the original stipulations. The Chelkat Yakov YD 66 grapples with the Rogachover and Maharshag but ultimately says that it is forbidden rabbinically even though there is a good logic to permit it. Rav Zalman Nechemya Goldberg (Shiurei Ribbit p. 8) questioned the proof of the Maharshag because the risk factor that the debtors won't pay the bank isn't as great as the risk that a field gets ruined. Minchat Shlomo 1:28 argues with Rav Moshe and isn't lenient in either direction.

Lastly, Rav J. David Bleich in Netivot HaHalacha v. 2 p. 191-4 disagrees with Rav Moshe that it is impossible to have a shiybud nechasim without shiybud haguf. If there exists a shiybud it also applies to the guf even though there is some external conditions which make it impossible to collect from the shiybud haguf.

Hasagat Gevul and Unfair Competition (Dubbin Hanon)

1. There is a lot of discussion in the poskim regarding opening a competing business.⁵⁸ Nowadays, although it may sometimes be preferable not to open a competing business,⁵⁹ it is permissible for a competing business to open near a preexisting business and sell the same products. One business may even advertise and offer incentives to attract customers,⁶⁰ provided that the newcomer lives in or pays taxes to that city.⁶¹
2. However, if the newcomer threatens to cut off the income of the original tradesman entirely, many rule that the incumbent has the right to prevent the competitor from opening his business.⁶²

⁵⁸ The Gemara in Makkot (24a) derives the prohibition from the verse “he did not perform evil with his neighbor” (Tehillim 15:3), whereas the Gemara in Sanhedrin (81a) derives the same idea from the verse “he defiled his neighbor’s wife” (Yechezkel 18:6). The Gemara Yevamot 76b compares one who takes the livelihood of someone else away to a murderer. Rambam (Teshuva 273) says you are in violation of מסיג גבול רעהו (Devarim 27:17). Maharshal Teshuva 89 also applies this pasuk to the concept of encroaching on someone’s business unfairly. Terumat Hadeshen (128) writes that this is a rabbinic prohibition, but Chatam Sofer (CM 79) says it is from the Torah. See Chazon Ish Emunah U’Bitachon 3:15 regarding the faith someone who is facing competition should have.

⁵⁹ Pitchei Choshen Hilchot Geneva ViHona’a 9:1, S”A Harav Hilchot Hefker Vihasagat Gevul Seif 13, Chavot Yair 42. The prohibition of being יורד לאומנות חבירו, literally “descending to another’s profession,” or illegal competition, is derived from two distinct verses.

⁶⁰ S”A CM 228:18, [Rabbi Eli Mansour Dailyhalacha.com](http://www.dailyhalacha.com), Pitchei Choshen Hilchot Geneva ViHona’a 9:3. However, one may not speak lashon hara about his competitor’s product (Chafetz Chaim Hilchot Lashon Hara Klal 5: Halacha 7). See [Advertising and Promotional Activities as Regulated by Jewish Law](#) by Rabbi Dr. Aaron Levine

⁶¹ Pitchei Choshen Hilchot Geneva ViHona’a 9:2. The Gemara (Baba Batra 21b) addresses a situation whereby one operates a mill in a mavoy (alley), and another wishes to open a similar establishment in the same mavoy. Rav Huna asserts that the owner of the first mill may prevent the newcomer from opening, as the newcomer will interfere with the incumbent’s

livelihood. Rav Huna son of Rav Yehoshua argues that the first miller cannot prevent the newcomer from opening as long as the newcomer is from that town or at least pays taxes to that town. Rashi d”h “Shani Dagim” explains that the competitor can claim that “Whoever will come to me will come to me, and whoever will come to you will come to you.” Rif (Baba Batra 11a in pages of Rif), Rambam (Hilchot Shechenim 6:8), and Rosh (Baba Batra 2:12) follow the latter opinion, and this is the ruling of the Tur and S”A C”M 156:5.

Rama (based on Tosafot Baba Batra 21b “vi’ee”) rules that an outside resident paying local taxes may open an establishment in a different mavoy of the city, but not in the same mavoy as the already existing business. Rabbi Chaim Jachter (*Gray Matter Hasagat Gevul: Economic Competition in Jewish Law*) writes that the modern day neighborhood is equivalent to the mavoy of the Gemara.

