

## *Mesachek Bakuvia*

### **Is Gambling Kosher?**

### **Is it Permitted? Is it Holy?**

#### **Sanhedrin 24b**

### **Teacher's Guide**

The global gambling market is estimated to be worth over \$500 billion in 2015. The world is full of thousands of casinos, racing tracks, bingo halls, lotteries, and sports betting pools. And since the late 1990s, with the development of a multi-billion dollar online gambling industry, you do not even have to leave the comfort of your home to engage in this addictive pastime.

What does the halachah (Jewish law) say about all this gambling? And, a Jew must also ask: What do Jewish ethics and morality dictate? Is gambling kosher?

In this Thinking Gemara shiur we will explore this issue on a number of levels. We will learn a key Talmudic passage addressing gambling, in a discussion of dice players and pigeon racers. Additionally, we will probe the halachic sources to find out about the Jewish view of casual gambling, betting, playing poker for money, and buying lottery tickets. We will also consider whether or not chancy investments should be treated like gambling.

Here are some of the key questions this shiur will deal with:

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#### **KEY QUESTIONS**

- According to the Torah, is gambling considered a vice or entertainment?
- Does the Torah view a professional gambler as a Jew in good standing?
- Does the halachah permit using slot machines, playing poker for money, betting on sports, or buying lottery tickets?
- Is making an extremely risky investment tantamount to gambling?
- Can a Jewish organization raise money through selling raffle tickets?

**CLASS  
OUTLINE****Section I. The Weekend Gambler: Jew in Good Standing or Persona Non Grata?**

**Case 1.** Can Murray (just back from a Synagogue gambling weekend in Atlantic City) serve as a witness at Shari and Jason's Jewish wedding?

**Section II. Gambling: From Chess in the Park to Slot Machines in Las Vegas**

**Case 2.** Can Vadim Levtovich and Dima Garnovitch play chess for money - winner takes \$200?

**Case 3.** Is putting a quarter in one of the slot machines at Las Vegas's Maccaran International Airport halachically permissible?

**Section III. Lottery Tickets and Synagogue Raffles**

**Case 4.** Does the halachah permit buying a Powerball ticket?

**Case 5.** Can the Mexico City Hillel House raise money by selling raffle tickets for the one-million peso grand prize?

**Section IV. Risky Investments**

**Case 6.** Are extremely risky investments tantamount to gambling?

**Section V. Gambling and Jewish Ethics**

- Compulsive gambling
- Recreational gambling
- Hard-earned money or get rich quick?

**Note of Caution:**

This topic is fascinating and potentially dangerous. Many people's lives - and their family's lives - have been ruined by problematic gambling that began in a seemingly innocuous way. What could be wrong - a person might say - with an innocent and entertaining casino visit, football bet, or friendly poker game? Please see Rabbi Abraham Twerski's book, *Compulsive Gambling*, where he shows how the experience of gambling can be seductive: Compounded by factors such as low self-esteem and/or financial difficulties, a person can become addicted to gambling, leading to financial disaster, and even suicide. Someone attending your shiur might be at risk for gambling addiction!

Moreover, some of the legal sources cited might be interpreted as a rabbinic green light to gamble (and we will take a closer look at whether the Rema really has a lenient ruling on this in Section II). Please make sure that the ethical material in the last section of the shiur is included as a central component of your presentation.

**Note:** This shiur is not intended as a source of practical *halachic* (legal) rulings. For matters of halachah, please consult a qualified *posek* (rabbi).



## SECTION I The Weekend Gambler: Jew in Good Standing or Persona Non Grata?

The main discussion of gambling in the Talmud appears in the context of a list of invalid witnesses. This will be the starting point of our shiur.

### Case 1. Can Shari's neighbor, Murray (just back from a Synagogue gambling weekend in Atlantic City), serve as a witness at Shari and Jason's Jewish wedding?

*Shari and Jason were planning their wedding. They really wanted to find a way to honor Murray Goldstein, Shari's family's neighbor and lawyer, who was practically like an uncle to her. So they decided to invite him to be one of their witnesses validating the proceedings of their wedding ceremony. They were looking through "A Guide to Jewish Marriage," and Murray seemed to fit the bill: he was not related to either of them, and was observant of Jewish law.*

*"Wait a second," said Shari. "I know this is a strange thing to mention, but the book says here that a gambler is invalid as a witness. Of course I know that Murray is not a professional gambler, and he's a very good Jew, but he does go on those weekend gambling events. Because this is our wedding, I want to be extra sure that our witnesses are 100% kosher. Let's give Rabbi Levine a call just to make sure."*

### What do you think? Should an occasional weekend gambler be invalid as a witness at a Jewish wedding?

In order to answer Shari and Jason's question, we will first need to learn one of the essential requirements for an acceptable witness. The Torah makes it clear that a person must be on a basic level of righteousness to serve as a witness.

#### 1. Shemot (Exodus) 23:1 – A wicked person cannot serve as a witness.

You shall not accept a false report; do not join hands with a wicked person to be a corrupt witness.

לֹא תִשָּׂא שְׂמֵעַ שָׂוְאָ, אֶל תִּשָּׂא יָדְךָ עִם רָשָׁע לְהִיטֵ עַד חֲמָס.

The Rambam, based on earlier sources in the Oral Torah, formulates this as a law in his Mishneh Torah.

#### 2. Rambam (Maimonides), Mishneh Torah, The Laws of Testimony 10:1 – An evil person is invalid as a witness.

The wicked are unacceptable as witnesses according to Scriptural Law, as Shemot (Exodus) 23:1 states: "Do not join hands with a wicked person to be a corrupt witness." The Oral Tradition interprets this as meaning: "Do not allow a wicked person to serve as a witness."

הַרְשָׁעִים פְּסוּלִין לְעֵדוּת מִן הַתּוֹרָה, שֶׁנֶּאֱמַר "אֶל תִּשָּׂא יָדְךָ עִם רָשָׁע, לְהִיטֵ עַד חֲמָס" (שְׁמוֹת כג, א); מִפִּי הַשְּׂמוּעָה לְמַדּוֹ, אֶל תִּשָּׂא רָשָׁע עֵד.

How is a wicked person defined in Jewish law? The Shulchan Aruch (Choshen Mishpat 34:2-3) rules that a wicked person is someone who transgresses a Torah or rabbinic law. Is a gambler considered “wicked” in Jewish law, and if not, are there any other criteria that might disqualify a gambler as a witness? Please keep in mind that whether or not gambling disqualifies one from serving as a witness does not directly imply that gambling is halachically permissible or forbidden. This issue of whether gambling is ever allowed, and in what forms, will be addressed in Sections II-V.

We are now ready to learn the Mishnah that forms the basis of any halachic discussion on gambling.

### 3. Mishnah, Sanhedrin 24b – What kind of gambler is invalid as a witness?

The following are invalid (as witnesses): a gambler (literally, a dice player); one who lends with interest; pigeon racers... Rabbi Yehudah said, “When is this true – in a case where they do not have any other profession, but if they have another profession they are valid.”

וְאֵלוֹ הֵן הַפְּסוּלִין, הַמְּשַׁחֵק  
בְּקַבָּיָא, וְהַמְלוֹה בְּרַבִּית,  
וּמְפָרִיחֵי יוֹנִים... אָמַר רַבִּי  
יְהוּדָה, אִימְתִי, בְּזִמְנֵי שְׂאִין לָהֶם  
אֲמָנוּת אֲלָא הוּא, אֲכַל יֵשׁ לָהֶן  
אֲמָנוּת שְׂלָא הוּא, כְּשֵׁרִין:

What position does the Mishnah take about an occasional gambler (Murray)? It is not clear whether he is valid or not, because there are two possible readings of Rabbi Yehudah’s approach. **On the one hand**, Rabbi Yehudah might be **arguing** with the first approach presented in the Mishnah (the “Tanna Kamma”) that categorically invalidates **any** gambler – and Rabbi Yehudah rules that only a professional gambler is invalid. If so, we will definitely not rule according to Rabbi Yehudah, because of the precept: “When an individual rabbi argues against the majority, we rule according to the majority opinion” (this principle appears in Berachot 9a, Shabbat 60b, and elsewhere). **On the other hand**, Rabbi Yehudah might just be **qualifying** and clarifying that only a professional gambler is invalid. If that is the case, we will rule according to his opinion. Both readings of the Mishnah appear in the Gemara (in other words, as we will see, there is an Amoraic dispute about whether the Tannaim argue or agree!).

