

Mesachek Bakuvia

Is Gambling Kosher?

Is it Permitted? Is it Holy?

Sanhedrin 24b

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:

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
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- 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.

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?

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?

1. Shemot (Exodus) 23:1

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

לֹא תִשָּׂא שְׁמֵעַ שָׁוְא, אֶל תִּנְשֵׂת יָדְךָ עִם רָשָׁע לְהִיטֵת עַד חֲמָס.

2. Rambam (Maimonides), Mishneh Torah, The Laws of Testimony 10:1

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 תִּנְשֵׂת יָדְךָ עִם רָשָׁע, לְהִיטֵת עַד חֲמָס" (שְׁמוֹת כג, א); מִפִּי הַשְּׂמוּעָה לְמַדּוֹ, אֶל תִּנְשֵׂת רָשָׁע עַד.

3. Mishnah, Sanhedrin 24b

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, וְהַמְלִוֶה בְּרִבִּית, וּמַפְרִיחֵי יוֹנִים... אָמַר רַבִּי יְהוּדָה, אִימְתִי, בְּזִמְנֵי שְׂאִין לָהֶם אֲמָנוּת אֲלֵא הוּא, אֲבָל יֵשׁ לָהֶן אֲמָנוּת שְׁלֵא הוּא, כְּשֶׁרִין:

4. Sanhedrin 24b, 25a

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 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.

מִשְׁחָק בְּקִבְיָא מַאי קָא עָבִיד?
אָמַר רַמִּי בֶּר חַמָּא מְשׁוּם דְּהוּה
אַסְמַכְתָּא וְאַסְמַכְתָּא לֹא קִנְיָא.
רַב שֵׁשֶׁת אָמַר כָּל כִּי הָאִי גְוֹנָא
לְאו אַסְמַכְתָּא הִיא, אֶלָּא לְפִי
שְׂאִין עֲסוּקִין בְּיִשׁוּבוֹ שְׁל עוֹלָם.
מַאי בִּינְיָהוּ? אִיפָּא בִּינְיָהוּ
דְגַמְר אֻמְנִיתָא אַחֲרִיתִי.

5. Ibid.

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

מַר סָבַר פְּלִיגִי, וּמַר סָבַר לֹא
פְּלִיגִי ...

6. Rashi on Sanhedrin 24b “She’ein Lo Umanut Ela Hu”

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.

שְׂאִין לוֹ אוּמָנוּת אֶלָּא הוּא.
דְּהוּאִיל וְאִין עֲסוּקִין בְּיִשׁוּבוֹ שְׁל
עוֹלָם אִינֵן בְּקִיָּאִין בְּטִיב דִּינִין
וּמִשְׁאָא וּמִתָּן, וְאִינֵן יְרָאִי חֲטָא:

7. Me’iri on Sanhedrin 24b “Ve-amar al Zeh”

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.

פִּירוּשׁ: הַטַּעַם לְפִי שְׂאִינוֹ עוֹסֵק
בְּיִשׁוּבוֹ שְׁל עוֹלָם וְאִינוֹ יוֹדֵעַ
בְּטִיב מִשְׂאָא וּמִתָּן וּבְכַוְנַת עֲדוּת,
וּכְמוֹ שְׂרָגִילִין לְשַׁקֵּר בְּאֻמָּנוּת
שְׁלָהֶם וְאִינֵם מִתְגַּנְּגִים לְבְרִיּוֹת
בְּאוֹתוֹ שְׁקֵרוֹת, הֵם סוֹבְרִים
שְׁלֹא יִתְגַּנְּגוּ בְּשַׁקְרוֹת שְׂאָר
הַדְּבָרִים. וְכֵן אִין מְפִירִין בְּטַרַח
וְצָרוֹת שְׁל בְּנֵי אָדָם וְאִינֵם חֲסִים
עַל חֲבֵרֵיהֶם לְהַפְסִיד מְמוֹנָם.

8. Rambam, Mishneh Torah, The Laws of Testimony 10:4

...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, 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.

