

Hekhsher Tzedek

Al Pi Din

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The Hekhsher Tzedek Commission
of the Rabbinical Assembly
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Hekhsher Tzedek Al Pi Din

לא תעשוק שכיר עני ואביון

You shall not abuse a needy and destitute laborer.
(Deuteronomy 24:14)

והייתי עד ממהר... בעושקי שכר שכיר... אמר ד' צב-אות

I will act as a relentless accuser against those...
who cheat laborers of their hire... said the Lord of Hosts.
(Malachi 3:5)

למען תלך בדרך טובים וארחות צדיקים תשמור

So that you might walk in the way of the worthy
and follow in the paths of the righteous.
(Mishlei 2:20)

הודנו והדרנו הוא שנרחם על מי שעבד אותנו

It is our pride and our glory that we are kind to those who work for us.
(Sefer HaChinukh 482)

אין כשרות המצות שלמה בהידוריהן שבהלכות הפסח לבד,

כי אם עם דקדוקיהן גם בדיני חשן משפט

The kashrut of the mitzvot is not complete with the specialties of the
laws of Pesach alone, but only with the details of Choshen Mishpat
as well. (Israel Salanter, in Dov Katz, Tenuat haMusar 1.358)

This paper is a companion to the Hekhsher Tzedek Policy Statement and Working Guidelines that have been approved by the Hekhsher Tzedek Commission of the Rabbinical Assembly and the United Synagogue of Conservative Judaism. Hekhsher Tzedek has formulated its principles and standards in terms of five primary areas of corporate practice: Wages and Benefits, Employee Health and Safety, Product Development Policies, Environmental Impact and Corporate Transparency and Integrity. With the exception of the matter of transparency, which is material only in terms of the trust that can be given to the corporate responses and representations, each other area represents a substantial concern of the halakhah. While the details of the measurements imposed to assess any area are closely related to the data that are available to monitor that area, and will not necessarily correspond to the measures used in antiquity, the goals are clearly set out in halakhic materials from the Bible and throughout the development of Jewish law.

Wages and Benefits.

The primary law about employee wages (Shulchan Arukh, Choshen Mishpat 331:1) states its premise in its title:

השוכר פועלים ינהג עמהם כמנהג המדינה

One who hires employees should treat them in accordance with local custom.
In subparagraph two, there, Caro continues:

מקום שנהגו לזון יזון, לספק בגרוגרות או בתמרי[ם] וכיוצא בהם יספק – הכל כמנהג המדינה
 Where the custom was to provide their meals, he should provide their meals, to provide figs or dates or something similar, he should provide it – all in accordance with local custom.

That follows the Mishnah in Bava Metzia 7:1

השוכר את הפועלים ואמר להם להשכים ולהעריב - מקום שנהגו שלא להשכים ושלא להעריב אינו רשאי לכופן. מקום שנהגו לזון - יזון, לספק במתיקה - יספק. הכל כמנהג המדינה.
 One who hires employees and instructs them to begin work early and stay late – where it was not the custom to begin early and stay late, he may not require them to do so. Where it was the custom to provide meals – he must provide meals. Where it was the custom to provide snacks – he should provide those. All in accordance with the local custom.

This has placed an enormous burden on local courts to adjudicate laws related to employee treatment in terms of the specific customs in their locale. Indeed, like the well known rule of דינא דמלכותא דינא – that the law of the land is the controlling law, in this area both the local law and local custom is determinative – with the law gaining its efficacy from the fact that local custom is likely to be in accordance with the law (or the law passed in accordance with custom). In his modern responsa, Moses Feinstein makes the point that it is not Jewish custom that is being referred to but the custom of the locale, even if it is established by non-Jews (Igrot Mosheh, Choshen Mishpat 1.72):

א[ין] צ[ורף] שיעשה המנהג ע[ל] פ[י] חכמי התורה וגם אף לא ע[ל] פ[י] יהודים דוקא, דאף שהנהיגו זה הנכרים – כגון שהם רוב תושבי העיר – נמי הוא מדין התורה בסתמא כפי המנהג, דאדעתא דמנהג העיר נחשב כהתנו בסתמא... ולכן אין חלוק מי הם שהנהיגו

It is not necessary that the custom be based on the sages, nor even based on Jews, for even if gentiles established the custom – as, for instance, where they are in the majority in that location – it is still Torah law that the standard should follow the custom, for absent another provision it is as if they conditioned [the contract] on the prevailing custom... therefore it does not matter who it is who has established the custom.