### 4. Sanhedrin 24b, 25a – Which gamblers are invalid?

A gambler (dice player): What did he do (that causes the Mishnah to invalidate him as a witness)? **Rami son of Chama** said, “[He is invalid because his gambling winnings were attained through] an *asmachta* transaction (the loser handed him money as the result of a condition he did not expect to have to fulfill – see below Section II for a more detailed explanation), and an *asmachta* is not an effective transaction (hence, he has attained

מְשַׁחֵק בְּקַבָּיָא מַאי קָא עָבִיד?  
אָמַר רַמִּי בַר חַמָּא מְשׁוּם דְּהִנּוּה  
אֲסַמְכְתָא וְאֲסַמְכְתָא לֹא קִנְיָא.  
רַב יֵשֶׁת אָמַר כָּל כִּי הָאִי גְוֹנָא  
לֹא אֲסַמְכְתָא הִיא, אֲלָא לְפִי  
שְׂאִין עֲסוּקִין בְּיִשׁוּבוֹ שֶׁל עוֹלָם.  
מַאי בִּינְיָהוּ? אִיכָּא בִּינְיָהוּ  
דְּגַמְר אֲוִמְנוּתָא אַחֲרִיתִי.

someone else's money illegally and is considered a thief)." **Rav Sheshet** said, "This kind of thing is not considered an *asmachta*. Rather, gamblers are invalid as witnesses because they are not involved in a productive occupation (literally, settling the world)." In which case do they (Rami son of Chama and Rav Sheshet) differ? They differ in a situation where the gambler has another profession.

Rami son of Chama holds that an occasional gambler, one who has another profession, is still invalid, and taking someone else's money illegally even once invalidates you. But Rav Sheshet does not invalidate the gambler who has another occupation.

The Gemara concludes that Rami son of Chama and Rav Sheshet differ over how to interpret our Mishnah:

#### 5. *Ibid.* – Amoraim have two different readings of the Mishnah.

One (Rami son of Chama) holds that the Rabbis and Rabbi Yehudah argue, and the other (Rav Sheshet) holds that they do not...

מר סבר פליגי, ומר סבר לא פליגי ...

Rami son of Chama holds that Rabbi Yehudah argues with the other rabbis and maintains that we rule like them against Rabbi Yehudah; Rav Sheshet holds that Rabbi Yehudah just explains what they said and that, as such, his opinion is halachah.

**Why**, according to both opinions, is a **professional** gambler , **who has no other** profession invalid as a witness?

**Rami son of Chama** holds that gambling is a form of theft, a topic we will discuss more in Section II.

But what is behind **Rav Sheshet's** opinion – and that of his predecessor, Rabbi Yehudah? Why should a professional gambler be invalid as a witness just because he "is not involved in 'settling the world,'" not occupied in productive activity?

#### 6. Rashi on Sanhedrin 24b "She'ein Lo Umanut Ela Hu" – Why is a professional gambler invalid as a witness or judge?

That it (gambling) is his only profession – For since they are not involved in productive worldly activities, they are not familiar with laws and business, and are not afraid of transgression.

שאין לו אומנות אלא הוא.  
דהואיל ואין עסקין בישובו נשל  
עולם אינו בקי אין בטיב דינין  
ומשא ומתן, ואינו יראי חטא:

Here is a possible interpretation of Rashi's comment:

There are two distinct problems with a professional gambler's testimony: first, he does not understand laws and business and therefore the information in his testimony is bound to be inaccurate; furthermore, he does not fear sin, and is therefore tantamount to a *rasha*, an evil person whose testimony is invalid.

The Me'iri's explanation of the Rabbi Yehudah and Rav Sheshet approach begins like Rashi's, but adds other factors.

### 7. Me'iri on Sanhedrin 24b "Ve-amar al Zeh" – Why, according to the Me'iri, is a professional gambler invalid as a witness or judge?

The explanation is as follows: The reason he is invalid is because he is not involved in productive worldly activity and therefore does not understand business and the value of accurate testimony. And just as they are used to lying in their occupation (gambling) and do not get condemned for it, so too they think they will not be condemned for lying in other areas. They also do not appreciate the struggles and difficulties that people go through and are not concerned about other people losing money.

פירושו: הטעם לפי שאינו עוסק  
בְּיָשׁוּבֵי שְׁל עוֹלָם וְאִינוּ יוֹדְעִים  
בְּטֵיב מִשָּׂא וּמִתֵּן וּבְכֹנֶנֶת עֲדוּת,  
וְכִמוּ שֶׁרְגִילוֹ לְשַׁקֵּר בְּאִמְנוֹת  
שְׁלָהֶם וְאֵינָם מִתְגַּנְּיִים לְבָרִיּוֹת  
בְּאוֹתוֹ שְׁקֵרוֹת, הֵם סוֹבְרִים  
שֶׁלֹּא יִתְגַּנוּ בְּשְׁקֵרוֹת שְׂאָר  
הַדְּבָרִים. וְכֵן אֵין מִפִּירִין בְּטֵרַח  
וְצָרוֹת שְׁל בְּנֵי אָדָם וְאֵינָם חֹסִים  
עַל חֲבֵרֵיהֶם לְהַפְסִיד מְמוֹנָם.

The Me'iri begins his explanation like Rashi, but goes on to mention two other reasons to invalidate their testimony. One is that deception is such a part of their lives that we assume they will give false testimony. The second is that because they are so out of touch with normal people's financial struggles, they will not care about the loss of money that their false testimony brings about.

After reading these comments by Rashi and the Me'iri, take a close look at the Rambam's ruling on this topic.

### 8. Rambam, Mishneh Torah, The Laws of Testimony 10:4 – Only professional gamblers are invalid as witnesses.

...Similarly, dice-players are disqualified if this is their only occupation. Since such a person does not involve himself in ordinary business pursuits, it can be assumed that his livelihood is dependent on his gambling, which is forbidden as "the dust of [i.e. borderline] theft." The above applies not only to dice-players, but also to all those who gamble with nutshells or pomegranate peels. Similarly, our Sages did not disqualify only those who train pigeons, but also those who gamble with other animals, beasts,

... וְכֵן הַמְּשַׁחֵק בְּקַבֵּיה -  
וְהוּא, שֶׁלֹּא תִהְיֶה לוֹ אִמְנוֹת  
אֶלָּא הוּא - הוּא אֵיל וְאֵינוּ  
עוֹסֵק בְּיָשׁוּבֵי הָעוֹלָם. הֲרִי זֶה  
בְּחֻזְקַת שְׂאֵוֹכֵל מִן הַקַּבֵּיה,  
שֶׁהוּא אֶבֶק גָּזֵל. וְלֹא בְּקַבֵּיה  
בְּלֶבֶד אֶמְרוּ, אֶלָּא אֶפִּילוּ  
בְּקַלְפֵי אֵיגוּזִים וּקְלַפֵי רְמוֹנִים.  
וְכֵן לֹא יוֹנִים בְּלֶבֶד אֶמְרוּ,  
אֶלָּא אֶפִּילוּ הַמְּמִירִין בְּבִהְמָה

and fowl, saying the owner of the one that will outrace the other or vanquish the other will acquire the stakes put up by both. Similarly, other analogous types of gamblers are disqualified, provided they do not derive their livelihood from a source other than gambling. All of the above are disqualified according to Rabbinic decree.

תִּהְיֶה וְעוֹף, וְאָמְרוּ כָּל הַקּוֹדֵם  
אֶת חֲבֵרוֹ אוֹ כָּל הַנוֹצֵחַ  
אֶת חֲבֵרוֹ, יִטַּל בְּעֵלְיוֹ אֶת  
שְׂנֵיהֶן, וְכֵן כָּל פְּיוּצָא בְּשָׁחוֹק  
זֶה - וְהוּא, שְׂלֵא תִהְיֶה לוֹ  
אֲמִנוֹת אֲלָא שְׁחוֹק זֶה - הֲרִי  
זֶה פְּסוּל. וְכָל אֵלוֹ פְּסוּלִין  
מִדְּבָרֵיהֶם.

The problem with the professional gambler's testimony, according to the Rambam, is that "it can be assumed that his livelihood is dependent on his gambling, which is forbidden as *avak gezel*, 'the dust of theft.'" As we will see further in Section II, the Rambam categorizes the gambler as a thief, because he acquires other people's property through halachically illegitimate means.

Through the comments of Rashi, the Me'iri, and the Rambam, we can distinguish between three possible explanations of why the professional gambler is invalid as a witness. All of these comments emerge from trying to explain why "not being involved in a productive occupation" is a reason to invalidate him as a witness. The three reasons to discredit his testimony are:

**A. It is likely that his testimony will be false** (gamblers lie often – Me'iri; gamblers will not testify accurately, because they do not understand business and law – Rashi; gamblers will not appreciate how terrible it is for others to lose money through their false testimony – Me'iri).

**B. He does not fear transgression** (Rashi) and is therefore classified in the general category of *rasha*, an evil person, whose testimony is invalid.

**C. He lives on money that is classified, at least rabbinically, as *avak gezel*** – literally, the "dust of theft" (Rambam). *Avak gezel* refers to activities on the periphery of theft (similar rabbinic concepts: *avak lashon hara*, negative speech, and *avak ribit*, interest).

Can you think of a case which might be invalid only according to one or two of these reasons? (Suggestions: a businessman **turned** professional gambler; a gambler who always loses.)

How does the Shulchan Aruch rule? His opinion is identical with the Rambam's, and in fact, the Shulchan Aruch (Choshen Mishpat 34:16) quotes the Rambam's ruling almost verbatim.

