

THE BAIS HAVAAD

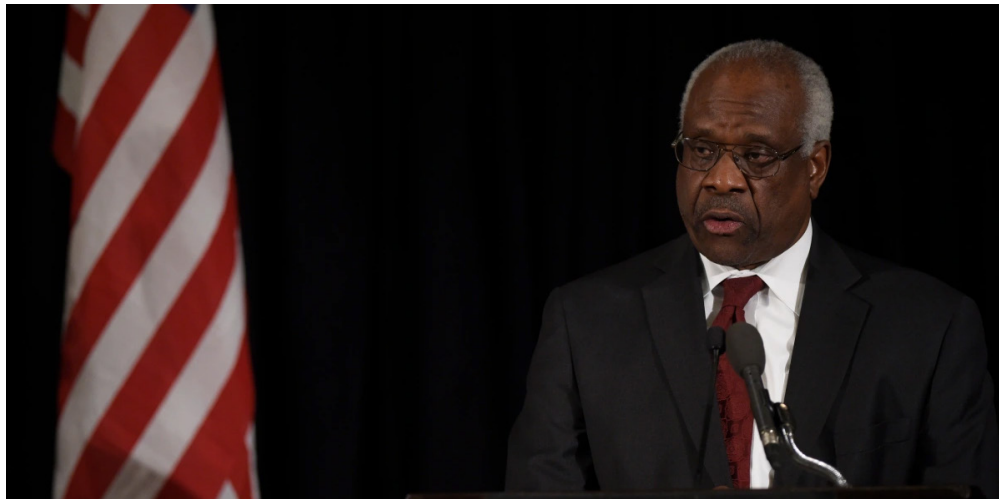
# HALACHA JOURNAL

Family, Business, and Jewish Life through the Prism of Halacha



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## JE RÉCUSE! WHEN MUST A DAYAN DISQUALIFY HIMSELF?

Adapted from the writings of Dayan Yitzhak Grossman

Our previous article concluded:

A litigant's provision of paid services to a judge does not disqualify the judge, but he should nevertheless recuse himself if it has engendered *kiruv hada'as*.

In this article, we elaborate upon this point.

Fix the Court, which styles itself as a nonpartisan organization "that advocates for non-ideological 'fixes' that would make the federal courts, and

primarily the U.S. Supreme Court, more open and more accountable to the American people,"<sup>1</sup> writes:

Justices Breyer, Sotomayor and Gorsuch have book deals with Penguin Random House, with all three earning big bucks from these contracts. In 2019, PRH was a respondent in a copyright infringement suit at [the Supreme Court]...and only Breyer recused,

(continued on page 2)

<sup>1</sup> About Us: Fix the Court.

In memory of R' Zev Aryeh Solomon z"l  
זאב ארי' בן יעקב שמואל ז"ל  
נפטר ח' חשוון  
Dedicated by  
Rabbi and Mrs. Raphael Wurzbarger

The Bais Hava'ad  
on the  
Parsha  
Bring the Parsha to Life!

### PARSHAS SHLACH

#### DOUGH MIXER

Excerpted and adapted from a shiur by HaRav Chaim Weg

As the first of your kneading you shall set aside a loaf as a portion...

Bemidbar 15:20

According to Rashi, "*reishis arisoseichem* (the first of your kneading)" refers to the minimum quantity of flour that is subject to the mitzvah of *hafrashas* challah, one omer. According to *poskim*, five pounds is enough to meet this *shiur* with certainty and make a *bracha*. (Many are strict to separate challah from a dough made from as little as 2.5 pounds of flour, without a *bracha*.) Doughs can combine for the *shiur* by touching strongly enough that when separated, one takes a piece from the other (*neshichah*) or by being temporarily in the same basket (*tziruf sal*) or other container.

(continued on page 2)

O&A from the  
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### Insufficient Funds

Q Two people approached me, each seeking a \$10,000 loan, but I can only lend \$10,000. Should I split it between them or somehow prioritize one over the other?

A Lending money to a Jew in need is a mitzvah *de'Oreisa*, as it says (Shmos 22:24), "*Im kesef talveh es ami, es he'ani imach* (When you lend money to My people, to the poor person who is with you)..." Chazal (see Rashi *ibid.*) derive a system of prioritization from the wording of the *pasuk*: A Jew (*ami*) precedes a non-Jew; a poor person (*ani*) precedes a man of means; a relative or a local (*imach*) precedes a non-

(continued on page 2)

(continued from page 1)

though not because of his writing but because at the time, his wife's family's publishing company, Pearson, owned a large stake in PRH. Though the "financial interest" language in the federal recusal statute is typically interpreted to mean stocks, all three—and now Justice Barrett, who has her own PRH book deal—should recuse...Fix the Court identified these conflicts in its July 2020 recusal report, but no further action was taken.<sup>2</sup>