... וְכֵן הַמְשַׁחֵק בְּקַבֵּיהָ -
וְהוּא, שְׁלֵא תְהִיָּה לוֹ אֲמִנוּת
אֲלָא הוּא - הוֹאֵיל וְאֵינוֹ
עוֹסֵק בִּישׁוּב הָעוֹלָם, הָרִי זֶה
בְּחִזְקַת שְׂאוּכֵל מִן הַקַּבֵּיהָ,
שֶׁהוּא אֲבָק גָּזֵל. וְלֹא בְּקַבֵּיהָ
בְּלֶבֶד אֲמָרוֹ, אֲלָא אֲפִילוֹ
בְּקַלְפֵי אֲגוּזִים וְקַלְפֵי רְמוֹנִים.
וְכֵן לֹא יוֹנִים בְּלֶבֶד אֲמָרוֹ,
אֲלָא אֲפִילוֹ הַמְמִירִין בְּבַהֲמָה
חִיָּה וְעוֹף, וְאֲמָרוֹ כָּל הַקוֹדֵם
אֶת חֵבְרוֹ אוֹ כָּל הַנוֹצֵחַ
אֶת חֵבְרוֹ, יִטַּל בְּעֵלְיוֹ אֶת
שְׂנֵיָהוּ, וְכֵן כָּל פְּיוּצָא בְּשַׁחֲוֶה
זֶה - וְהוּא, שְׁלֵא תְהִיָּה לוֹ
אֲמִנוּת אֲלָא שַׁחֲוֶה זֶה - הָרִי
זֶה פְּסוּל. וְכָל אֵלוֹ פְּסוּלִין
מִדְּבָרֵיהֶם.

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)?

9. Mishnah Bava Batra 168a

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.

מי שפרע מקצת חובו והשליש את שטריו ואמר לו, אם לא נתתי לך מכאן ועד יום פלוני תן לו שטרך, הגיע זמן ולא נתן, רבי יוסי אומר, יתן. רבי יהודה אומר, לא יתן.

10. Bava Batra 168a

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).

במאי קמיפלגי? ר' יוסי סבר אסמכתא קניא, ורבי יהודה סבר אסמכתא לא קניא.

11. Rashbam on Bava Batra 168a

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.

אסמכתא - המבטיח לחבירו דבר על מנת שיעשה דבר לעתיד, וסומך בלבו בשעת התנאי שיוכל לקיים הדבר כשיגיע זמן, וכשיגיע הזמן יאגס ולא יוכל לקיים:

12. Bava Batra 168a

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

ואין הלכה כרבי יוסי:

13. Rashi on Sanhedrin 24b, “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.

אֲסַמְכַתָּא - הֵיִינוּ דְּבַר דְּאִינוּ
נוֹתְנוּ לוֹ מִדְּעֵתוֹ אֶלָּא סוּמְיָה
עַל דְּבַר שְׂאִינוּ, דְּסָבַר שֶׁהוּא
יָכוֹל לְנַצֵּחַ, וּפְעָמִים
שְׂמַנְצָחִין אוֹתוֹ:

14. Ibid., “Kol Ki Hai Gavna Lav Asmachta Hee”

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 הָאִי גּוֹוֹנָא לְאוּ
אֲסַמְכַתָּא הִיא - וְהִכִּי דְּמִי
אֲסַמְכַתָּא כְּגוֹן דְּאָם אוֹבִיר
וְלֹא אֶעְבִּיד אֲשֶׁלֶם בְּמִיטְבָּא
(בְּבָא מְצִיעָא עַג): וְכְגוֹן
מִשְׁלִישׁ אֶת שְׁטְרוֹ דְּגִט
פְּשוּט (בְּבָא בְּתֵרָא קֶסֶח).
דְּסוּמְיָה עַל לֹא דְּבַר, דְּסָבַר
כָּל זֶה בְּיַדִּי לְעִשׂוֹת,

וּמְרִישָׁא כִּי מִתְּנִי אֲדַעְתָּא
דְּלֹא יְהִיב לִיהִי לְאֲסַמְכַתָּא קָא
מִתְּנִי, דְּטוּעָה וְסָבַר לֹא יָבֵא
לְיַדִּי כְּדֵי, אֲבָל הִכָּא לֹא סְמִיךְ
אֲמִידִי, דְּהָא לֹא יָדַע אִי נַצַּח
אִי לֹא נַצַּח, וְאֲפִילוּ הִכִּי אֲתִנִּי
שְׂמַע מִינָהּ מִסְפִּיקָא אֲתִנִּי
גְּמַר וְאֲקִנִּי, וְלֹא גְזֻלָּה הִיא:

15. Rambam, Mishneh Torah, The Laws of Theft 6:7,10

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

ז. דְּבָרִים הִרְבֵּה אָסְרוּ חֻקֵּימִים
מִשׁוּם גְּזוּל; וְהָעוֹבֵר עֲלֵיהֶן, הֵרִי
זֶה גְזוּלוֹ מִדְּבָרֵיהֶם: כְּגוֹן מְפָרִיחֵי
יוֹנִים וְהַמְשַׁחֲקִין בְּקַבְּלָהּ....

י. הַמְשַׁחֲקִין בְּקַבְּלָהּ בִּיצֵד: אֵלּוּ

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.

שְׁמִשְׁחָקִין בְּעֵצִים אוּ בְצִרְוֹת
אוּ בְעֵצְמוֹת וְכִי־צֵא בָהֶן,
וְעוֹשִׂים תְּנָאֵי בִינֵיהֶם שְׁפָל
הַנוֹצֵחַ אֶת חֲבֵרוֹ בְּאוֹתוֹ
הַשְּׂחֹק, יִקַּח מִמֶּנּוּ כֶּף וְכָף –
הֲרִי זֶה גְזֵל מִדְּבָרֵיהֶם. אִם
עַל פִּי שְׂבִרְצוֹן הַבְּעָלִים לְקַח,
הוֹאִיל וְלִקַּח מִמוֹן חֲבֵרוֹ בְּחֶנֶם
דְּרָדָה שְׂחֹק וְהַתּוֹל, הֲרִי זֶה גְזֵל.

וְכֹן הַמְּשַׁחֲקִין בְּבֵהֵמָה אוּ בְחַיָּה
אוּ בְעוֹפוֹת וְעוֹשִׂים תְּנָאֵי, שְׁפָל
שֶׁתִּנְצַח בְּהֵמָתוֹ אוּ תְרוּץ יוֹתֵר,
יִקַּח מִחֲבֵרוֹ כֶּף וְכָף, וְכֹל כִּי־צֵא
בְּדָבָרִים אֱלוֹ--הַכֹּל אֲסוּר, וְגֵזֵל
מִדְּבָרֵיהֶם.

16. Shulchan Aruch Choshen Mishpat 370:2

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...

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.

א. יֵשׁ דְּבָרִים שְׂאֲסָרוּ חֲכָמִים
מִשּׁוֹם גְּזֵל, וְהָעוֹבֵר עֲלֵיהֶם הֲרִי
זֶה גְזֵל מִדְּבָרֵיהֶם, מִפְּרִיחֵי
יוֹנִים, וּמְשַׁחֲקִים בְּקַבָּיָא...

ב. הַמְּשַׁחֲקִים בְּקַבָּיָא בִּיצֵד: אֱלוֹ
שְׁמִשְׁחָקִים בְּעֵצִים אוּ בְצִרְוֹת
אוּ בְעֵצְמוֹת, וְעוֹשִׂים תְּנָאֵי
בִינֵיהֶם שְׁפָל הַנוֹצֵחַ אֶת חֲבֵירוֹ
בְּאוֹתוֹ שְׂחֹק יִקַּח כֶּף וְכָף, וְכֹן
הַמְּשַׁחֲקִים בְּבֵהֵמָה אוּ בְחַיָּה אוּ
בְעוֹפוֹת, וְעוֹשִׂים תְּנָאֵי שְׁפָל
שֶׁתִּנְצַח בְּהֵמָתוֹ אוּ תְרוּץ יוֹתֵר
יִקַּח מִחֲבֵרוֹ כֶּף וְכָף, וְכֹן כֹּל
כִּי־צֵא בְּדָבָרִים אֱלוֹ הַכֹּל אֲסוּר
וְגֵזֵל מִדְּבָרֵיהֶם הוּא:

17. Rema's note on Shulchan Aruch Choshen Mishpat, Laws of Theft 370:3

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

הֶגָּה: אֲבָל אִם יֵשׁ לוֹ אוּמָנוּת
אֲחֵרָת אֲפִילוֹ מְשַׁחֵק עִם
יִשְׂרָאֵל אֵינוֹ פְּסוּל (טור) וְעַיִן
לְעֵיל סִמָּן רַז סְעִיף יג, וְכָבֵר

to follow the second approach, [to consider it permissible] to play dice, and only to invalidate one who has no other profession...