So, concluded Rabbi Levine, Murray, who is not a professional gambler, **can** serve as a witness at Shari and Jason's wedding.

**KEY  
THEMES  
OF  
SECTION  
I**

- A gambler, says the Mishnah, cannot serve as a witness.
- Amoraim – and perhaps even Tannaim – argue about whether this just applies to a professional gambler or even to someone who won money through even one instance of gambling.
- Even one instance of winning at gambling would, according to one opinion, invalidate a witness, since the one who eventually lost had really intended to win, so the winner taking another's money is considered a form of rabbinic-level theft.
- According to the other opinion, only a gambler who has no other profession is invalid as a witness, because *eino osek be-yishuvo shel olam*, “he is not involved in a productive occupation.”
- This invalidates him either because we assume he will give false testimony, or because he does not fear sin, or because he has done rabbinically prohibited activities on the “periphery” of theft.
- We rule that only a professional gambler is invalid as a witness.

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**SECTION II Gambling: From Chess in the Park to Slot Machines in Las Vegas**

Although we established that a gambler who also works in a different profession may serve as a witness, does this mean that gambling itself is halachically allowed? We will now clarify whether gambling is prohibited or permitted by Jewish law.

**Case 2. Can Vadim Levtovich and Dima Garnovitch play chess for money – winner takes \$200?**

*Vadim is extremely confident about his talents as an amateur chess player – but so is Dima. They were both members of the Charkov chess clubs when they were kids, and, now, as American citizens, each usually beats his American-born opponents. Now, for the first time, they are up against each other in New York City's Washington Square Park. Dima, slightly overconfident, decides to make the game interesting and places \$100 down on the table. “How about putting down \$100 of your own – winner takes all?”*

*“No problem!” and Vadim pulls out a crisp \$100 bill.*

*What would the halachah say about such a scenario? Is it permissible to bet on a chess game (assuming we temporarily turn a blind eye on the ethical and spiritual dangers of arrogance and overconfidence, and the extra-legal reasons not to gamble, which we will focus on in Section IV of this class)?*

The Talmud's main discussion of gambling begins with the Mishnah Sanhedrin 24b about invalid witnesses discussed above in Source 3. In the subsequent Gemara Sanhedrin 24b-25a, cited in Source 4, one of the Amoraim, Rami son of Chama, clearly prohibits even one act of gambling because winning at gambling is considered a type of transaction called an *asmachta*. What is an *asmachta*?

Here is a classic example of an *asmachta*, described in a Mishnah in Bava Batra (the text itself follows in Source 9): A man borrowed money, but when it comes time to pay back his loan, he does not have sufficient funds to reimburse the entire debt, so he pays only a portion of the loan. However, the borrower wants to assure the lender that he will eventually pay back the debt in full. So the partially paid loan document is given to a third party, to whom the borrower says, “If I do not pay by a certain date, give the lender back his document,” enabling him to collect the original debt in full. What if the borrower does **not** pay by that date? Will that self-imposed conditional obligation (If I do not pay back the rest of the loan, I will penalize myself by paying it back in full) hold up in a *beit din*, a rabbinical court?

That is the subject of the following Mishnah:

**9. Mishnah Bava Batra 168a – The partial borrower case is a classic example of an *asmachta* transaction.**

Someone who paid back [only] a portion of the loan he owes, and gave the loan document to a third party and said, “If I do not give the complete amount between now and such and such date, give the lender his document (allowing the lender to collect the entire amount)”: If the appointed time came and the borrower still did not give the money, Rabbi Yossi says the third party should give the document back to the lender. Rabbi Yehudah says he should not give it over.

מִי שִׁפְרַע מִקְצַת חוּבוֹ וְהִשְׁלִישׁ  
אֶת שְׁטָרוֹ וְאָמַר לוֹ, אִם לֹא  
נָתַתִּי לְךָ מִכָּאן וְעַד יוֹם פְּלוֹנִי  
יָתֵן לוֹ שְׁטָרוֹ, הִגִּיעַ זְמַן וְלֹא נָתַן,  
רַבִּי יוֹסִי אוֹמֵר, יָתֵן. רַבִּי יְהוּדָה  
אוֹמֵר, לֹא יָתֵן.

The Talmud explains the conceptual roots of their dispute.

**10. Bava Batra 168a – Tannaim differ about whether *asmachta* transactions are effective or not.**

What is the root of their dispute? Rabbi Yossi holds that an *asmachta* transaction is effective (therefore the document must be handed to the lender, and the borrower must reimburse the full amount of the original loan), and Rabbi Yehudah holds that an *asmachta* transaction is not effective (therefore his obligation was meaningless and he need not hand over the document, and the borrower must only reimburse the balance of the actual amount owed).

בְּמַאי קָמִיפְלִגִּי? ר' יוֹסִי סָבַר  
אֶסְמַכְתָּא קַנְיָא, וְרַבִּי יְהוּדָה  
סָבַר אֶסְמַכְתָּא לֹא קַנְיָא.

The Rishonim explain why, according to Rabbi Yehudah, an *asmachta* is ineffective.

## 11. Rashbam on Bava Batra 168a – What really is an *asmachta*, and why should it be ineffective?

*Asmachta* – This is where one person promises his friend something (here – to transfer the document back to the lender) on condition that he will do something in the future (here – finish paying off his loan within a certain time frame). He thinks to himself at the time he makes the condition that he will be able to keep his word when the time comes (and pay off the remainder of the loan). But when the time actually comes, due to circumstances beyond his control, he is unable to keep his word.

אַסְמַכְתָּא - הַמְבֹטֵיחַ לְחֵבִירוֹ דְּבָרָא עַל  
מְנַת שְׂעִיעוּשָׁה דְּבָרָא לְעֵתִיד, וְסוּמָךְ  
בְּלִבּוֹ בְּשַׁעַת הַתְּנָאִי שְׂיֻכַּל לְקַיִּים  
הַדְּבָר כְּשִׁיעֵי זְמַן, וּכְשִׁיעֵי הַזְּמַן  
יֵאָנֵס וְלֹא יֻכַּל לְקַיִּים:

The word *asmachta* is based on the Hebrew root סמך. One of that root's connotations is "relying." So an *asmachta*, says the Rashbam, is a type of conditional transaction where the speaker relies on only the desirable one of the two outcomes taking place – the winning one, not the losing one. In the Mishnah we just cited, he relies on paying back the loan on time and not incurring the penalty.

How does the Talmud rule on this?

## 12. Bava Batra 168a – The Gemara's conclusive ruling.

The halachah is **not** according to Rabbi Yossi.

וְאִין הִלְכָה כְּרַבִּי יוֹסִי:

The final conclusion of this passage is that an *asmachta* transaction is not effective.

Now try to plug this back into our discussion of gambling. **Is gambling an *asmachta* or not?**

We will primarily follow Rashi's way of explaining the debate between Rami son of Chama and Rav Sheshet (in Source 4 above) about whether gambling is considered an *asmachta* or not (note that there are a number of other approaches in the Rishonim about how an *asmachta* is defined – see Tosafot "Kol Ki Hai Gavna" on Sanhedrin 24b and 25a and Chapter 11 of the Laws of Selling in the Rambam's Mishnah Torah).

According to Rami bar Chama, what is it about an *asmachta* that renders the transaction invalid and how does it apply to gambling?

### 13. Rashi on Sanhedrin 24b, “Asmachta” – What is an *asmachta*?

Asmachta – This is a transaction where a person does not give to another willingly, but rather, [when he originally made the condition] he was relying on one eventuality not happening. He thought he would be able to win (at gambling), [even though he knows that] sometimes it ends up that others beat him.

אַסְמַכְתָּא - הֵינּוּ דְּבַר דְּאִינוּ  
נוֹתֵן לוֹ מִדְּעֵתוֹ אֶלָּא סוּמְיָה  
עַל דְּבַר שְׂאִינוּ, דְּסָבַר שֶׁהוּא  
יָכוֹל לְנַצֵּחַ, וּפְעָמִים  
שְׂמַנְצָחִין אוֹתוֹ:

Vadim and Dima, for instance, each relied on winning. When they each put their \$100 bill on the park table, each one thought that he would walk away with \$200 that day.

Why, then, might gambling **not** be considered an *asmachta*? What is behind Rav Sheshet's opinion?

### 14. Ibid., “Kol Ki Hai Gavna Lav Asmachta Hee” – Why is gambling not an instance of *asmachta*?

Anything like that (gambling) is not considered an *asmachta* – And what is a genuine case of *asmachta*? It is a situation where a sharecropper makes a condition that if he does not work the land (as he is supposed to), he will pay the owner with high quality property (Bava Metzia 73b). Another example (Bava Batra 168a) is a borrower who partially pays a loan, then deposits the loan contract with a third party (and says, “If I do not pay back by such and such a date I penalize myself by allowing you to return the document to the lender for subsequent full payment”). He relies on something insubstantial (i.e. that he will definitely pay), for he thinks, “This is within my control.”

