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JE RECUSE! A CONFLICT-OF-INTEREST CONFLICT, PART II

Adapted from the writings of Dayan Yitzhak Grossman

In the previous article, we considered whether the basic halachic rules governing conflicts of interest (*negiah*) would require the judge in a lawsuit filed by Elon Musk's X Corp. to recuse himself; in this one, we consider the Gemara's principle that a judge should recuse himself if there is suspicion of a conflict of interest or partiality toward one litigant, even in the absence of any actual conflict or partiality:

There was a certain animal with a severed trachea that came before Rav for a ruling. Rav sat and was examining it to see if the trachea was severed through a majority of its thickness. Rav Kahana and Rav Asi said to Rav: But you have taught us, our master, that the majority that renders an animal a treifah is a cut through the majority of its *hollow*! Rav sent the trachea to

Rabbah bar bar Chanah. He examined it to see if it was severed through a majority of its hollow and permitted it, and he bought thirteen simple *istirei* worth of its meat...

But let it emerge that it was wrong for Rabbah bar bar Chanah to buy the meat of the animal he had permitted because of the appearance of impropriety! For it was taught in a *breisa*: If one adjudicated a case and ruled in favor of one party and against the other, or he ruled an item *tamei* or *tahor*; and similarly, if witnesses testified about a disputed property, they are all allowed to buy the item awarded to one party or ruled *tahor* or permitted, but the Chachamim said: Keep far away from unseemliness and from anything resembling it (and people may suspect that he permitted

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HaRav Yosef Grossman zt"l

it in order to benefit from it).
(The Gemara answers:) This concern applies only to an item sold based on appraisal, without measuring. But here, the weight of the meat demonstrates that he paid full price for it.¹

Many *Rishonim* understand that this admonition to keep far away from unseemliness and from anything resembling it (*harcheik min hakiyur umin hadomeh lo*) is not strictly mandatory: The Ritva declares it to be good advice and a matter of pious conduct (*midas chasidus*);² Tosfos and the Rosh explain that it is addressed to a pious person (*ba'al nefesh*),³ but if one does not wish to be stringent with himself, there is no prohibition,⁴ and the Rama apparently accepts this view.⁵ (The Rambam, Tur, and Shulchan Aruch do not codify the admonition at all, but it is unclear why not.⁶)

Some maintain that the admonition is limited to a judge presiding over a case on his own, or a pair of witnesses, or a panel consisting of only two members, but it does not apply to a three-member panel.⁷ Others reject this distinction.⁸

Another basis for the principle that
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¹Chulin 44b.
²Chidushei HaRitva Yevamos 25b (column 648 in the Mossad HaRav Kook edition, and see n. 849 there).
³See Psachim 40a.
⁴Tosfos Yevamos 25b s.v. *Lo chashu*; Tosfos HaRosh *ibid.* s.v. *Eidim hachasumim*; Hagahos Maimoniyos Hichos Geirushin perek 10 os 3.
⁵Rama to Shulchan Aruch E.H. 121. Cf. Shu"t Chavos Yo'ir siman 122 s.v. *Nimtza*.
⁶See Taz *ibid.* s.k. 2; Birkei Yosef *ibid.* os 1 s.v. *VehaTaz*.
⁷Hagahos Prishah (Knesses Pasim) *ibid.* os 7; Levush Habutz Veha'argaman *ibid.* se'if 2; Birkei Yosef *ibid.* at the beginning of os 1.
⁸Taz *ibid.*; Bais Shmuel *ibid.* s.k. 4, and cf. Knesses Hagedolah *ibid.* Hagahos Tur os 2; Birkei Yosef *ibid.* s.v. *VehaKnesses Hagedolah*; and the additional sources cited in Otzar Haposkim *ibid.* (Volume 2) s.k. 9 p. 129.
Yam Shel Shlomo Yevamos *ibid.* *siman* 20 suggests that some *Rishonim* may limit the admonition to a judge presiding over a case on his own and not extend it even to a pair of witnesses, but he himself acknowledges that other *Rishonim* clearly do extend it to a pair of witnesses, and he himself recommends that a *ba'al nefesh* be stringent in this regard. Cf. Birkei Yosef *ibid.* at the end of s.v. *VehaTaz*, and the end of n. 849 to the Chidushei HaRitva *ibid.* (column 649).
Cf. Nachum Rakover, *Nigud Inyanim, Sifriyas Hamishpat Halvi*, 5767/2006; Encyclopedia Talmudis: Noge'la Bodavar.

Q&A from the
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Meal Prep

Q Is all food preparation permitted on Yom Tov?