However, Pitchei Choshen Geneva ViHona’a 9: note 2 explains that in the modern business environment, it does not stand to reason that if there is one store or business in town, that store should be given a monopoly on the entire town. This is especially true for big cities, where there is plenty of room for several stores and businesses to make a good income. Rabbi Aryeh Lebowitz ([Hasagas Gevul - Unfair Competition on Yutorah](#)) raises this argument as well. Rabbi Chaim Jachter (*Gray Matter Hasagat Gevul: Economic Competition in Jewish Law*) quotes that Rav Soloveitchik thought that the laws of competition do not apply in America but didn’t explain why he felt that way.

⁶² See Pitchei Teshuva 156:3 at length. Aviasaf (cited by the Mordechai, Baba Batra 516) rules that it is forbidden for somebody,

3. Furthermore, even when the newcomer is permitted to enter the market, he is prohibited to compete in an unfair manner, such as by selling below cost.⁶³
4. If the new business will charge lower prices or sell higher quality, some say that we cannot stop him from opening.⁶⁴

even if he lives locally, to open a store at the entrance to a mavoy satum (a dead-end alley), if a similar establishment is already located within the mavoy. The reason for this is that opening such a store will bring the original shopkeeper's business to ruin. Potential customers will see only the new store upon entering the alley, and the original establishment will go unnoticed.

The Beit Yosef C.M 156 explains that the ruling of Aviasaf follows the opinion of Rav Huna, which is not according to Halacha. Thus, it would seem from S"A C.M 156:5 that one may not prevent another business from opening nearby even if it will certainly eliminate his own business. This is the ruling of the Beit Ephraim C.M 26. The Rama (Darchei Moshe 156:4) however, explains that according to the Aviasaf, all opinions agree that it is prohibited to open a new business if this will cause the original business (the one inside the mavoy) to collapse. In other words, cases of "definite damage" do not fall into the principles above, and it is forbidden for one business to cause "definite damage" to another.

In a teshuva, the Rama (Siman 10) brings this Aviasaf among other arguments and rules that it is forbidden for a second publisher to publish an already published work (in this case the Mishneh Torah of the Rambam), if this will inevitably bring the first publisher to ruin. Sh"t Chatam Sofer (Siman 61, 79) also rules like this Aviasaf

on a similar question where the incumbent business would be forced to close down. Rav Moshe Feinstein (Iggerot Moshe C.M 1:38) brings several arguments including the Aviasaf and concludes that a new shul could not open because they would ruin the income of the rabbi of the existing shul. Pitchei Teshuva 156:3 quotes Sh"t Masat Binyamin 27 that if there is a law that only allows one store, a second one may not open and force the initial one to close. He notes that the Masat Binyamin doesn't quote the Aviasaf and must think that this is even for the Rishonim who disagree with the Aviasaf.

Rav Moshe Feinstein (Iggerot Moshe C" M 1:38) writes that loss of livelihood is not defined by a loss of one's home or the ability to put food on the table. It means interfering with his ability to afford as much as an average person in his times.

⁶³ Pitchei Choshen Hilchot Geneva ViHona'a 9:3, Aruch Hashulchan 156:11, Erech Shai 228:18.

⁶⁴ Aruch Hashulchan 156:11, Pitchei Choshen Hilchot Geneva ViHona'a 9:8, Mishpitei Hatorah 2:10. This is based on the Rosh (Baba Batra 2:12), quoting the Ri ibn Megash. Although the Beit Yosef quotes that the Ramban disagrees, the Rosh is mentioned as a yesh omrim in the Rama 156:7. See Rabbi Moshe Sternbuch (Teshuvot Vihanhagot 1:800) on opening a competing restaurant.

5. Competition is not limited at all in the following areas: teaching Torah,⁶⁵ internet businesses,⁶⁶ and certain business districts in which the original business owner would benefit from a new business opening up (i.e. more customers will arrive).⁶⁷

Onaa (Dubbin Hanon)

1. There is a Torah prohibition to overcharge (as a seller) or underpay (as a buyer) when the other party is unaware of the market value for such an item.⁶⁸ This is split into three categories:
- More than 16% above market price - this amount is considered onaa and the buyer can invalidate the sale.
 - Exactly 16% above market price - the sale is valid, but the extra money that the buyer paid must be returned.
 - Within 16% above market price - the sale goes through and the extra money that the buyer paid need not be returned.⁶⁹