In general, halacha does not disqualify a judge from adjudicating a case involving a litigant with whom he has a professional or business relationship. R' Yosef Colon (the Maharik) was asked whether a teacher may adjudicate a case involving his student or his student's father despite having been paid for his services, and he rules that he may, because the payment he received was not a gift but compensation for services rendered, and there is no indication that the payment was made in anticipation of the litigation.<sup>3</sup> R' Yosef (Mahari) ibn Lev adds that although the Maharik, when recording the question posed to him, describes the teacher as having been paid "precisely for the hours" that he worked, in his ruling he

omits any mention of this, implying that the ruling applies whether or not this is the case. The Mahari ibn Lev accordingly rules that it is not even considered ideal conduct for a teacher to avoid adjudicating a case involving his student, and he extends this rule to permit employees to adjudicate cases involving their employers:

We do not find an allusion anywhere in the Gemara that workers and employees are disqualified, either from testifying or from judging...<sup>4</sup>

R' Shmuel di Medina (the Maharshdam), however, asserts that "without a doubt" a teacher should ideally (as a matter of *midas chasidus*) recuse himself from a case involving his employer.<sup>5</sup>

Elsewhere, the Maharik cites the Mordechai<sup>6</sup> as ruling that a guest is not strictly disqualified from adjudicating a case involving his host. Although the Gemara records an incident in which the *Amora* Rav recused himself from such a case, declaring that "I am disqualified to judge for you,"<sup>7</sup> this, he says, was only an exercise of personal stringency.<sup>8</sup>

<sup>4</sup> Shu"t Mahari ibn Lev *cheilek* 3 *simon* 97.

<sup>5</sup> Shu"t Maharashdam C.M. *siman* 2 at the beginning of *sv. Teshuvah*. (The *teshuvos* of Mahari ibn Lev and Maharashdam are addressing the same question.)

The *Knesses Hagedolah* (*ibid.* Hagahos Bais Yosef os 22) cites Mahari ibn Lev and Maharashdam as disagreeing, and does not decide between them, but the Shach (*ibid.* s.k. 12) cites only the former, leading the Halacha Psukah (Mechon Harry Fischel) *ibid.* p. 60a n. 278x to conclude that the Shach sides with Mahari ibn Lev.

<sup>6</sup> It is unclear if this explanation is found in our editions of the Mordechai, but it is found in any event in Tosafos *ibid.* *sv. Pasolina lach*.

<sup>7</sup> Sanhedrin 7b-8a.

<sup>8</sup> Maharik *ibid.* *shoresh* 21, cited in Bais Yosef *ibid.* and Shach *ibid.*

<sup>2</sup> Recent Times in Which a Justice Failed to Recuse Despite a Conflict of Interests. Fix the Court. May 11, 2023. <https://fixthecourt.com/2023/05/recent-times-justice-failed-recuse-despite-clear-conflict-interest/>. The conservative Daily Wire, in an article titled "Liberal SCOTUS Justice Took \$3M From Book Publisher, Didn't Recuse From Its Cases," which cites Fix the Court's work, details Sotomayor's failure to recuse herself from PRH litigation but neglects to mention Gorsuch's failure to do so.

<sup>3</sup> Shu"t Maharik *shoresh* 16 *anaf* 2, cited by Bais Yosef C.M. *siman* 7 and codified by Rama in *ibid.* *seif* 7 and Sma *ibid.* s.k. 21.

(continued from page 1)



If several smaller cakes or challos are put into the freezer, would that qualify as *tziruf sal* to combine them for the minimum and subject them to challah? R' Pesach Eliyahu Falk (Shu"t Machazei Eliyahu)

rules leniently by combining several arguments, each of which is controversial on its own:

- Some *poskim* hold that *tziruf sal* requires that the items touch, and plastic bags may prevent that.
- Some *poskim* say that since you chose to keep the doughs or loaves

separate from each other with plastic bags, the freezer doesn't combine them.

- Some *poskim* maintain that a large stationary container doesn't qualify as a *sal*, and this may apply to a freezer.
- If the items are of different flavors, e.g., chocolate cake and

(continued from page 1)

relative or foreigner.

A poor stranger precedes a relative or local with means (Ahavas Chessed *Halva'ah* 6:1). Neighbors precede locals (Shulchan Aruch Y.D. 251:3). Foreign relatives precede neighbors (*ibid.*). Close relatives precede more distant ones (*ibid.*).



If any of these criteria gives precedence to one of your petitioners over the other, lend him the full sum rather than dividing the funds between them (Ahavas Chessed *ibid.* *perek* 1 note 25).

If both are equal in the hierarchy, you may choose one, but it is preferable that you split the money. The Chafetz Chaim writes in Ahavas Chessed (*ibid.* 1:14) that because each loan is a separate mitzvah, giving small loans to multiple people earns greater reward than lending all the money to one.

But in some cases, he says, this doesn't apply: If one prospect is on the verge of financial ruin and you prevent it, you fulfill the additional mitzvah (Vayikra 25:35) of "vehechezakta bo (and you shall strengthen him)." So if both require the full sum to stave off collapse, it is better to lend it all to one than lend insufficient funds to both.

<sup>1</sup> Loaves that are joined only after baking still require challah if they reach the minimum shiur.

vanilla cake, or if they were kneaded with the intent that they would be consumed by different people, *tziruf sal* may not apply.

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