Initially, he only made the condition with the understanding that he would never give what he agreed to, because he thought the *asmachta* would never happen. He mistakenly thought he would never come to such a situation. But in this case (gambling over dice) he did not rely on one of the two possibilities not happening, because he knew that he might win and he might not win, and nevertheless, he still made the condition. We see that out of lack of certainty he had complete intent to give, and it is not theft.

כָּל כִּי הָאֵי גוּוֹנָא לָאוּ  
אַסְמַכְתָּא הִיא - וְהִכִּי דְּמִי  
אַסְמַכְתָּא כְּגוֹן דְּאָם אוֹבִיר  
וְלֹא אַעֲבִיד אֲשֶׁלָּם בְּמִיטְבָּא  
(בְּבָא מְצִיעָא עֵג: וּכְגוֹן  
מִשְׁלִישׁ אֶת שְׁטְרוֹ דִּגִּט  
פְּשׁוּט (בְּבָא בְּתָרָא קִסְח).  
דְּסוּמְיָה עַל לֹא דְּבַר, דְּסָבַר  
כָּל זֶה בְּיַדִּי לְעִשׂוֹת,

וּמְרִישָׁא כִּי מִתְּנִי אֲדַעְתָּא  
דְּלֹא יְהִיב לִיה לְאַסְמַכְתָּא קָא  
מִתְּנִי, דְּטוּעָה וְסָבַר לֹא יָבֵא  
לְיָדֵי פֶה, אֲבָל הִכָּא לֹא סְמִיךְ  
אַמִּידִי, דְּהָא לֹא יָדַע אִי נַצַּח  
אִי לֹא נַצַּח, וְאַפִּילוּ הִכִּי אֲתִנִּי  
שְׂמַע מִינָהּ מִסְפִּיקָא אֲתִנִּי  
גָמַר וְאַקְנִי, וְלֹא גִזְלָה הִיא:

Gambling, if we shave off any external trappings, can be analyzed as a conditional gift (it is obviously not a sale or barter). If X occurs (if I win the game) you give me

money, and if Y occurs (you win the game) I give you money. However, an essential element of a gift is consent, da'at. On the one hand, Vadim and Dima **verbally** agreed that the winner takes both \$100 bills. However, the Amoraim debate, is there **internal** consent to the condition?

Rami bar Chama classifies this as an asmachta because even though the gambler is cognizant of the reality that even talented people sometimes lose at games, he is relying on winning and this transaction lacks internal consent.

Rav Sheshet says that a transaction is only classified as an asmachta if he did not expect one of the two possibilities to happen at all, so gambling is still a valid transaction with the necessary consent. [Note that Rabbeinu Tam in Tosafot "Kol Ki Hai Gavna" takes a different direction, only defining a transaction as an asmachta in situations where the person only stands to lose, like the loan case we mentioned where he penalizes himself for not paying on time.]

The Rambam takes the stringent view that prohibits gambling, in accordance with Rami bar Chama.

### 15. Rambam, Mishneh Torah, The Laws of Theft 6:7,10 – Gambling is considered rabbinic-level theft.

7. Our Sages forbade many acts, classifying them as robbery, e.g. pigeon racing or dice playing. If a person transgresses these prohibitions, he is considered a robber by rabbinic decree...

10. What is meant by dice players? People who play with pieces of wood, pebbles, bones or the like and establish a condition that whoever will better a colleague in this sport is entitled to take a certain amount of money from him. This is robbery according to rabbinic decree. Although the owner himself consents to the other person's taking his money, since he is taking it without getting anything in return (as opposed to a sale), as part of the frivolous sport (and because it was won in a game, the transaction was an ineffective asmachta), it is considered to be [rabbinic-level] robbery.

Similarly, those who gamble over domesticated animals, beasts or fowl, making a condition that the one whose animal will vanquish or outrace the other one's is entitled to take a certain amount of money from him – this and all forms of gambling are forbidden and considered to be robbery by rabbinic decree.

ז. דברים הרבה אסרו חכמים משום גזל; והעובר עליהו, הרי זה גזלן מדבריהם: כגון מפריחי יונים והמשחקין בקביה....

י. המשחקין בקביה ביצד: אלו שמשחקין בעצים או בצורות או בעצמות וכיוצא בזה, ועושים תנאי ביניהם לשקל הנוצח את חברו באותו השחוק, יקח ממנו כה וכך - הרי זה גזל מדבריהם. אף על פי שברצון הבעלים לקח, הואיל ולקח ממון חברו בחנם דרך שחוק והתול, הרי זה גזל.

וכן המשחקין בבהמה או בחיה או בעופות ועושים תנאי, לשקל שתנצח בהמתו או תרוץ יותר, יקח מחברו כה וכך, וכל כיוצא בדברים אלו--הכל אסור, וגזל מדבריהם.

[Note: Commentators point out a seeming contradiction between the Rambam's position in the laws of theft and what he holds in the laws of witnesses. He classifies any gambling as theft, yet only invalidates a **professional** gambler as a witness. This is seemingly a contradiction, for even one act of theft should invalidate a person as a witness. The Vilna Gaon's resolution (in his comments on Shulchan Aruch Choshen Mishpat 203:4) is that they prohibited **any** gambling as rabbinic-level theft, but only rabbinically invalidated as a witness someone who makes his livelihood from gambling.

The Shulchan Aruch rules like the Rambam.

### 16. Shulchan Aruch Choshen Mishpat 370:2 – Gambling is prohibited as rabbinic-level theft.

1. The Sages prohibited certain things because they involve theft; and one who transgresses them is a rabbinic-level thief: pigeon racers, and dice players...

א. יש דברים שאסרו חכמים משום גזל, והעובר עליהם הרי זה גזלן מדבריהם, מפריחי יונים, ומשחקים בקביא...

2. What are examples of the dice players: These are those who play with wood, rocks or bones, and [the players] make a condition among them that whoever wins in that game will collect a certain amount of money. Similarly, those who play with animals or birds and make a condition that the one whose animal wins or runs faster will take a certain amount from his friend. These and similar activities are all prohibited and considered rabbinic-level theft.

ב. המשחקים בקביא כיצד: אלו שמשחקים בעצים או בצרורות או בעצמות, ועושים תנאי בנייהם שכל הנוצח את חברו באותו שחוק יקח כד וכד, וכן המשחקים בבמה או בחיה או בעופות, ועושים תנאי שכל שתנצח בהמתו או תרוץ יותר יקח מחבירו כד וכד, וכן כל כיוצא בדברים אלו הכל אסור וגזל מדבריהם הוא:

The Rema, both in the laws of theft (Choshen Mishpat 370:3), and in the laws of business transactions (Choshen Mishpat 207:13), sides with the more lenient approach. Note how after not invalidating the occasional gambler he mentions the prevalent custom about gaming for money. The Rema's comments become the basis for Ashkenazi halachic rulings on gambling.

### 17. Rema's note on Shulchan Aruch Choshen Mishpat, Laws of Theft 370:3 – Gamblers with another occupation are not invalidated as witnesses.

Note: But if one has another profession besides gambling, even if he plays against another Jew he is not invalid (Tur), and see above in Choshen Mishpat 207:13. The custom has already spread to follow the second approach, [to consider it permissible] to play dice, and only to invalidate one who has no other profession...

הגה: אבל אם יש לו אומנות אחרת אפילו משחק עם ישראל אינו פסול (טור) ועיין לעיל סימן רז סעיף יג, וכבר פשט המנהג כסברא האחרונה לשחוק בקביא ואין פסול אלא מי שאין לו אומנות אלא הוא...

The Rema begins with a leniency about testimony – a point the Shulchan Aruch agrees with – but continues with a further leniency and allows playing the game itself.

In the Rema's comments about *asmachta* in the laws of **asmachta** transactions below, he elaborates. Notice how limited permissible gambling really is. We cite his entire presentation so the context of his remarks about gambling is clear. The two factors that determine whether a condition is an *asmachta* or not are:

- a. control of the outcome of his condition; and
- b. exaggeration.

### 18. Ibid., 207:13 – Gambling: games of skill vs. games of chance.

Note: There are those who differentiate between three different situations in the laws of *asmachta*:

1. Any condition which is not in his control but is in another's...is an *asmachta* no matter what and is not effective.

2. Any condition which is within his control – if he does not exaggerate, for instance, where he says, “If I let the land lay fallow and do not work it, I will pay with high quality land,” is not an *asmachta* and is an effective sale.

3. However, if he exaggerates, and says, “If I do not work the land, I will pay a thousand silver coins,” this is an *asmachta* and is not an effective sale...

4. But if keeping the condition is completely out of his or anyone else's hands, as with **playing dice** and the like, where he does not know if he will win or not but makes the condition anyways – he certainly consented to the transaction out of doubt.

הגה: ויש אומרים דשלישה חלוקין  
בדיני אסמכתא:

1. דכל מה שאין בידו ותלוי ביד  
אחרים... הוי אסמכתא בכל ענין  
ולא קנה,

2. ומה שיש בידו לעשות, אם  
לא גזים כגון שאמר אם אוכיר  
ולא אעבוד אשלים במיטב לא הוי  
אסמכתא וקניא, אבל

3. אי גזים ואמר אם לא אעבוד  
אשלים אלפא זוזי, הוי אסמכתא  
ולא קניא ...