פֶּשֶׁט הַמְּנַהֵג כְּסִבָּרָא הָאֲחֵרוּנָה
לְשָׁחוֹק בְּקִבְיָא וְאִין פְּסוּל אֶלָּא
מִי שְׂאִין לוֹ אוּמָנוּת אֶלָּא הוּא...

18. Ibid., 207:13

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.

הֵגָה: וַיֵּשׁ אוֹמְרִים דְּשִׁלְשָׁה חֲלוּקִין
בְּדִינֵי אֲסַמְכָתָא:

1. דְּכָל מַה שְׂאִין בְּיָדוֹ וְתִלּוּי בְּיָד
אֲחֵרִים... הוּי אֲסַמְכָתָא בְּכָל עֲנִין
וְלֹא קִנְיָה,

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.

2. וּמַה שְׂאִין בְּיָדוֹ לַעֲשׂוֹת, אִם
לֹא גִזִּים כְּגוֹן שֶׁאָמַר אִם אוֹבִיר
וְלֹא אֶעְבֹּד אֶשְׁלַם בְּמִיטֵב לֹא הוּי
אֲסַמְכָתָא וְקִנְיָא, אֲבָל

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...

3. אִי גִזִּים וְאָמַר אִם לֹא אֶעְבֹּד
אֶשְׁלַם אֶלְפָּא זֹוּי, הוּי אֲסַמְכָתָא
וְלֹא קִנְיָא ...

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.

4. אֲבָל אִם אִין בְּיָדוֹ לְגַמְרֵי וְלֹא בְּיָד
אֲחֵרִים, כְּגוֹן הַמְּשַׁחֵק בְּקִבְיָא
וְכִזְזִיא בּוֹ שְׂאִינוּ יוֹדֵעַ אִם יִנְצַח אוֹ
לֹא וְאֶפִּילוּ הֵכִי הִתְנָה, וְדַאי גָּמַר
וּמְקַנֵּי מְסַפֵּק.

19. Ibid.

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)...

בְּמַה דְּבָרִים אָמְרִים: כְּשִׁשְׁחֻקִין
בְּמַעוֹת מוֹכְנִים, אֲבָל אִם שׁוֹחֲקִים
בְּאִמְנָה אִין מוֹצִיִּין מִמֶּנּוּ מַה
שֶׁהִפְסִיד (טוֹר בְּשֵׁם ר'')...

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

אֲבָל כְּשִׁמְעוֹת מוֹכְנִין עַל הַדָּף
מוֹתָר לְשָׁחוֹק וְאִין בּוֹ אֲסַמְכָתָא
(מְרַדְכֵי פֶרֶק זֶה בּוֹרֵר), וְדִלָּא כְּיֵשׁ
חוֹלְקִין וְאוֹסְרִין לְשָׁחוֹק בְּכָל עֲנִין
(הֵגָהוֹת מְרַדְכֵי הַנִּזְכָּר לְעֵיל), וַיֵּשׁ
אוֹמְרִים דְּאִינוּ מוֹתָר רַק כְּשֶׁהַדָּף
שֶׁהַמַּעוֹת מְנַחִים עָלָיו קִנּוּי
לְשִׁנְיָהֶם (תוֹסֵפוֹת פֶּרֶק הַנִּזְכָּר

the Ri). See also the Shulchan Aruch in Choshen Mishpat 370...

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.

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...

לְעֵיל בֵּית יוֹסֵף בְּשֵׁם ר"י וְעַיִן
לְעֵיל סִימָן ש"ע, ...