⁶⁵ The Gemara (Baba Batra 21b-22a) states that even Rav Huna permits unrestricted competition in the area of Torah education, since competition fosters improved Torah knowledge (*kinat sofrim tarbeh chochmah*). Rabbi Jachter writes that this doesn't apply to other mitzvot. Therefore, he quotes Rabbi Ezra Basri (Shaare Ezra 2:131) that these laws of competition would apply to selling chametz before Pesach. Similarly, Rav Moshe Feinstein (Iggerot Moshe CM 2:31) wouldn't allow a second Seforim/Judaica store to open in a place that couldn't support two. On the other hand, Pitchei Choshen Hilchot Geneva ViHonaa 9: note 1 quotes the Levushei Mordechai CM 12 that this does apply to other mitzvot. Based on that he allowed a new mikveh to open even though it would force the first one to close.

⁶⁶ Rabbi Jachter pg. 118. Similarly, S'A C'M 156:7 based on Baba Batra 22a rules that the restriction on outside competition does not apply to a market day, when people from outside the town come to shop. Rabbi Yehoshua Pfeffer ([Opening Shop? Laws of Hasagas Gevul](#) on dinonline.org) applies this in a general sense to malls and large shopping centers, which attract shoppers from out of town.

⁶⁷ Rabbi Jachter quoting Rav Moshe D. Tendler and Rav Basri, since the original storeowners benefit from the newcomers. Rabbi Aryeh Lebowitz (Hasagas Gevul - Unfair Competition on Yutorah) brings the same argument.

⁶⁸ Vayikra 25:14 states “וכי תמכרו ממכר או קנה מיד עמיתך אל תונו איש את אחיו” “And when you make a sale to your fellow Jew or make a purchase from the hand of your fellow Jew, you shall not wrong one another.” The Rambam in Sefer Hamitzvot Lo Taaseh 250 as well as in Mishne Torah (Mechira 12:1) considers it to be one of the 613 mitzvot. This is also the opinion of the Sefer HaChinuch (Mitzvah 337). The Mishna Bava Metsia 51a says that this prohibition applies both to the buyer or seller. The general prohibition of onaa can be found in Shulchan Aruch C.M 227:1, Halichot Bein Adam Lachavero 10:30, and Pitchei Choshen Geneva Vihonaa 10:1.

⁶⁹ Gemara Bava Metzia 50b, Halichot Bein Adam Lachavero 10:31. Rambam Mechira 12:3 explains that the reason that the sale is valid if the price is less than 1/6 above market price is because most people willingly forego such a small difference. Rosh Bava Metzia 4:20 writes that it is because it is impossible to be perfectly precise. Although Sefer Hachinuch (Mitzva 337) writes that charging that little above market price is totally permissible, the Ramban in his commentary on the Torah (Vayikra 24:14) writes that one still violates the prohibition even though he need not return the difference. Shulchan Aruch CM 227:6 quotes both opinions without conclusion. Pitchei Choshen Geneva Vihonaa 10:2 also doesn't rule conclusively but says that a God fearing person should be strict.

2. Nowadays, most items don't have a set price. Therefore, one would only be allowed to cancel a sale if there is a set price for that item in every store in the area and he was charged more than 16% above that set price.⁷⁰
3. Somebody who invents something unique, such as if he got a patent, may sell the invention or the copyright for whatever price he wants. However, retail stores which sell that item cannot sell it for more than 16% above what it is sold for in other stores.⁷¹
4. If a store which is well known for its high prices because of its high quality, its convenience, or its customer service, charges higher than usual prices, the laws of onaa will not apply.⁷²
5. Onaa doesn't apply to land. Therefore, if one is buying or renting a house or apartment, we do not cancel the sale if he was charged too much.⁷³ Nonetheless, it is biblically forbidden to overcharge or underpay for land when the other party is not aware of the true market value of the land.⁷⁴

⁷⁰ Halichot Bein Adam Lachavero 10:32, Rav Asher Weiss (Kovetz Darkei Horaa Tammuz 5765 2 pg. 124). See Pitchei Choshen Geneva Vihonaa 10:1 who discusses practical applications for nowadays and seems to conclude that one calculates it from the median price in that area.

⁷¹ Halichot Bein Adam Lachavero 10:36, Hilchot Mishpat pg. 294. This is based on the Rosh BM 4:20 that the whole basis for onaa is if you can acquire the item somewhere else for cheaper.