4. אבל אם אין בידו לגמרי ולא ביד  
אחרים, כגון המשחק בקניא  
וכיוצא בו שאינו יודע אם ינצח או  
לא ואפילו הכי התנה, ודאי גמר  
ומקני מספק.

### 19. Ibid. – Gambling is permitted in very limited circumstances.

When does this apply – when they play with cash up front. But if they play trusting that the winner will pay, the winner cannot extract payment in court (Tur quoting the Ri)...

במה דברים אמורים:  
כשחוקין במעות מוכנים,  
אבל אם שחקים באמנה אין  
מוציאין ממנו מה שהפסיד  
(טור בשם ר"י)...

But if the money is pre-prepared on the board, it is permissible to play and is not considered an *asmachta* (Mordechai in Sanhedrin). This is against the approach that prohibits it no matter what (Hagahot Mordechai). Some [authorities] only permit gambling if the board the money is placed on is jointly owned by both players (Tosafot in Sanhedrin and Beit Yosef quoting the Ri). See also the Shulchan Aruch in Choshen Mishpat 370...

אבל כְּשֶׁמַּעוֹת מוּכָנֵן עַל הַדָּף מוֹתֵר לְשַׁחֹק וְאִין בּוֹ אֲסַמְכָתָא (מְרַדְכֵי פֶרֶק זֶה בּוֹרֵר), וְדִלָּא כִּיִּשׁ חוֹלְקִין וְאוֹסְרִין לְשַׁחֹק בְּכָל עֵנְוִן (הַגְּהוֹת מְרַדְכֵי הַנּוֹכַר לְעִיל), וַיֵּשׁ אוֹמְרִים דְּאִינוּ מוֹתֵר רַק כְּשֶׁהַדָּף שְׁהַמְּעוֹת מְנַחִים עָלָיו קְנוּי לְשִׁנְיָהֶם (תּוֹסְפוֹת פֶּרֶק הַנּוֹכַר לְעִיל בֵּית יוֹסֵף בְּשֵׁם ר"י) וְעֵינִין לְעִיל סִימָן ש"ע, ...

There is an approach that says that gambling is not considered an *asmachta* since **both** make conditions, and not only one of them could lose. Because each one also could win, they consent to transfer the money if they lose.

יֵשׁ אוֹמֵר הָא דְּמִשְׁחָק בְּקִבְיָא לֹא הוּי אֲסַמְכָתָא הוּא מִטְעָם דְּמֵאַחַר שִׁשְׁנֵיהוֹן מִתְנִין זֶה כְּנִגְדַּד זֶה וְלֹא אַחַד יוֹכֵל לְהַפְסִיד אֲגַב דְּבַעֵי לְמִקְנֵי גְמַר וּמִקְנֵי,

Therefore, if any two people gamble, the transfer of money is binding if they each made a *kinyan* (act of acquisition). This is providing that the outcome is not within their power; but if it is, they cannot gamble... And even regarding this there are those who differ. Therefore, they had to give other reasons for how gambling might be permitted...

וְלָכוּן כָּל שְׁנַיִם שֶׁהִמְרוּ זֶה עִם זֶה קְנוּ אִם קְנוּ מִיָּדוֹ, וְדוֹקָא שְׂאִין בְּיָדוֹ גַּם כִּן אֲבָל מַה שֶׁבְּיָדוֹ לֹא... וְאַפִּילוּ בְּזֶה יֵשׁ חוֹלְקִין, וְלָכוּן הִצְרָכוֹ לְתַת טְעָמִים אַחֲרֵים גְּבִי מִשְׁחָק בְּקִבְיָא ...

Even according to the Rema, to avoid prohibited gambling, the players would have to: (1) place the money down at the outset; (2) on a jointly owned table, (3) gamble only on a game where no skill is involved, where the outcome is not within his control; and (4) before they begin each would have to make an act of acquisition, agreeing to hand over the money if he loses.

Vadim and Dima's chess game in the public park would not, according to this, fill all conditions. The public chess table is certainly not jointly owned (though they could bring their own board with them to the park, and one might be able to consider the park's chess table *tzidei reshut harabim*, areas not on the main thoroughfare where personal acquisition is possible). But as far as games that people gamble on, chess is probably the most skill-oriented one ("I am totally in control"). Nothing is left to chance at all.

Let us now apply these sources to other forms of gambling. What would you say about the pure legal side of playing **poker** – not chess – for money? Is it prohibited as an *asmachta* or not?

Even though poker has an element of chance that chess does not, it still involves skill, and the Rema does not permit gaming unless the results are totally out of one's control. Furthermore, the Rema delineates three other limitations for a game to be

permitted. As stated above, the players would have to: (a) place money up front, (b) play on a jointly owned table, and (c) before beginning to gamble each make an act of acquisition, agreeing to transfer the money if he loses.

What about a pure game of chance – against the house? What about a slot machine?

**Case 3. Is putting a quarter in one of the slot machines at Las Vegas's Maccaran International Airport halachically permissible?**

*Salomon Gabai was able to get a low-cost plane ticket to Los Angeles with a three-hour stopover in Las Vegas's Maccaran Airport. As he walked from one side of the airport to the other, he noticed slot machines in many strategic locations throughout the departures section. His first thought was – maybe I will just try my luck and see if I win. But then he had a vague memory of a tangential discussion in one of Rabbi Dayan's classes on business ethics, where they talked about gambling, and he did not remember the conclusion. He pulled out his cellphone and rang up the Rabbi.*

Rabbi Dayan's answer included the following points:

- A.** Whether to gamble or not is not solely a question of halachah. There are ethical and spiritual reasons to think twice before gambling even once (see Section V below).
- B.** Because Salomon is of Sephardic descent, his custom is to follow the halachic rulings of Maran Rabbi Yosef Karo in his Beit Yosef and Shulchan Aruch. Although the Rema (followed by Ashkenazim) takes a lenient approach, the Shulchan Aruch, based on the Rambam's approach, takes a strong stand against gambling, deeming it prohibited as rabbinic-level theft. As Dayan Batzri says in his classic *Dinei Mamot* (Vol. II, Ch. 19, p. 90), "To those that follow the rulings of our master, of blessed memory (Rabbi Yosef Karo) all of this is prohibited and rabbinic-level theft."
- C.** Slot machines are a pure game of chance; pulling the handle involves no skill at all. There might be a Talmudic model for a pure game of chance. The Mishnah (Source 3) mentions both dice playing and pigeon racing. Why was there a need to cite more than one example of gambling? Pigeon racing – according to one view on Sanhedrin 25a – is totally out of my control, whereas dice games in Talmudic times involved some element of skill (that passage presents a dissenting opinion that it takes skill to inspire your pigeon to go faster and win the race!). Yet, according to the Rambam and Shulchan Aruch, pigeon racing is just as prohibited as dice games.

**Salomon Gabai should therefore refrain from using the slot machines, a pigeon-racing-like game of pure chance.**

Note the Mishnah Berurah, which is a stringent voice among the Ashkenazi halachic authorities:

## 20. Mishnah Berurah Orach Chaim 322:22 – Games of chance are prohibited.

Kubia, the game people play with wood or dice, is rabbinically prohibited (“the dust of”) theft, for the loser does not intend to give over the money as a complete transfer. Therefore it is prohibited even on the weekday (not just on Shabbat as a business related prohibition).

קביא הוא מה שמשתחקין  
בעצים וקביא הוא אבק גזל  
מדברייהם שאין דעתו להקנותו  
בקנין גמור ולהכי אסור אף  
בחול.

[To better understand the context of his comment, see Shulchan Aruch Orach Chaim 322:6, as well as the Aruch Hashulchan Orach Chaim 322:7.]

### KEY THEMES OF SECTION II

- Whether or not an individual act of gambling is prohibited as theft is the subject of an Amoraic debate.
- Rami bar Chama rules that gambling is prohibited because it is defined as an *asmachta*, a type of ineffective conditional transaction.
- In the classical examples of *asmachta*, in order to show another how serious I am about my promise (to pay a loan, to work a field, etc.), I obligate myself to pay money should I not follow through. Because I rely on never having to pay, the condition is considered null and void, because there is no real inner consent on my part to give over the money.
- Gambling is the same, says this opinion, because no one plans on losing. The winner at gambling has, in effect, taken another's money against his true will.
- Rav Sheshet's approach counters that people's awareness of the reality that you sometimes lose at gambling removes this from the category of *asmachta*.
- The Shulchan Aruch and Rambam categorically prohibit gambling, whereas the Rema is the more lenient approach (not too lenient, though) than his predecessors in the Ashkenazi halachic world.
- Even according to the lenient approach, the money the winner will eventually receive must be placed on the table – which some say must be jointly owned – up front; they cannot play for promised money. Others require that the two players each make a *kinyan*, an official act of acquisition concretizing the transaction.
- The Shulchan Aruch apparently prohibits even gambling that involves no skill at all.
- The Mishnah Berurah, although following the Ashkenazi halachic tradition, prohibits gambling.

