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ShortStop

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article on the GameStop short selling controversy considered some halachic arguments against the legitimacy of short selling. Here we consider several additional arguments.

IMPROPER COMPETITION

In the previous article, we discussed (and challenged) Rabbi Dr. Aaron Levine's argument that the short selling by a business of a competitor's stock constitutes improper competition because it is "tantamount to competing with [the other company] by operating in [the other company's] premises." There are, however, other potential arguments from the halacha of competition for considering short selling improper.

UNDERCUTTING

Although the halacha is that free competition is generally permitted, there is a major dispute

among the *poskim* over whether a seller may undercut his competitors (where a stable market price exists).¹ According to the stringent view, perhaps deliberately driving down the price of assets owned by others is also prohibited, and this could encompass short selling with intent to drive down the price of a security (as opposed to merely anticipating its decline) or other active measures intended to do so (such as attempting to convince the public that the security is overvalued). It is certainly possible, however, that injuring the livelihood of others is a much more serious matter than merely devaluing their assets, and the analogy

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¹ Rama, Shulchan Aruch C.M. 156:5; Erech Shai ibid.; Shulchan Aruch C.M. 228:18; Chochmas Shlomo ibid.; Erech Shai ibid. s.v. *Yachol*; Aruch Hashulchan ibid. se'if 14; Shu"t Panim Meiros cheilek 1 siman 78 (cited in Pis'chei Teshuvah siman 156 s.k. 8); Shu"t Bais Efraim C.M. siman 27 s.v. *Ve'od nlan'd pashut*; Shu"t Chasam Sofer C.M. siman 79 s.v. *Mizeh nireh li*; Shu"t Divrei Chaim cheilek 1 C.M. simanim 18-19; Shu"t Maharya Halevi cheilek 2 siman 130; Shu"t She'eilas Shalom kama siman 13; Shu"t Mahariaz Enzil siman 69 os 1; Shu"t Karnei Re'eim siman 135 s.v. *Umei'atah havo navo*; Shu"t Vaya'an David C.M. siman 228; Shimru Mishpat siman 40.



PARSHAS TERUMAH COPY PROTECTED

Excerpted and adapted from a shiur by
 HaRav Yechiel Biberfeld

And you shall make a menorah of pure gold...

Shemos 25:31

The Gemara in Avodah Zarah says it is forbidden *mid'Oraisa* to build a replica of the seven-branched menorah of the *Bais Hamikdash*. Though the original was made of gold, a replica may not be made in any metal, because any metal is kosher *b'dieved* for the menorah.

The Pis'chei Teshuvah cites the view that a round candelabra of seven branches would be permissible because the menorah in the *Bais Hamikdash* was straight. But others forbid this.

Most opinions prohibit owning or using a seven-branched menorah even if it was made by and purchased from a non-Jew. The Sheivet Halevi says that the prohibition would not apply to hanging lamps, as they do not resemble the menorah. However, R' Akiva Eiger's nephew R' Shmuel Halevi Birnbaum writes in a letter that his uncle was extremely strict regarding this

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Constructive Criticism

Q My window shades fell down on Shabbos. Would I have been permitted to rehang them?

A One of the 39 *melachos* of Shabbos is *boneh* (building). In addition to new construction, the *melacha* includes repairing or adding to an existing structure.

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Q&A from the
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between undercutting a competitor and driving down the price of assets held by others is therefore unpersuasive.