On the matter of wages and benefits, the standard of the Hekhsher Tzedek that such wages and benefits should be at “the industry average or above” represents a proper restatement of the halakhic requirements. The particular package of benefits described in the Hekhsher Tzedek materials, that “companies must offer... comprehensive health insurance and retirement benefits, and provide workers with paid time off for vacation, sick and maternity leave” – follows from the law’s concern that not just wages but associated benefits (meals or snacks) be in line with prevailing custom¹. These have been

¹ These benefits are fully supported as regnant custom, but several responsa make it clear that even absent such a custom, sick leave would be required even if not part of a contract because of the reasonable expectations of the employer. This was not obvious as the Talmud specifies that a worker who is unable to complete his work through no fault of his own is, nevertheless, paid only for the work he has completed. Considering this precedent squarely, Rabbi Shimon ben Tzemach Duran (N. Africa, late 14th-15th c.;

determined to be the primary features of employment custom in this country at this time. Nevertheless, the details of this package remain open for consideration with regard to a specific employer and industry – therefore the language in the Hekhsher Tzedek working guidelines that “companies will be favored” on the basis of these standard perqs, rather than enunciating a hard-and-fast, non-negotiable rule. Thus, for instance, the size of the employer affects whether they are expected to offer health benefits, both by law and custom. It is appropriate for the Hekhsher Tzedek committee to take such differences into account in determining what is, in fact, the relevant custom with regard to any particular situation. (Rabbis Elliot Dorff and Aaron Mackler have made the case that universal health care should be a societal, therefore governmental, obligation – Life and Death Responsibilities in Jewish Biomedical Ethics, ch. 30, ed. A Mackler. If health care were assumed by the government, it would no longer be obligatory on the employer to provide it, and the relevant Hekhsher Tzedek criteria would need to change with the change of custom).

Likewise, the Hekhsher Tzedek guiding document indicates that the relevant expectations will be determined “as compared with the relevant industry and regional average.” The halakhah recognized that, although it was using the general language of *מנהג המדינה*, the local custom, the sages had in mind other differences that affect custom. Thus halakhic sources indicate that custom may be determined by a particular industry, as can be seen in the cases on Bava Kama 116b (cited from Tosefta Bava Metzia), where the relevant guide is the custom of caravan guides or sailors.

It must be noted, as Moses Feinstein pointed out, that the efficacy of custom is in the assumption that a contract that does not indicate otherwise should be presumed to operate in line with the local custom. The text of the relevant section of Shulchan Arukh above specifies in subparagraph 1 that local custom is relevant only *כיון שלא התנה כן בשעה ששכרן* -- since he did not contract [otherwise] at the time that he hired them. If a contract was agreed upon, however, its terms appear to override standard custom. That is confirmed by what follows in Shulchan Arukh, which specifies (332:1-2) that even were they misinformed about their wages, the contract stands as accepted. Thus:

אמר [בעל הבית] לשלוהו: צא ושכור לי פועלים בשלשה והלך ושכרן בארבע[ה] ... נותן להם ארבעה ונוטל מבעל הבית שלשה, ומפסיד אחד מכיסו...
אמר לו בעל הבית שכור לי בארבע[ה] והלך השליח ושכר בשלש[ה], א[ה] ע[ל] פ[י] שמלאכתן שוה ד', אין להם אלא ג' – שהרי קיבלו על עצמם. ויש להם תרעומת על השליח.

If the employer said to his manager: hire laborers for me at 3 and [the manager] went out and hired them at 4... [the manager] pays them 4, collects 3 from the employer and loses 1 out of pocket...

Tashbetz I, 64) finds that that is true only of a day laborer, whereas, when hiring a worker in a long-term contract the employer knows full-well that “it is to be expected that a person will take sick during that long a time” and, therefore, the employer undertakes to pay his wages in full even when he is out sick. Such a case is made by Israel Bruna (Germany, 15th c; *Responsa* 134) concerning payment of the full wage of a worker limited by a disability. Recently Eliezer Waldenberg (*Tzitz Eliezer* II, 26.9) makes a similar case with regard to retirement benefits.