## SECTION III Lottery Tickets and Synagogue Raffles

“Winning the lottery” is a universal metaphor for windfall profits. Providence smiles on the winner, giving an opportunity for the man in the street to break out of poverty. But is it permitted? What about the categorical prohibition against gambling recorded by the Shulchan Aruch, following the Rambam’s approach?

Until now in our shiur we have heard strong voices against gambling; even the Rema’s leniencies were extremely limited. But we have been speaking about gambling that involves two parties: betting on a chess game or a poker game; or playing a slot machine against “the house.” But some authorities hold that lottery tickets and raffle tickets are fundamentally different. Let’s examine the distinction.

### Case 4. Does the halachah permit buying a Powerball ticket?

First of all, Rabbi Ovadiah Yosef has, in fact, ruled that buying a lottery ticket is also prohibited for people following the Sephardic halachic tradition.

#### 21. Yabia Omer, Vol. 7, Choshen Mishpat #6 – Participating in a lottery is prohibited for Sephardic Jews.

The halachic conclusion is that Sephardic Jews are prohibited from participating in buying lottery tickets...

מִסְקָנָא דְדִינָא שְׁהִסְפְּרָדִים  
וְעֹדוֹת הַמְזֻרָח אֲסוּר לָהֶם  
לְהִשְׁתַּתֵּף בְּקִנְיַת כְּרֵטִים  
מִפְּעַל הַפִּיּוּם...

However, his opinion met with opposition. A number of contemporary authorities argued that purchasing a lottery ticket is a completely different type of enterprise than the gambling we have spoken of earlier. Notably, Rabbi Avraham Shapiro, of blessed memory, who served as Chief Rabbi of the State of Israel from 1983-1993, objected. We cite here Rabbi Moshe Shternbuch, shlita’s rationale for contrasting purchasing a lottery ticket with other forms of gambling.

#### 22. Rabbi Moshe Shternbuch, Teshuvot Vehanhagot 4:311 – Participating in a lottery is permitted even for Sephardim.

The asmachta that the author of the Shulchan Aruch prohibited is a situation where a person says, “When a certain event happens, I will acquire or give something.” That case is an asmachta, and the receiver does not acquire (the transaction is not valid), but here he buys a ticket that is worth a few dollars on the market and can resell and receive its worth...**But here he acquires something that might bring a great profit and might not.** This is like anyone that

... אֲסִמְכַתָּא שְׁאֲסוּר לְהִמְחִיב  
הֵינּוּ אִם אָמַר כְּשִׁיחֶה דְּבַר  
פְּלוּנִי אֶקְנֶה אוֹ אֶתֵּן, וּבְזֶה הָיָה  
אֲסִמְכַתָּא וְלֹא קִנְיָה, אֲבָל פֶּאן  
קוֹנֶה כְּרֵטִים שְׁשִׁיחֶה עֲכָשִׁי בְּשׁוּק  
כְּפֻמָּה דוֹלָרִים, וְיִכּוּל לְמַכּוֹר  
אוֹתוֹ עֲכָשִׁי וּלְקַבֵּל אֶת שְׁוִיו...  
אֲבָל פֶּאן קִנְיָה עֲכָשִׁי דְּבַר שְׁיִתְּכוּ  
שְׁיִבּוּא לּוֹ מִזֶּה רוּוח גָּדוֹל וְיִתְּכוּ  
שְׁלֵא, הָיָה כִּכְל עוֹשֶׂה עֶסֶק

enters his own business venture or participates in one, in which case there is not worry of *asmachta*...In any case, it seems that buying a lottery ticket does not involve an *asmachta* and this applies both to Ashkenazim and Sephardim.

או משתתף בו שאין בזה שום  
חשש אסמכתא.  
... על כל פנים נראה שבקניית  
כרטיס לא שייך אסמכתא, והיינו  
בין לאשכנזים ובין לספרדים.

A lottery ticket, he says, is a piece of property that costs a little when you buy it, but might end up becoming extremely valuable. When I buy a Powerball ticket, I have, essentially, invested \$2. I can, if I choose, sell the ticket to a friend. And if I hold on to my investment until after the drawing and it turns out that they chose my number, my investment appreciated and became worth millions of dollars. Is there any difference, this approach maintains, between a penny stock that ended up being a winner and a lottery ticket?

### **Case 5. Can the Mexico City Hillel House raise money by selling raffle tickets for the one-million peso grand prize?**

Not just the Mexico City Hillel, but hundreds (thousands?) of synagogues, schools, and assorted Jewish organizations raffle off hundreds of thousands of dollars, dozens of trips to Israel, along with computers, furniture, and sets of the Talmud. Is this all prohibited activity? If not, why not?

### **23. Shulchan Aruch Yoreh Deah 258:10 – Authorities permit an *asmachta* transaction if the proceeds go to charity.**

If one vowed to give money to charity in an *asmachta*-like condition, such as, “If I do a certain thing, I will give a certain amount to charity,” and he did it – he must give the money to charity.

נדר לצדקה באסמכתא, כגון  
אם אעשה דבר פלוני אתן כד  
וכד לצדקה, ועשאו חייב ליתן.

This demands explanation. It is certainly not permitted to steal if the proceeds go to charity! Robin Hood and his Merry Men, stealing from the rich and giving to the poor, would be considered sinners according to the halachah that prohibits a *mitzvah haba'a ba'veirah*, a *mitzvah* that comes about through a sin. So why is an *asmachta*, which is usually invalid, considered binding with regard to charity?

The simplest explanation of why the halachic authorities are lenient with regards to making an *asmachta* to give *tzedakah* is (based on the Mordechai, Bava Kamma Section 46) that an *asmachta* is only considered an invalid transaction on a rabbinic level, but on a biblical level it is a valid transaction. This is in line with the formulation we have heard made time and again, that gambling is rabbinically considered in the periphery of theft.

Therefore, the rabbinic stringency was not applied to *tzedakah* situations.

Again, keep in mind that purchasing a \$50 raffle ticket that might win \$50,000, like purchasing a lottery ticket, might not present any problem of prohibited gambling.

It is not that the organization agreed to give you \$50,000 on the condition that you have the right number (like standard gambling), but that you bought something from them that is now worth \$50 (a raffle ticket that you could theoretically resell) and might appreciate in value a thousand fold. [An additional reason to be lenient might be the giver's intention to donate the money to tzedakah, whether he wins or not.]

**KEY  
THEMES  
OF  
SECTION  
III**

- Some authorities, based on the Sephardic halachic tradition, hold that even buying a lottery ticket is considered gambling and thus prohibited.
- Others counter that all authorities would permit buying a lottery ticket and holding on to the winnings, because the lottery situation is not an *asmachta*, but an investment in a ticket that can itself be resold and might seriously appreciate in value if it wins.
- The Shulchan Aruch and Rema permit receiving tzedakah funds that were given with an *asmachta* condition (such as, "If I do not do X, I will give \$10,000 to tzedakah"). This is probably based on a view that the transaction is binding on a biblical level, so the rabbinic stringency is waived here.
- There is an extra reason to allow raffle tickets for charitable causes: they are identical to lottery tickets.

## SECTION IV Risky Investments

### **Case 6. Are extremely risky investments or uneducated speculative investment decisions tantamount to gambling?**

Even within the realm of seemingly proper business practices, the word gambling has been used in conjunction with risky investments. Here is the lead-in of an article about risky mutual funds.

#### **24. "Seven Mutual Funds for Gamblers," by Rob Silverblatt in USA Today – Risky investments seem like gambling.**

Most traders will shrug off the analogy between investing and spinning the roulette wheel. After all, isn't investing all about making money while minimizing the risks? But occasionally, investors need to take some risks in order to avoid other ones. "Sometimes the biggest risk you can have in your portfolio is not having enough risk," says Chris Konstantinos, a portfolio risk manager at Riverfront Investment Group, a Virginia-based advisory firm. Investors looking to spice up their portfolios have a number of options. With that in mind, here are seven funds for gamblers...

Even the investment professionals are known to gamble, and JPMorgan Chase's now infamous "London Whale's" miscalculations resulted in a devastating 6.2 billion trading loss for the bank in 2012! However, it should be obvious that even though we

use the word “gambling” with regards to risky investments, there is a fundamental **legal** difference between purchasing something that might appreciate in value (even if that is a remote possibility), where there is clearly 100% consent on the part of the buyer and seller, as opposed to betting on a chess game where the inner consent is not complete (and a classic *asmachta* where there is no inner consent).

This distinction is exactly why many authorities (see Section III) permit buying a lottery ticket. A lottery ticket is similar to an investment because, as many authorities say, it is also a piece of property that can appreciate in value. However, pure chance is introduced when the lottery officials randomly choose the winning numbers.

Even though the **legal reality** of risky investments is fundamentally different from gambling, the **experience** of investing might mirror the experience of gambling. This is apparent among uneducated day traders engaged in speculative investing.