PREDATORY PRICING

R' Shlomo Yehuda Tabak asserts that even if a seller is generally permitted to undercut his competitors, predatory pricing—where a seller sells at a loss in order to hurt a competitor—is prohibited under the rubric of *midas Sedom* (pointlessly selfish conduct, where one behaves in a manner that is technically within his rights, but the course of conduct has negative repercussions for someone else with no benefit to himself). He adds that this is prohibited even if his motivation is actually self-interest—he intends to extort money from the competitor in order to cease his harassment, or to force the competitor to enter into a partnership with him—since conduct that is inherently *midas Sedom* is not legitimized by the motivation of extortion.²

It could be argued, then, that deliberately attempting to drive down the value of securities held by others also constitutes *midas Sedom*, and the motivation of profiting from this by short selling the security does not legitimize it. But this analogy as well is tenuous, since unlike in the case of predatory pricing, where the primary intent is to hurt others, in the case of short selling the pri-

² Erech Shai *ibid.* *siman* 156 s.v. *V'im mozil kdei l' hazik.*

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prohibition, to the extent that when he found a hanging lamp in his

home that had seven branches and was in the shape of a star, he had it removed, even though it did not resemble the Menorah in the *Bais Hamikdash* at all.

R' Ovadiah Yosef writes that a seven-branched electric candelabra is permitted because it does not resemble the menorah. Some sources even permit a candelabra built for candles rather than oil.

mary intent is to generate profit for oneself. This more closely resembles ordinary competition or undercutting, where even though one's intent is to lure customers away from his competitors, which will obviously hurt the competitors, this is certainly not considered *midas Sedom* because the primary goal is to generate profit for oneself.

V'AHAVTA L'REIACHA KAMOCHA

As we noted in the previous article, many people consider short selling repugnant: “mean, shameful, and loathsome,” and “motivated by appalling avarice and greed.” It might thus be argued that short selling violates the mitzvah of *v'ahavta l'reiacha kamocho* (you shall love your fellow as yourself).³ But as we noted several weeks ago in the context of jumping a line, invoking *v'ahavta l'reiacha kamocho* to create a new prohibition is quite problematic. Moreover, the opprobrium of short selling is hardly universal; many argue that short sellers perform a useful function by uncovering fraudulent accounting and other problems at companies.⁴

In summary, there does not seem to be any compelling halachic reason to prohibit short selling.

³ Vayikra 19:18.

⁴ Wikipedia contributors. Short (finance). In *Wikipedia*, [https://en.wikipedia.org/w/index.php?title=Short_\(finance\)&oldid=1005361177](https://en.wikipedia.org/w/index.php?title=Short_(finance)&oldid=1005361177).

There is a famous replica of the menorah in the Old City of Yerushalayim built by a group called the Temple Institute. They claim this was permitted because it was built to be used in the Third *Bais Hamikdash*, and the only prohibition is to have a replica for one's home. However, it was discovered that this golden menorah is really only gold-plated iron. As noted, a menorah not of pure gold could only be used *b'dieved* in the *Bais Hamikdash*, so it is highly questionable why this institution would build a *b'dieved* menorah for the *Bais Hamikdash*.

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We will focus here on additions to structures that are either a) connected to the ground, or b) not connected to the ground, but at least 40 *se'ah* in volume (about 11.5 cubic feet, according to some views).



DAYAN YEHOSHUA GRUNWALD

Such additions can be divided into three categories:

1. If the addition is permanent and enhances the structure either functionally or cosmetically, it is prohibited Biblically. Example: placing a shelf on pegs in a closet that is either attached to the ground or 40 *se'ah* in size.
2. If the addition is intended to be permanent, but a) it is connected loosely, and one doesn't mind that it wiggles at the place of connection, b) it can be connected with minimal energy and skill, and c) it has an independent function rather than just enhancing the structure it's attached to, it is permitted according to most *poskim* (Mishnah Berurah 315:7, but see Chazon Ish 52:13).
3. An addition that is meant to be detached and reattached regularly, if it is a) recognizable as such, and b) not connected tightly, it may be attached and detached on Shabbos. (If one of these conditions is missing, it is Rabbinically forbidden.) Examples include a fridge magnet and a child-safety gate that fits into a track.

Because window shades are generally kept hanging until they are discarded, and they have the same function—protection from the elements—as the house, rather than an independent function, rehangings would belong in the first category and be Biblically forbidden.

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