יֵשׁ אֹמֵר הָא דְמִשְׁחָק בְּקִבְיָא לֹא
הוּי אֲסֻמְכָתָא הוּא מְטַעַם דְּמִאֲחָר
שְׂשֻׁנִיהוּ מִתְנִין זֶה פְּנֹגֵד זֶה וְלֹא
אֶחָד יוּכַל לְהַפְסִיד אֲגַב דְּבַעֵי
לְמִקְנֵי גָמֵר וּמִקְנֵי,

וְלָכוּן כָּל שְׁנַיִם שֶׁהִמְרוּ זֶה עִם זֶה
קָנוּ אִם קָנוּ מִיָּדוֹ, וְדוֹקָא שְׂאִין
בְּיָדוֹ גַּם כֵּן אֲבָל מַה שְׂפִיָּדוֹ לֹא...
וְאִפְּיֵלוּ בְּזֶה יֵשׁ חוֹלְקִין, וְלָכוּן
הֶעֱרָכוּ לְתַת טְעָמִים אַחֲרֵים גְּבִי
מִשְׁחָק בְּקִבְיָא ...

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.

20. Mishnah Berurah Orach Chaim 322:22

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).

קִבְיָא הוּא מַה שְׂמִשְׁחָקִין
בְּעֵצִים וְקִבְיָא הוּא אֲבָק גָּזֵל
מִדְּבָרֵיהֶם שְׂאִין דְּעֵתוֹ לְהַקְנוֹתוֹ
בְּקִנְיָן גָּמוֹר וְלִהְכִי אֶסוּר אִף
בְּחוּל.

[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.]

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?

21. Yabia Omer, Vol. 7, Choshen Mishpat #6

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

מִסְקָנָא דְדִינָא שְׁהִסְפְּרָדִים
וְעִדוֹת הַמְּזָרְחַת אֶסוּר לָהֶם
לְהִשְׁתַּתֵּף בְּקִנְיַת כְּרִטִּים
מִפְּעַל הַפִּיּוּס...

22. Rabbi Moshe Shternbuch, Teshuvot Vehanhagot 4:311

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 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.

... אֶסְמַכְתָּא שְׁאֶסוּר לְהַמְחַבֵּר
הֵיִינוּ אִם אֹמֵר כְּשִׁיחִיָּה דְכָר
פְּלוּנִי אֶקְנֶה אוֹ אֶתֶּן, וּבְזֶה הָיָה
אֶסְמַכְתָּא וְלֹא קִנְיָה, אֲבָל כָּאֵן
קוּנְיָה כְּרִטִּים שְׁשׂוּהָ עֲכָשׂוּ בְּשׁוּק
כְּמָה דּוֹלָרִים, וְיָכוּל לְמַכּוֹר
אוֹתוֹ עֲכָשׂוּ וּלְקַבֵּל אֶת שְׂוִיו...
אֲבָל כָּאֵן קִנְיָה עֲכָשׂוּ דְכָר שְׁיִתְּכֵן
שְׂבִיבֹא לוֹ מְזָה רוּחַ גְּדוֹל וְיִתְּכֵן
שְׂלֵא, הָיָה כְּכֹל עוֹשֶׂה עֶסֶק אוֹ
מְשַׁתְּתֵף בּוֹ שְׂאִין בְּזֶה שׁוּם
חֲשִׁשׁ אֶסְמַכְתָּא.

... עַל כֹּל פְּנִים נִרְאָה שְׁבִקְנִיַת
כְּרִטִּים לֹא שְׂיִידָה אֶסְמַכְתָּא, וְהֵיִינוּ
בֵּין לְאֶשְׁכְּנָנִים וּבֵין לְסְפָרְדִים.

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

23. Shulchan Aruch Yoreh Deah 258:10

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.

SECTION IV Risky Investments

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

24. “Seven Mutual Funds for Gamblers,” by Rob Silverblatt in USA Today

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...

25. Paul R. Ashe, President of the Florida Council on Compulsive Gambling, njlap.org/AboutGambling/UnderstandingCompulsiveGambling/

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...

26. Bava Metzia 42a

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.

ואמר רבי יצחק לעולם ישליש
אדם את מעותיו שליש בקרקע
ושליש בפרקמטיא ושליש
תחת ידו.

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?”

Compulsive Gambling

27. Sanhedrin 25b

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 בְּקַבֵּיאַ: אֵלּוּ הֵן
הַמְשַׁחֵקִים בְּפִיסְפָּסִים. וְלֹא
בְּפִיסְפָּסִים בְּלֵבַד אֲמָרוּ, אֶלְא
אֲפִילוּ קְלִיפֵי אֲגוּזִים וְקְלִיפֵי
רְמוֹנִים. וְאִימְתִי חֲזַרְתָּן?
מִשִּׁישְׁבָּרוֹ אֵת פִּיסְפָּסֵיהֶן וַיְחַזְּרוּ
בָּהֶן חֲזָרָה גְמוּרָה דִּאֲפִלוּ בְּחֵנָם
לֹא עָבְדִי.