⁷² Halichot Bein Adam Lachavero 10:37, Mishpitei Hatorah 2:1, since people are willing to pay extra for this convenience

⁷³ Shulchan Aruch CM 227:29, 32 based on Mishna Bava Metzia 56a rules that there is no onaa on the sale of land. The Gemara Bava Metsia 56b says that renting of objects or land is considered a temporary sale and therefore there is onaa. This is codified by Shulchan Aruch CM 227:33-35. Halichot Bein Adam Lachavero 10:45 and Pitchei Choshen Geneva Vihonaa 10:5 agree.

Rabbenu Tam cited by Tosfot Ketubot 98a s.v. almanah based on the Yerushalmi (Ketubot 11:4) writes that if you charge double or more of the going price of land, then it is certainly considered onaa and the sale is invalid. Tosafot Bava Metsia 57a s.v. Amar and Bava Kama 14b s.v. Davar, and Rosh (Bava Metsia 4:21) agree. The Rama CM 227:29 codifies this opinion but only says that if it is more than double it is onaa. However, the Sama 227:50 points out that

Rabbenu Tam in Ketubot and the Rosh explicitly say even exactly double is onaa. On the other hand, Rif (Bava Metsia 32a-32b) at length disagrees with the opinion of some geonim who thought that the sale of land is invalid if one charges more than double. The Rambam (Mechira 13:8) states that there's no onaa on land for any price even if you overcharge by tenfold. This is also the opinion of the Bet Yosef CM 227:29.

⁷⁴ Pitchei Choshen Geneva Vihonaa 10:3. The Ramban Vayikra 25:14 points out that even though the Gemara learns that land is excluded from onaa, according to the simple explanation of the pasuk, it is clearly forbidden to cheat someone on the sale of land. In fact, he says that the simple explanation is so compelling that he suggests that there is a biblical prohibition to cheat someone on the sale of land, it is just excluded from the laws of returning the money. The Minchat Chinuch 337:3 argues that the Ramban would agree with the Ramban because he holds that gezel applies to land and the gemara Bava Metsia 61a suggests that onaa would be sufficient to replace the prohibition of gezel. However, he notes, that the Tosfot ad loc. s.v. alah would argue with the Ramban's premise and assume that there's no prohibition of onaa on land at all. The Pitchei Teshuva CM 227:21 quotes this Ramban. Similarly, the Sama CM 227:51 cites the Maharshah who holds that it is onat devarim to cheat someone on a sale of land.

6. Onaa doesn't apply to the following items: items that don't have a set price,⁷⁵ antiques,⁷⁶ investments,⁷⁷ and documents.⁷⁸

⁷⁵ Teshuvat Harosh 13:20, Halichot Bein Adam Lachavero 10:47

⁷⁶ Halichot Bein Adam Lachavero 10:47, Mishpitei Hatorah 2:4

⁷⁷ Halichot Bein Adam Lachavero 10:47 writes that for something that the buyer is projecting the value of the item to rise greatly there is no honaa. Teshuvat Harosh 13:20

⁷⁸ Shulchan Aruch CM 227:29. This exclusion would apply nowadays to the purchase and sale of most financial documents – stocks,

bonds, treasury bills, etc. – since they do not have intrinsic value and only represent the debt or share in the company. ([Business Halacha: Overcharged by the Mechanic](#) by Rabbi Meir Orlan)

Nonetheless, the Minchat Chinuch 337:3 assumes that documents have the same halacha as land where the sale is valid but it is forbidden to overcharge. Pitchei Choshen Geneva Vihonaa 10:3 agrees.

*Tearing Keriya for a Patient (Natie Elkaim)*⁷⁹

1. While the Talmud and the Shulchan Aruch clearly state that a person is obligated to rend one's garments when present at the passing⁸⁰ of another Jew,⁸¹ the common practice is to be lenient,⁸² especially for doctors and nurses.⁸³

⁷⁹ Largely adapted from the Nishmas Avraham vol 1 oc 223:6 and vol 2 Y.D 340:2.

⁸⁰ The Bet Yosef Y.D 340:6 notes that the Ramban and the Rosh cite the Raavad that this includes from the time of death to the time of burial (also Ritva Moed Katan 25a, see Prishah on the Tur note 10). However, the Rama Y.D 340:5 citing the Raavya limits it to the simple interpretation of being present at the time of death, and the practice is to be lenient (Rambam Avel 9:11 seems to hold this way as well).