If the employer said, hire for me at 4 and the manager hired at 3, even though the quality of their work is worth 4, they receive only 3 – for that is what they agreed to. But they have a reason to be angry with the manager.

On its face this could be taken as a justification for whatever work conditions an employer can get workers to accept. But it should not be, neither as a matter of *tzedek*, of righteousness, nor as a matter of *halakhah*.

Note, first, the matter of *תרעומת* (*tar-omet* / justified anger). It is a strange feature of Jewish labor law that it recognized a category of justified anger where the legal standing of a contract is unassailable, yet the result is unacceptable. Other examples, where work is called off before it is begun (*Bava Metzia* 76b), or where an investing agent fails to invest funds and returns them as they were (*Yerushalmi Bava Metzia* 5:3). In all these cases, while there is no legal remedy, it is clear that the actions of the malicious actor relative to the victim are not consonant with appropriate behavior. Therefore, the legally justified anger (*תרעומת*). In our case the Talmud (*Bava Metzia* 76a) explains the justification in terms of the verse (*Mishlei* 3:27) “אל תמנע טוב מבעלייך” – Do not withhold benefit from one to whom it is due.” Thus *תרעומת*, this legally justified anger, is a marker for the presence of unrighteousness, and the standard of a *hekhsher tzedek*, a seal of social justice, needs to reach for the higher standard of the absence of causes of *tar-omet*.

The Bible is clear that in matters of the relationship of the usually richer employer and the usually poorer employee there is a fertile ground for exploitation that is to be fought and avoided².

לא תעשוק את רעך... לא תלין פעולת שכיר אתך עד בקר.

You shall not coerce your neighbor... The wages of a laborer shall not remain with you until morning. (*Leviticus* 19:13)

לא תעשוק שכיר עני ואביון... ביומו תתן שכרו ולא תבוא עליו השמש

כי עני הוא ואליו הוא נושא את נפשו, ולא יקרא עליך אל ד' והיה בך הטא.

You shall not abuse a needy and destitute laborer... You must pay his wages on the same day, before the sun sets, for he is needy and his life depends upon it; else he will cry out to Adonai about you, and you will be judged to be guilty.

(*Deuteronomy* 24:14-15)

This is not a small matter, nor is it divorced from normative law. But this matter of the treatment of the poor and those often exploited is most fundamentally a matter of righteousness.

כי תשה ברעך... לא תבוא אל ביתו לעבוט עבוטו... ואם איש עני הוא, לא תשכב בעבוטו.
השיב תשיב לו את העבוט כבוא השמש ושכב בשלמתו וברכך. ולך תהיה צדקה.

² In a doctoral dissertation submitted to Hebrew University in 1964 entitled “*Dinei Avodah BaMishpat HaIvri*,” Shilem (Szylem) Warhaftig opens his introduction thus, “The existence of a Labor Law (sic) which governs the legal relationships between employers and employees... is... in order to protect the weaker side in the relationship – the employee – who is liable to be taken advantage of by the stronger side – the employer. It may be said that labor law (sic) come (sic) to correct a socio-economic inequality...”

When you make a loan... to your neighbor, you may not enter his house to seize his pledge... If he is a needy man, you shall not go to sleep in his pledge. You must return his pledge to him at sundown so that he may sleep in his cloak, and he will bless you, and it will be accounted to you as a righteous act. (Deuteronomy 24:10-13)

While in the case of תרעומת (tar-omet) this input of righteous behavior does not gain legal standing, it is one of the features of Jewish business law (דיני ממונות) that that expressly ethical concern makes incursions into the law as adjudicated in court. The best known example is probably the following Talmudic anecdote from the first generation of Babylonian sages (Bava Metzia 83a):

רבה בר בר חנן [חנה / בר רב הונא – גירסאות אחרות], תברו ליה הנהו שקולאי חביתא דחמרא. שקל לגלימיהו. אתו אמרו לרב. אמר ליה: הב להו גלימיהו. אמר ליה: דינא הכי? אמר ליה: אין. "למען תלך בדרך טובים." יהיב להו גלימיהו. אמרו ליה: עניי אנן, וטרחינן כולה יומא וכפינן, ולית לן מידן. אמר ליה: זיל, הב אגרייהו. א[מר] ל[יה]: דינא הכי? אמר ליה: אין. "וארחות צדיקים תשמור."