**25. Paul R. Ashe, President of the Florida Council on Compulsive Gambling, [njlap.org/AboutGambling/UnderstandingCompulsiveGambling/](http://njlap.org/AboutGambling/UnderstandingCompulsiveGambling/) – Day trading borders on gambling.**

Day traders buy and sell stocks dozens or even hundreds of times daily, closing out their positions at the end of the day. Day traders usually have no knowledge of the companies behind the stocks they trade, nor do they care to. Their only concern is the fluctuation in the companies' stock prices, which keeps them glued to their computer screens. The vast majority of day traders lose money, with some even losing their homes, financial assets, and lives...

The Talmud has some simple and straightforward investing advice.

**26. Bava Metzia 42a – Proper Investment Procedures**

Rav Yitzchak says, “A person should divide his money into thirds, and invest one third in real estate (which is the most secure investment), one third in inventory (to turn a business profit), and one third should remain liquid so that it will be available, in case merchandise is suddenly available to him at a bargain price.

וְאָמַר רַבִּי יִצְחָק לְעוֹלָם יִשְׁלִישׁ  
אָדָם אֶת מְעוֹתָיו שְׁלִישׁ בְּקָרְקַע  
וְשְׁלִישׁ בְּפָרֶקֶמְטִיא וְשְׁלִישׁ  
תַּחַת יָדוֹ.

**KEY  
THEMES  
OF  
SECTION  
IV**

- Risky investing and irresponsible day trading are legally permitted purchases and sales. But experientially they share gambling's highs and lows, and sage advice warns against them.

## SECTION V Gambling and Jewish Ethics

Up until now, the focus of this class has been legal, asking questions like, “Is gambling halachically permissible?” and “Can a gambler serve as a witness?” In order to do justice to this topic, we must also address another angle, the moral side: “Is gambling advisable?” “Is gambling dangerous?” “Is gambling ethical?” “Is gambling holy?” We will hear a clear condemnation of compulsive gambling, as well as some warnings against even recreational gambling.

### Compulsive Gambling

**Gambling** wreaks its greatest havoc through gambling addictions. This makes gambling, sometimes even minor gambling like one shot at a slot machine or even buying one lottery ticket, extremely dangerous for the addict. One line in the Gemara illustrates this. The Gemara evaluates when we know that a professional gambler is reformed, to the degree that he is once again acceptable as a witness. Here is the answer:

#### 27. Sanhedrin 25b – The gambler must destroy the pieces of his games.

One who plays with dice – this refers to those who play with wood counter pieces. This not only applies to wood pieces, but also nutshells, and pomegranate peels. And when can they be considered once again valid to testify? It is only when they destroy the pieces and completely reform to the degree that they do not even do it for free.

הַמְשַׁחֵק בְּקַבֵּי: אֵלוֹ הֵן  
הַמְשַׁחֵקִים בְּפִסְפָּסִים. וְלֹא  
בְּפִסְפָּסִים בְּלֵבָד אֶמְרוּ, אֶלָּא  
אֶפֶּילוּ קְלִיפֵי אֶגְזִיִּים וְקְלִיפֵי  
רְמוֹנִים. וְאֵימְתִי תְּזַרְתָּן?  
מְשִׁישְׁבָרוֹ אֶת פִּסְפָּסֵיהֶן וַיִּחְזְרוּ  
בְּהֵן תְּזַרְהָ גְמוּרָה דְאֶפְלוּ בְּחֵנָם  
לֹא עֲבָדִי.

The gambler's reform must be total; we demand abstinence, not just a decrease in frequency. Otherwise, for an addict, the danger of relapse is always in the background.

#### 28. Rabbi Dr. Abraham Twerski, *Compulsive Gambling, “Treatment of Compulsive Gambling,”* p. 89 – “I must stay away from handling dice.”

Recovery from any addiction is fraught with the possibility of relapse. The delusion of being able to gamble socially and in a controlled manner may recur. Along with this, come all the negative character features: lying, cheating, manipulating, etc. While certainly destructive, relapse should not result in despair on the part of the gambler and family. Unfortunately, it may take more than one relapse to finally realize that he has no control over gambling, and that he must distance himself from anything that can lead to gambling. One gambler with years of recovery said that he does not join the family in playing Monopoly. “I must stay away from handling dice.” This kind of awareness of the insidious seductiveness of gambling is essential to prevent relapse.

**29. Condensed from: "Theories about Compulsive Gambling," p. 26, in Rabbi Dr. Abraham Twerski, Compulsive Gambling – Four risk factors for gambling disorders.**

**A.** There is serious evidence that some people have a **genetic** propensity towards addiction; **B.** There is a **physical** element to gambling, for the gambler becomes addicted to the pleasant sensation of endorphins released by gambling activity (winning or losing); **C.** One of the main **psychological** characteristics of the addict is low self-esteem that the promise of winning at gambling feeds upon; **D. Environmental** factors, exposure to and involvement with gambling activities, can lead a potential gambler to becoming an actual one.

**Recreational Gambling**

Some authorities condemn even recreational gambling, restricting the Rema's lenient position. Gambling, they say, is unproductive and potentially destructive.

**30. Responsa of the Rivash #432 – Gambling is ugly, abominable, and repulsive.**

Even according to Rav Sheshet, who holds there that gambling is not considered an asmachta transaction, it is nevertheless ugly, abominable, and repulsive. Many are those it has caused to fall, claiming an astounding number of victims.

וּאֶפִּילוּ לְרַב שֵׁשֶׁת, דְּסָבִירָא לִיהּ  
הֵתָם: דְּלִיכָא אֲסַמְכָתָא בְּקַבְיָא;  
מִכָּל מְקוֹם דְּבָר מְכַעַר וּמִתְעַב  
וּמִשְׁקֵץ הוּא. וְרַבִּים חָלְלִים  
הָפִיל, וְעֲצוּמִים כָּל הָרְגִיו.

**31. Dayan Ezra Batzri, Dinei Mamonot, Vol. II, Ch. 19, "The Laws of Asmachta," p. 90, footnote 7 – Avoid beginning to gamble.**

We see with our own eyes that those who are drawn after these games in the end waste their money, and many times they reach hopelessness and actual suicide...It is better for a person not to start, because it is very addictive after one gets accustomed to it...And in almost all communities they have made local decrees against gambling.

עֵינֵינוּ רוֹאוֹת שֶׁכָּל הַנִּמְשָׁכִים אַחַר  
מִשְׁחָקִים כָּאֵלֶּה, סוּף שֶׁמְכַלִּים  
מָמוֹנָם, וּפְעָמִים רַבּוֹת הַגִּיעוּ  
לְיֵאוֹשׁ וְהִתְאַבְּדוֹת מִמֶּשׁ ... וּמוֹטָב  
לוֹ לֶאֱדָם שְׁלֹא יִתְחִיל בְּזֶה כִּי זֶה  
מוֹשֵׁד מְאֹד אַחַר שֶׁמִּתְרַגְּלִים  
לְכָד... וּבְכָל הַקְּהָלוֹת כְּמַעַט הָיוּ  
תִּקְנוֹת שְׁלֹא לְשַׁחֵק...

**32. Rabbi Moshe Feinstein, Igrot Moshe, Oruch Chaim 4:35 – Card playing and Bingo are not enviable, productive pursuits.**

Playing cards, Bingo and similar activities, even though there is no clear prohibition, are repulsive and are not productive.

... לְשַׁחֵק בְּקַלְפִּים (קְאָרְטוֹן) וּבִיִּנְגָא  
וּכְדוּמָה אִף שְׂאִין עֲבוּדָה זָרָה  
אִיסוּר בְּרוּר הֵם דְּבָרִים מְכַעְרִים  
בְּכָל מְקוֹם שֶׁהוּא וְגַם הוּא כְּמוֹשֵׁב  
לְצִים.

### Hard-earned money or get rich quick?

Judaism has a serious work ethic, and gambling is diametrically opposed to it.

#### 33. Tehillim (Psalms) 128:2 – The ideal is the Jewish work ethic.

If you eat the toil of your hands, you are praiseworthy, and it is good for you.

יְגִיעַ כַּפֵּיךָ כִּי תֹאכַל אֲשֶׁרֶיךָ וְטוֹב לָךְ:

The gambling myth is that you can reap high results from minimal labor. The Talmud debunks such an illusion and teaches that it is hard work alone that produces success.

#### 34. Megillah 6b – Success is achieved though sincere effort.

Rabbi Yitzchak taught, If a person tells you, “I tried, but I didn’t succeed,” don’t believe him; “I didn’t try and I succeeded,” don’t believe him; “I tried and I succeeded,” believe him.

וְאָמַר רַבִּי יִצְחָק, אִם יֹאמַר לָךְ אָדָם: יִגְעַתִּי וְלֹא מָצָאתִי - אַל תִּאֱמִין, לֹא יִגְעַתִּי וּמָצָאתִי - אַל תִּאֱמִין, יִגְעַתִּי וּמָצָאתִי - תִּאֱמִין.