⁸¹ The gemara in Moed Katan 25a praises one who mourns an "adam kasher" and states that in fact it is an obligation. Similarly, the gemara says that if a person was standing by a Jew at the time of death then again there is a requirement to mourn and tear keriya. Tur Y.D 340 cites R Yonah that so long as the person is not suspected of sinning, one rends his garment. He further cites the Maharam Rutenburg who maintains that the enactment includes Jews who at times violate commandments for pleasure or out of laziness, but not apostate Jews. The Shulchan Aruch Y.D 340:5 writes in accordance with R Yonah, whereas the Rama writes in accordance with the Maharam Rutenburg. The Rambam (Avel 9:11) seems to understand that the gemara was not relating to the previous statement when it cited the law that one rend one's garment over the passing of another Jew, and thus rules that this applies to all Jews. The Nishmas Avraham Vol 1 (O.C 223 note 6) write that for this enactment to apply, the deceased must be one who is not suspect on any transgressions. See there for further discussion

The gemara explains that the reason for this enactment is because when a Jew dies it is like a sefer Torah was burned. There is a version of Rashi which elaborates that this line means that the person could have learned more Torah. Some explain that according to Rashi this enactment does not apply to women (Ramban, Ritva, Tur). However, others explain that even

Rashi would agree that this enactment applies to women (Rashba, Beit Yosef).

⁸² There are three reasons brought down for the leniency today: 1) the takanah is waived so that people will stand there at the time of death (Shulchan Gavoha YD 339:4, Gesher Hachayim 14:9); 2) the sick person waives the takanah so that people will be there at the time of death (Shut Torat Chesed OC 17:6); 3) practically we cannot allow so much garment rending; otherwise people will run out of clothing and die of cold (Shulchan Gavohah YD 339:4 based on Rama YD 340:7; also Kaf Hachayim OC 547:25). The Nishmas Avraham (vol 2 YD 340:2) holds that there should be a chiyuv as these reasons are weak and the rabbis never worried about such things. However from what he writes in OC 223:6 it is clear that he does not believe that one who does not rend one's garments is mistaken, nor is it clear that he would advise one to rend, based on common practice not to do so.

Rav Schachter (oral communication) said regarding similar laws of kriya on non-relatives, like a rebbe muvhak, that one should only observe these laws nowadays if his actions will not seem out of place or disproportionate to his relationship with the person or otherwise inappropriate; however if it would not seem out of place or cause stress to the mourners then such expressions would be appropriate.

⁸³ The Nishmas Avraham discusses poskim who are lenient not to tear since the coat that they wear on top is not their own (Tzitz Eliezer vol 13 35:4). He himself holds on principle that one would be required to rend the garment underneath for two reasons: first, because some say that if one rends the lower garment one still fulfills his obligation, and second as the white doctors' coat does not count as an upper garment, rather the lower garment (the doctor's personal shirt) would count as the upper garment (Rabbi Neuwirth, Rabbi Shlomo Zalman Auerbach). It would seem that today even the

2. One who does rend his garments when present at the time of death need not tear a full tefach for each passing, rather one tefach for the first and then add on a little bit (*kol shehu*) for each subsequent passing.⁸⁴

Negiah and Yichud Issues (Alex Mermelstein)

Isur Negia

1. It is forbidden to affectionately touch individuals of the opposite gender.⁸⁵
2. If the touching is done in a professional context, then it could be permitted.⁸⁶
3. Ideally, one should try to see a doctor of the same gender.⁸⁷ However, it is permitted to see a doctor of the opposite gender if there is no other option.⁸⁸

Isur Yichud

1. There is an issur of yichud to be alone with an individual of the opposite gender.⁸⁹ Depending on with whom one is in seclusion, this prohibition may even be biblical.⁹⁰
2. For a dentist/doctor, yichud may be permitted if one is caught up in his work to the point that he will not do anything inappropriate.⁹¹ Some do not like this heter alone for yichud.⁹²

Nishmas Avraham would agree not to rend for doctors and nurses who wear scrubs and their lower garments are also not their own. (See Shulchan Aruch YD 340:34)

⁸⁴ Igros Moshe CM vol 2 73:10

⁸⁵ Rambam Issurei Biah 21:1

⁸⁶ Gemara Ta'anit 21b brings a story of Abba Umna who was a doctor and is praised for putting the men and women in separate areas and for having a special garment that covered the women when he was treating them. This Gemara implies that it is unique and praiseworthy that Abbau Umna did this, which shows that the ordinary person is not required to do these things. This can be a source for male doctors being permitted to touch female patients while treating them.