Some porters broke the wine keg of Rabbah bar bar Chanan [Chana / bar Rav Huna – alt. versions]. He took their cloaks. They brought the matter before Rav. He told [Rabbah]: Give them back their cloaks. [Rabbah] said [n.b. incredulously, I presume]: Is that the law? [Rav] answered: Yes. "So that you might walk in the way of the worthy." (Mishlei 2:20) So he gave back the cloaks. They then said [to Rav]: We are poor people. We worked all day and are bent over [from the work], yet we have nothing [to show for it]. Said he [to Rabbah]: Go, pay their wages. Said [Rabbah]: Is that the law? [Rav] answered: Yes. "and follow in the paths of the righteous." (same verse).³

Rashi equates this with acting "לפנים משורת הדין" – beyond the requirements of the law – even as Rav argues that such behavior should be what the law requires. And this intuitive principle, like תרעומת (tar-omet), plays a distinct part specifically in the development of Jewish economic law. There is an extensive debate over the centuries concerning to what extent this extra-judicial principle can be allowed to impose itself on the law. In particular it is allowed sway when protecting the poor and powerless⁴.

³ The literary and allusive nature of this story should not be allowed to pass us by. Rabbah does two things which, while apparently within his rights as he understands them, are ruled to be legally unacceptable by Rav. But Rav does not cite a legal precedent to base his ruling upon. He relies, instead, on a general ethical text from Writings, not generally seen as a legal source. Yet the two things are clearly intended to take us back to the ethical underpinnings of the Biblical cases in Deuteronomy 24, for they are precisely, taking a poor man's cloak (v. 13) and failing to pay his daily wage (v. 15). Our ethical sensitivity, argues Rav, must by law be greater than the law itself might be. A Palestinian version of the story is found in Yerushalmi Bava Metzia 6:6.

It has been noted that this story is not reflected in Shulchan Arukh nor in Maimonides's code. It is the lead, however, in the Tur, Choshen Mishpat 304 and gains a larger place in the jurisprudence of the later authorities, through our own day.

⁴ The principle of לפנים משורת הדין appears in a legal context on Bava Metzia 24b and 30b, Bava Kama 99b, Berakhot 45b, Ketubot 97a, sometimes indicating that it is not enforceable in court, and sometimes that it is. See Tosafot to BM 24b and Shulchan Arukh, Choshen Mishpat 259:5. A review of some of this literature is found in *Mishpat haPoalim*, Joseph Rosner, Ashdod 2003, 28:7 and notes, and it is discussed in Aaron Levine, *Case Studies in Jewish Business Ethics*, Yeshiva Univ. 2000, p. 258ff. And see *Tashbetz* IV 3:14 (כופין על מדת סדום) – a person may be forced not to behave as a scoundrel, a citation of Bava Batra 12b)

There is yet another line of argument that runs through the halakhic literature that seeks to limit the power of the employer to take refuge behind unconscionable market practices. On the first page of Bava Batra, Rabbenu Tam is cited in Tosafot (s.v. big'vil) as offering a common sense limit to the generalization, operant here, that all is done in accordance with local custom.

יש מנהגים שאין לסמוך עליהם אפילו היכא דתנן הכל כמנהג המדינה

There are customs that one should not rely upon even where it says, all in accordance with local custom.

Tosafot does not characterize them, but Mordecai (Bava Metzia 366) cites him, characterizing these as -- מנהגים גרועים דלא אזלינן בתרייהו -- unworthy customs that we do not hold by. They are again characterized with some passion and slightly better definition by Isaac ben Sheshet Perfet (14th c. Spain / N. Africa, *Responsa Rivash* 477), thus:

המנהג הוא בלתי ישר, וחוזן מן הדין... דומה למה שכתב ר"ת ז"ל בפרקא קמא דבבא בתרא: מנהג של שטות הוא, ואין הולכין אחריו... גם זה המנהג, חוזן מכבוד אותם שהנהיגוהו, הוא מנהג מעוקל... וגם המנהג אינו בנוי על קו היושר, אין לדון בו.