#### What else?

There are a number of other Jewish values and ideals that militate against gambling:

**Using time wisely** – Time is literally life, and should be invested wisely in meaningful pursuits. Not only does gambling create an illusion that one can get rich quickly, the very involvement distracts one from a productive life.

#### 35. Pirkei Avot (Ethics of the Fathers) 3:14 – Wasting time is wasting life.

Rabbi Dosa ben (son of) Hurkenus said: Late morning sleep, wine in the afternoon, the chatter of the youth, and sitting in the gathering places of the ignorant – drive a person out of the world.

רַבִּי דוֹסָא בֶּן הוּרְקַיְנָס אוֹמֵר שִׁנְיָה שֶׁל שִׁחְרִית וַיִּין שֶׁל צֶהָרִים וְשִׁיחַת יְלָדִים וְיִשְׁבֵּת בְּתֵי כְנִסְיֹת שֶׁל עַמֵּי הָאָרֶץ מוֹצִיאִין אֶת הָאָדָם מִן הָעוֹלָם.

#### 36. Seforno, Pirkei Avot 3:14 – Gambling distracts a person from investing effort in this world and from earning his future world.

This type of conduct prevents man from attaining eternal life, and even deters him from being successful in this world. This is the result of someone wasting time without realizing it.

מוֹנְעִים אֶת הָאָדָם מִהַשְׁגִּיחַ חַיֵּי עוֹלָם וְגַם בֵּן מִהַשְׁגִּיחַ חַיֵּי שָׁעָה, וְזוֹה לְרַב מֵה שְׁנֵי מִיָּמֵי מֵהֶם מֵאֲבוּד הַזְּמַן בְּלִתֵּי שִׁירְגִישׁ הָאָדָם בּוֹ.

The time-wasting factor actually made it into the Shulchan Aruch's discussion about gambling:

### 37. Shulchan Aruch Orach Chaim 370:3 – There is an additional problem with gambling – idle activity.

There is an opinion (the Rambam) that says that playing dice, gambling, with a non-Jew is not considered (rabbinic-level) theft, but it is still prohibited because the person is involved in idle activities. For it is proper for a person to be involved his whole life only with matters of wisdom or an occupation that “settles the world” [through productive activity].

יש מי שאומר שהמשחק בקביא  
 עם העכו"ם אין בו משום גזל,  
 אבל יש בו איסור עוסק בדברים  
 בטלים, שאין ראוי לאדם שיעסוק  
 כל ימיו אלא בדברי חכמה וישובו  
 של עולם.

**Wasting resources** – The Torah prohibits wastefulness and destructiveness from the prohibition of “*Bal tashchit*,” “Do not destroy.” The biblical paradigm (Devarim/Deuteronomy 20:19-20) of destructiveness is uprooting fruit trees while besieging a city, but the prohibition expands to other areas. This includes gambling, which wastes valuable financial resources. (see Rambam’s Mishneh Torah, The Laws of Kings 6:10).

**Focus on Spiritual Growth and Personal Development:** “Be holy, for I, the Lord, your God, am holy” (Vayikra/Leviticus 19:2) is, according to the Ramban’s commentary on that verse, a general principle of Judaism. We strive for a life of *Kedushah*, holiness, which is not focused on physicality, pleasure, or pursuit of luxuries. It is ultimately the most enjoyable and rewarding life, where physical pleasure and this-worldly resources play a major role – but it is focused on perfecting our character, performing kind deeds, and building a relationship with God. Gambling often brings pursuit of money onto the center stage, confusing the means with the ends.

#### KEY THEMES OF SECTION V

- Besides the halachic issues involved in occasional gambling and the clearly problematic professional gambler who is not involved in a productive occupation, gambling can be problematic for other reasons.
- Even occasional gambling can, for some people, be the beginning of compulsive gambling, where gambling is a dangerous addiction, leading to broken relationships, high debt, often crime, and even suicide.
- The gambling environment is often problematic for someone trying to live a life according to Judaism’s values, because of the frequent association gambling has developed with crime.
- Gambling is often out of sync with Jewish values, especially the Jewish work ethic that focuses on hard work to attain one’s financial and spiritual goals. A number of other key Jewish values do not mesh with gambling: using time wisely; focusing on Torah study; avoiding wastefulness; and living a life of *kedushah*, holiness.

**CLASS  
SUMMARY****According to the Torah, is gambling considered a vice or entertainment?**

The simplest answer is that it is mostly a vice. However, there are some limited types of gambling that some authorities permit. Yet, it goes too much against the grain of Jewish ethics to be considered kosher entertainment. Gambling might be considered theft, it may lead to addiction, it involves too much direct pursuit of quick money for the Jewish ethos, and it can create an association with crime. It is difficult to call gambling “holy.” Though involvement with gambling always seemed to be part of Jewish life, it was decried and condemned, and even the subject of special communal decrees.

**Does the Torah view a professional gambler as a Jew in good standing?**

He is a *persona non grata*. The professional gambler is, according to all authorities, invalid to testify, because he is not involved in a normal, productive occupation. Why should this matter in court? A number of suggestions are made: he is not God-fearing; he might lie, as he is used to doing in his profession; he may testify inaccurately because he is not familiar with standard business practices and laws; and since he is not troubled over others' losses, he will not be sufficiently concerned about the ramifications of false testimony.

**Does the halachah permit using slot machines, playing poker for money, betting on sports, or buying lottery tickets?**

There are authorities, following the Sephardic halachic tradition, that categorically prohibit all of these. However, buying a lottery ticket is permitted by most, because it is likened to an investment that might appreciate astronomically. The halachic prohibition against gambling is based on categorizing it as rabbinic-level theft, because the loser did not internally consent to giving away his money. Ironically, the more skill involved, the more likely it is to be considered prohibited gambling. A player who is sure he will win was initially less willing to give over the money. There is therefore more reason to prohibit betting on games that require skill (poker or chess) or factual knowledge (sports) – than slot machines, which are pure chance and the gambler knows he might win and might lose. Before doing any kind of gambling, consult a qualified rabbi (and, perhaps, a therapist with a special expertise at addiction).

**Is making an extremely risky investment tantamount to gambling?**

It is legally and halachically different, but can be experientially the same. Gambling involves making a condition (based on the rules of the gambling game) where the outcome will determine winning or losing money. An investment is a purchase. A lottery ticket is similarly an extremely risky investment. A professional gambler is not involved in a productive occupation, but a professional stock investor is, in fact, buying a share of a company, which is part of what “keeps the world running.” The experience of investing can be similar to that of gambling, though. Both involve risk, often competition, high stakes and a lot of action.

### **Can a Jewish organization raise money through selling raffle tickets?**

The Shulchan Aruch permits asmachta transactions for charitable purposes, probably based on an assumption that the prohibition against taking money in asmachta situations is on a rabbinic level – and they waived it for tzedakah. A raffle ticket has another leniency attached to it, because it involves purchasing an item (ticket) that can be resold.

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#### **RECOM- MENDED ADDITIONAL READING**

[torah.org/features/secondlook/gambling.html](http://torah.org/features/secondlook/gambling.html) Rabbi Berel Wein on Gambling: the Dreidel, the Eastern European Lottery, Bingo Nights, and the Casino in Jericho

#### **Source Material**

Through the following two resources you can get to the vast majority of relevant material in the Gemara, Rishonim, and Acharonim: Rabbi Josh Flug's English Outline and Hebrew Source Material, available online at [Rabbanan.org](http://Rabbanan.org)

Olamot's Hebrew Outline and Source Material, focusing on asmachta, available online through [olamot.net](http://olamot.net).

#### **English Shiurim**

"Gambling," by Rabbi Hershel Schachter, available online at:  
[yutorah.org/lectures/lecture.cfm/711774/Rabbi\\_Hershel\\_Schachter/Gambling](http://yutorah.org/lectures/lecture.cfm/711774/Rabbi_Hershel_Schachter/Gambling)

"Gambling," by Rabbi Shalom Rosner, available online at:  
[yutorah.org/lectures/lecture.cfm/712340/Rabbi\\_Shalom\\_Rosner/Gambling](http://yutorah.org/lectures/lecture.cfm/712340/Rabbi_Shalom_Rosner/Gambling)

"Halachos of Gambling," by Rabbi David Hirsch, available online at:  
[yutorah.org/lectures/lecture.cfm/759494/Rabbi\\_David\\_Hirsch/The\\_Halachos\\_of\\_Gambling](http://yutorah.org/lectures/lecture.cfm/759494/Rabbi_David_Hirsch/The_Halachos_of_Gambling)

"Gambling in Halacha" by Rabbi Aryeh Lebowitz with outline and sources:  
[yutorah.org/lectures/lecture.cfm/735781/Rabbi\\_Aryeh\\_Lebowitz/Gambling\\_in\\_halacha#](http://yutorah.org/lectures/lecture.cfm/735781/Rabbi_Aryeh_Lebowitz/Gambling_in_halacha#)

"Gambling in Jewish Law," by Rabbi David Bassous, [etzahaim.org](http://etzahaim.org)