A Generally, *melacha* for *ochel nefesh* is permitted on Yom Tov, but there are exceptions; here are several of them:

One may not prepare food for the next day. For example, if you will need ten pieces
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beyond being objectively impartial, a judge should be beyond even the suspicion of partiality, is a passage in the Zohar regarding the petition of the daughters of Tzlafchad to Moshe to inherit their father. The Torah relates:

The daughters of Tzlafchad...drew near...and they stood before Moshe, before Elazar the kohein, and before the leaders and the entire assembly at the entrance to the *Ohel Mo'ed*, saying: Our father died in the Wilderness, but he was not among the assembly that was gathering against Hashem in the assembly of Korach, but he died of his own sin; and he had no sons. Why should the name of our father be omitted from among his family because he had no son? Give us a possession among our father's brothers." And Moshe brought their claim before Hashem.⁹

The Zohar explains:

Tzlafchad was a master (*rav*) of the House of Yosef, but since he did not know the ways of the Torah as would be proper, he was not a *nasi*. He was the one who did not guard his mouth and words with respect to Moshe, and about him is it written (regarding the people who spoke against Hashem and against Moshe, against whom Hashem sent the fiery serpents): "A large (*rav*) multitude of Yisrael died".¹⁰ A man who did not know the Torah (alternately: "was not a *rav* of Torah") and was a *rav* of his family, a *rav* of the descendants of Yosef, of the sons of Menasheh.

And because he sinned in the Wilderness with words against Moshe, his daughters thought that Moshe bore a grudge. Because of this, they drew near to Moshe and Elazar and all the leaders and all the heads of the fathers, and they spoke to Moshe only before them, because they were suspicious of him (*dekaniu kin'ah minei*).

We see from here that one who is suspicious of a judge should bring others near and increase the number of people in the company of that judge, so that they will hear the judgment from him, and he will be afraid of them and make sure to judge properly, and if not, they will remove him from judging.

But they (Tzlafchad's daughters) did not know that "Moshe was exceedingly humble, more than any person on the face of the earth,"¹¹ and they did not know that Moshe did not bear any grudge. Once Moshe saw this, he said: "I see that this whole gathering of great men of Yisrael, and all the heads of the fathers, and all the leaders of the assembly have approached me"—Moshe immediately recused himself from judgment, and that is what is written: "And Moshe brought their claim before Hashem."¹²

The Shelah (R' Yeshayah Horowitz) urges judges to emulate this scruple of Moshe:

And even if a judge knows of himself that the two litigants are equal in his eyes, but he understands that one litigant suspects him of partiality toward the other, he should recuse himself from sitting in judgment. Whom do we have greater than Moshe Rabeinu a"h, and the Zohar says...¹³

Similarly, the Mishkenos Yaakov (R' Yaakov Bruchin "Karlener") rules that although a judge is not strictly required to recuse himself due to a litigant's suspicion that the judge harbors enmity toward him, it is evident from this Zohar that he needs ("*tzarich*") to do so, unless there is no other judge in the city.¹⁴

¹¹Ibid. 12:3.

¹²Zohar (Mantua 5318) Volume 3 p. 318. Cf. Or Hachaim ibid. 27:3, and see also Ramban ibid. s.v. *Vedati bederech hapshtut* (the same interpretation appears virtually verbatim in Moshav Zekeinim in the name of "N"Y); Pardeis Yosef Hechadash (Bnei Brak 5756) Volume 8 p. 1096 s.v. *Vehinei beMoshav Zekeinim*.

¹³Shnei Luchoos Habris (Cheilek 2) Masechess Rosh Hashanah, *Amud Hadin Shel Matah* (p. 55a) s.v. *Ve'af im hadayan*.

¹⁴Shu"t Mishkenos Yaakov C.M. siman 7 [cited in *Pis'chei Teshuvah* C.M. siman 7 s.k. 17 and *Halacha Psukah* ibid. p. 122 at the end of s.k. 25 and n. 300].

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of chicken at most for today, you may not make fifteen—unless you are cooking in a single pot, in which case no additional *tircha* (bother) is required.



HARAV SHRAGA KALLUS

Even activities that do not involve *melacha* may not be done for the next day. But many *poskim* allow food to be removed from the freezer on the first day of Yom Tov in order that it be thawed by the second (see Mishnah Brurah 667).

Melechess ochel nefesh is permitted only if it's *shaveh lechol nefesh* (of equal benefit to all); any *melacha* from which most people would not benefit is forbidden. The Pnei Yehoshua wrote two hundred years ago that smoking is *shaveh lechol nefesh*. Today, the practice is much less common, making it difficult to consider it *shaveh lechol nefesh*, even if smoking could be permitted generally.

The Magein Avraham and Mishnah Brurah say one should ideally not lower a flame on Yom Tov, because this is not a positive need. Rather, if a dish requires less heat, make another flame (by transferring an existing one). But R' Moshe Feinstein maintains that lowering the flame is preferred.

⁹Bemidbar 27:1:5.
¹⁰Ibid. 24:4-6.


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