This custom is unfair and illegal... This is akin to what Rabbenu Tam wrote in the first chapter of Bava Batra: This is a foolish custom and one does not follow it... This custom is unworthy of those who enacted it. It is

and the Rulings of the Court of the Chief Rabbinate of Israel, p. 86, case #32.1/1945 (“The law sides with the defendant, and on that basis the court should not honor the claim of the plaintiff [to return his deposit]. However, this does not release the defendant from the demand to do the right and the good, which the court can require of any person”). Another ruling of the same court, page 110, case #155/1945, employs this principle as particularly obligatory on persons and institutions of substance (כופין לאדם חשוב... והנה מוסד) – one requires it of an important individual... and a public institution is treated at law as an important person). Here, the clearest statement comes at the end of the Bayit Chadash’s review of this matter at Tur 12.4. He writes that “It is customary in every Jewish court to force a well-to-do person in matters that are right and proper, even though the law is not so... and where there is no loss of money, even one who is not wealthy ... all agree, may be forced.” And see Mordecai Bava Metzia 257 and Shakh 3 to Choshen Mishpat 259. Another such concept: לצאת ידי שמים – to fulfill the demands of heaven. Again, there is the odd formulation חייב בבא לצאת ידי שמים – he is obligated if he wishes to fulfill the demands of heaven (Bava Kamma 118a). And see Shulchan Arukh, Yoreh Deah 61:15 and Choshen Mishpat 300:1 and many more.

I had occasion to describe this paper and the Talmud story above to my cousin outside Jerusalem in the second week of December. He responded by relating a story. When his grandfather was a young man in Toronto, some eighty years ago, a fellow came to town and took a business loan from one of the wealthier Jews in the city. His grandfather was guarantor of that loan, but, with the business failing, the man skipped town. The merchant took his grandfather to Bet Din before the chief rabbi in Toronto in those days, his great grandfather and mine, Rabbi Joseph Weinreb. (His grandfather was not yet related to Rabbi Weinreb. Years later his daughter would marry Rabbi Weinreb’s grandson). Rabbi Weinreb ruled in favor of the merchant and arranged a monthly payment plan by which my cousin’s grandfather might pay off the debt. The following month his grandfather went to the merchant to pay the first installment, and the merchant refused to accept payment. “Why,” his grandfather asked, and was told that after the Bet Din had ended and he had left, Rabbi Weinreb had asked the merchant to stay on and told him, “In the Bet Din I am compelled to rule by the dictates of the law. But now I can tell you that you may not accept the payments.” “Since Rabbi Weinreb asked me not to accept the payment,” concluded the merchant, “I cannot take it.”

an unjust custom... The custom is not built upon the demands of fairness.
One should not rule by it⁵.

Not surprisingly, it remains a matter of extensive debate as to when a custom is unworthy of adherence, but we need not engage in that debate, for Hekhsher Tzedek is aspirational rather than a matter of law. As such it is sufficient to note that these ethical norms were always close to the surface and pressing the legal process.

Even an oral contract, which has even greater normative power than local custom, was subject to challenge in court from the very first if a case could be made that the contract was entered into under coercion. It would make little sense to say of local custom, as the Mishnah did: אינו ראוי לכופן – that he may not force them, and then to allow and to recognize a contract entered into by force. Even that coercion deriving from extreme need suffices to set aside a contract, as we see in the following case.

הרי שהיה בורח מבית האסורין והיתה מעבורת לפניו. אמר לו: טול דינר והעבירני. אין לו אלא שכרו.
One who was escaping imprisonment and came to a ferry crossing, though he says [to the ferryman]: I'll pay a dinar for you to take me across, [the ferryman] receives only his normal fare.

The case is codified in Shulchan Arukh, Choshen Mishpat 264:7 and understood in terms of the compulsion of circumstances which renders the commitment to pay unusually well an exaggeration which is unenforceable and nullifies the contract, returning the case to be settled in the light of standard expectations⁶. How a court might apply this precedent is unclear. It rests with the court to determine the valence of the commitments before them. Hekhsher Tzedek, by serving as an advisory, evaluating agency, is not compelled to determine the final resolution of such cases.