Gemara Bava Metziah 91a quotes Rav Yehuda who says that a professional who causes two animals to mate directly is not doing anything wrong because he is involved in his professional job. There is no problem of Pritzus because he is busy with his professional job, so he will not have any inappropriate urges.

Shach Yoreh Deah 195:20 says that according to the Rambam, the only issur of negiah is when the negiah is with hana'a, or pleasure, but in medical care there is no pleasure involved so it would be muttar to treat a patient of the opposite gender.

⁸⁷ Nishmas Avraham Yoreh Deah 195

⁸⁸ Rav Moshe Feinstein, Rav Shlomo Zalman Auerbach (as quoted by Rabbi Mordechai Torczyner)

⁸⁹ Gemara Kiddushin 80b

⁹⁰ Gemara Kiddushin 21b seems to imply that the source of the prohibition is directly from the Torah. Aruch Hashulchan E'H 22:2 says it is a Torah level prohibition.

⁹¹ Igros Moshe (E'H 4:65:1) says that a male OBGYN is so caught up in his work that he will not have any bad desires. He continues that even after he completed seeing the patient and other patients are waiting and he is not necessarily busy with the work at this moment, he doesn't have time to linger around and must rush to the next patient, so there is no potential issur that he will do in that short time span. If it is the end of the day and no more patients are coming, he can rely on the secretary or someone else in the building to mitigate the issur yichud.

⁹² Rav Shlomo Zalman Auerbach quoted in Nishmat Avraham 3:9 quotes the Gemara Kiddushin 80b which says that yichud applies even to a man and woman who are burying a baby in a cemetery, showing that there is an issur yichud even when one is busy with something where theoretically there should be no yetzer hara.

- a. A second potential heter for yichud for a dentist/doctor is that he/she will receive professional repercussions if he/she would act inappropriately. This suffices as a preventative measure.⁹³
- b. A third way to avoid yichud is by ensuring that other individuals can see inside the room⁹⁴ or by simply making sure others are present.⁹⁵
4. If when a dentist sees a patient he/she closes the door, if others commonly walk in, it could be muttar. But if other people never walk in when the door is closed, it would be assur.⁹⁶
5. The relationship between a dentist/patient can be transformed into a libo gas ba situation if they develop a relationship through the professional interactions. Then these heterim would not apply.⁹⁷

Taking Money for Learning and Teaching Torah (Robbie Schrier)

Learning Torah

1. The *mishna* in *Meseches Avos* states that one should not derive benefit from his Torah learning.⁹⁸ The *Rambam*⁹⁹ explains that it is a desecration of G-d's name, and by extension His *Torah*, to make *Torah* learning into a money-making profession.¹⁰⁰
2. Many *gedolei Yisroel* throughout the generations disagreed with the *Rambam*.¹⁰¹ Additionally, some *poskim* limit the scope of the *Rambam's psak* and conclude that even

⁹³ Yaskil Avdi, Tzitz Eliezer, Nishmat Avraham, as quoted by Rabbi Torczyner. Tzitz Eliezer says that this heter may potentially only apply when both individuals involved are busy with the work. In a dentist/patient relationship, only the dentist is preoccupied, so the heter may not apply.

⁹⁴ Igros Moshe E"YH 4:65:2 says that if a window is low enough for people outside to see, there is no yichud. But if the window is very high to the point that the people outside must climb up a ladder to see inside, which is very unnatural, that would be an issur yichud. When it comes to a dentist/patient, if they are visible to the public through a window, that can potentially avoid yichud.

⁹⁵ Rav Moshe Shternbuch says that if one goes to a dentist/doctor of the opposite gender, one should bring his/her spouse or another relative.

⁹⁶ Rav Shlomo Zalman Auerbach

⁹⁷ Rav Shlomo Zalman Auerbach, quoted in Nishmat Avraham 3:94-95

⁹⁸ Avos 4:5

⁹⁹ Ibid and in Hilchos Talmud Torah perek 3.

¹⁰⁰ The *Rambam* lists several different reasons as to why taking money for Torah is

wrong. Besides the consideration of chillul Hashem, the *Rambam* adds that melachah is a positive virtue which prevents falling into sin (Hilchos Talmud Torah 3:10). Thus, if a person is only learning and is not working he may run a greater risk of falling prey to sin.