28. Rabbi Dr. Abraham Twerski, Compulsive Gambling, “Treatment of Compulsive Gambling,” p. 89

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

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

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.

וְאֵפִילוּ לְרַב שֵׁשֶׁת, דְּסָבִירָא לִיהִי הַתָּם: דְּלִיכָא אֲסַמְכָתָא בְּקַבְיָא; מְפַל מְקוּם דְּבָר מְכַעַר וּמְתַעֵב וּמְשַׁקֵּץ הוּא. וְרַבִּים חָלְלִים הָפִיל, וְעֲצוּמִים כָּל הָרָגִיו.

31. Dayan Ezra Batzri, Dinei Mamonot, Vol. II, Ch. 19, "The Laws of Asmachta," p. 90, footnote 7

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 כְּאֵלֶּה, סוֹף שְׂמֻכְלִים מְמוֹנָם, וּפְעָמִים רַבּוֹת הִגִּיעוּ לְיֵאוּשׁ וְהִתְאַבְּדוֹת מִמֶּנּוּ ... וּמוּטָב לוֹ לֶאֱדָם שֶׁלֹּא יִתְחִיל בָּזֶה כִּי זֶה מוֹשֵׁךְ מְאֹד אַחַר שֶׁמִּתְרַגְּלִים לְכַף ... וּבְכָל הַקְּהָלוֹת כְּמַעַט הָיוּ תִּקְנוֹת שֶׁלֹּא לְשַׁחֵק...

32. Rabbi Moshe Feinstein, Igrot Moshe, Oruch Chaim 4:35

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

... לְשַׁחֵק בְּקַלְפִּים (קַאָרְטוֹן) וּבִיִּגָּא וּכְדוּמָה אִף שְׂאִין עֲבוּדָה זָרָה אִיסוּר בְּרוּר הֵם דְּבָרִים מְכַעְרִים בְּכָל מְקוּם שֶׁהוּא וְגַם הוּא כְּמוֹשֵׁב לְצִים.

Hard-earned money or get rich quick?

33. Tehillim (Psalms) 128:2

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

יִגִּיעַ כִּפְיֶךָ כִּי תֹאכַל אֲשֶׁרִיד וְטוֹב לְךָ:

34. Megillah 6b

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 לְךָ אָדָם: יִגְעַתִּי וְלֹא מְצָאתִי - אַל תִּאֱמִין, לֹא יִגְעַתִּי וּמְצָאתִי - אַל תִּאֱמִין, יִגְעַתִּי וּמְצָאתִי - תִּאֱמִין.

What else?

Using time wisely:

35. Pirkei Avot (Ethics of the Fathers) 3:14

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.

רבי דוסא בן הורקנוס אומר שינה של שחרית ויין של צהרים ושיחת ילדים ושיבת בתי כנסיות של עמי הארץ מוציאין את האדם מן העולם.

36. Seforno, Pirkei Avot 3:14

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.

מונעים את האדם מהשיג חיי עולם וגם בן מהשיג חיי שעה, וזה לרב מה שנמשך מהם מאבוד הזמן בלתי שיגיש האדם בו.

37. Shulchan Aruch Orach Chaim 370:3

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 ויישובו של עולם.

Wasting resources – “*Bal tashchit*,” “Do not destroy.” (Devarim/Deuteronomy 20:19-20)

Focus on Spiritual Growth and Personal Development: “Be holy, for I, the Lord, your God, am holy” (Vayikra/Leviticus 19:2)

**RECOM-
MENDED
ADDITIONAL
READING**

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

Olamot's Hebrew Outline and Source Material, focusing on asmachta, available online through olamot.net.

English Shiurim

"Gambling," by Rabbi Hershel Schachter, available online at:
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

"Halachos of Gambling," by Rabbi David Hirsch, available online at:
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#

"Gambling in Jewish Law," by Rabbi David Bassous, etzahaim.org