¹⁰¹ See the Tashbetz's reaction to the *Rambam* (Shut Tashbetz 1:142), where he notes that it was always the practice that Bnei Yisroel have supported their Torah scholars. He brings several proofs from midrashic and Talmudic sources that it is permissible, or perhaps even obligatory, for Torah scholars to accept wealth that matches their stature. The Rama YD 246:21 codifies the Tashbetz's opinion. Also, Kesef Mishna (Talmud Torah 3:10) emphasizes that there was a strong minhag to be lenient on this, and he ends off by saying that even if the halacha is like the *Rambam*, maybe we should apply the rule of "et laasot l'hashem". He repeats this sentiment in Bet Yosef YD 246:21.

The Maharshal (Yam Shel Shlomo Chullin 3:9) is adamantly opposed to the opinion of the *Rambam* if not taking money will cause bitul torah. He says that if a person can learn more by taking money to learn, he should do so, and it is an aveirah not to take it!

he would agree that it is permissible to take money for *Torah* learning if learning would otherwise be impossible.¹⁰²

3. We *pasken* that, while it is commendable for a Torah scholar to support himself from his own earnings, it is permissible for him to accept donations to facilitate his learning.¹⁰³

Teaching Torah

4. There is also a prohibition to charge money to teach *Torah*.¹⁰⁴
5. However, there are several *heteirim* for those teaching Torah to charge money. For example, payment can certainly be accepted for any teaching position which includes disciplining children or instruction of non-Torah subjects.¹⁰⁵
6. Additionally, if there is no other way for a teacher to make a *parnassah*, it is permissible to accept wages for *Torah* instruction. Even if the teacher can make a living without these wages, he can charge money for clearly evident *sechar batalah* (payment for the amount of money he could have earned if he was not teaching).¹⁰⁶

¹⁰² For example, see Rav Moshe Feinstein's approach to the Rambam in *Igros Moshe* (Yoreh Deah 4:36). He contends that the Rambam only said that accepting money for learning would be prohibited if the Torah scholar is capable of studying diligently with a clear mind even after working for *parnassah* for a portion of the day. However, if the scholar is not capable of concentrating in the same way that he would be without having engaged in work, it is permissible for him to accept donations from the *tzibbur*.

Taz YD 246:7 is swayed by the concern that nowadays making *parnasa* for tuitions, weddings, and raising a Jewish family is really very hard. Also, *Biur Halacha* OC 231 says perhaps the Rambam would be *modeh* that it is *mutter* if it isn't possible to learn properly and work.

Furthermore, Rav Moshe (*Igrot Moshe* YD 2:116) says that it isn't even a *midat chasidut* to be stringent for the Rambam nowadays if it'll cause you to minimize your learning, since nowadays we're not capable of doing both. Rav Ovadia Yosef in *Yabia Omer* YD 7:17 agrees with Rav Moshe.

Interestingly, *Maaseh Rav* (sheilta 50) says Rav Chaim Volozhon was asked by an *avrech* if

he was right in deciding to turn down a Yisachar-Zevulun opportunity because he said that he didn't want to share his spiritual reward for money. Rav Chaim said he was totally wrong. By not taking the money, he indicated that he wasn't interested in fulfilling Hashem's will; rather, he just wanted the spiritual reward. If he wanted to promote Hashem's *mitzvot* in a greater fashion, he would take the money so that he would be free to learn more.

¹⁰³ *Rama*, *Yoreh Deah* 246:21.

¹⁰⁴ *Gemara Bechorot* 29a, *Shulchan Aruch*, *Yoreh Deah* 246:5

¹⁰⁵ See *Beis Yosef* to *Yoreh Deah* 246:5. See Rav Schachter's explanation in *Ginat Egoz* (p. 188) where he writes that for younger grades the salary for teachers could be compensation for watching the students. For teachers of mature students, the salary could be considered a compensation to allow the teachers to have free time to learn and teach, but the actual teaching isn't for pay. Accordingly, he writes that in his opinion, there shouldn't be a fixed amount of sick days for *rebbeim* because they aren't being paid by the day, but rather they are being paid so that they're available to teach.

¹⁰⁶ *Shulchan Aruch*, *Yoreh Deah* 246:5