⁵ Perfet himself qualifies this in two ways. If the custom is exactly addressing the issue before the judge, perhaps it must be followed. And re taxes, there is no accounting for customs re taxes. Moses Isserles cites this responsum (Darkhei Moshe to Tur Choshen Mishpat 163.7 and Rema to Shulchan Arukh, there, #3). The commentary Me'irat Einayim there refers to another occasion where unconscionable custom is overridden in the view of Isserles in Rema to Choshen Mishpat 157, see Me'irat Einayim #2 there, a case where the custom will cause damage. At length, see Pitchei Teshuva 16, there, and further discussion of מנהג גרוע. Consider Chaim Palaggi (Palache)'s strong view (*Chaim Bayad* 36, Turkey, 19th c.) that “if a custom that was enacted by the laity is contrary to the tenor of the law (שורת הדין) any pious sage who avoids evil must seek any excuse to cancel it.”

⁶ See the responsum of Solomon ben Avraham haKohen, (Greece 16th c.; *Responsa Maharshakh* vol. II #80), who requires two things to override the contract: that the coercion be evident and that the contract be clearly unheard of. This notion that an agreement freely made might be intentionally false and unenforceable, is given legal legitimacy in the ruling that an employer faced with workers who renege on a job, thereby causing him immediate losses, may mislead them by promising to overpay them, and is not bound to honor that commitment (Bava Metzia 76b). It shades into the notion of patently absurd statements that have no legal value, known as *asmakhta* (אסמכתא). All these are areas where the discernment of the court is paramount. However, there is no minimum threshold of salary which would justify a claim of coercion by itself. As Rashbam notes on Bava Batra 87a: דרך פועל להשכיר עצמו בכל דהו כשאין לו מה יאכל – it is normal for a worker to accept anything when he has nothing to eat. Similarly, *Responsa Terumat haDeshen* 323 (Israel Isserlein, Germany 15th c.): לפעמים הפועל צריכין לו זוזי ומתרצה בכל דהו – sometimes the worker needs money and accepts anything. And see the discussion on Bava Metzia 112b on the interplay of the needs of employer and employee.

In this context a point made by our colleague, Jill Jacobs, in her recent responsum “Work, Workers and the Jewish Owner”⁷ is well-taken. In part of its midrash on Deuteronomy 24:15, the Talmud offers the following (Bava Metzia 112a):

ואליו הוא נושא את נפשו – כל הכובש שכר שכיר כאילו נוטל נפשו ממנו

His life depends upon it – whoever withholds the wages of a worker, it is as if he took his life.

While that appears clearly to be figurative, Nachmanides, in his biblical commentary to the verse, extends the point by understanding the verse literally.

כי עני הוא כרובי הנשכרים ואל השכר הזה הוא נושא את נפשו שיקנה בו מזון להחיות את נפשו... ילמד אותנו בכאן... שאם לא תפרענו בצאתו ממלאכתו מיד, הנה ילך לביתו וישאר שכרו אתך עד בקר וימות הוא ברעב בלילה

For he is poor like most employees, and he depends upon his salary in order to buy food to live... This verse teaches us... that if you do not pay him as he leaves work, he will go home, while his salary stays with you until morning, and he might die of hunger that very night.

The assumption is that his wage should be sufficient to guarantee his continuing to live – together with his wife and children⁸. This too, then, suggests the level of scrutiny that is necessary toward the workplace of the laborer, which should enable his livelihood and not threaten it in any way. This leads to the next area of concern, the matter of workplace safety.

Health and Safety / Employee Relations

In all one's doings, a person is expected to take responsibility for his actions and for his property. This is the fundamental principle of damages, including inanimate possessions (בור) whose opportunity to cause damage arises out of negligence (פשיעה)⁹. Concern for damage brought on by negligence is evident in Biblical laws requiring payment if a pit is left uncovered (Ex. 21:33) and requiring the building of a parapet on a roof that is in use (Deuteronomy 22:8). The case of a pit specifically addresses hazards

⁷ CJLS 5/28/08.

⁸ The wages of a worker are well known... sufficient for the livelihood of the worker [RaN to Alfasi Shavuot 1170 (26a)]. That a worker labors not only for his own sustenance, but for that of his wife and children as well, is not generally stated. There is, on Shabbat 127b, a story of a worker seeking payment so that he might “go feed his wife and children.” This is explicitly a matter of law concerning workers hired from public funds. Thus Maimonides, *Hilkhot Shekalim* 4:7 specifies: “They [scribes and judges in Jerusalem] receive their salary from the Temple treasury... If it did not suffice... one adds whatever they require, they, their wives, their children and their households.” It is less clear of private workers, who, as Rashbam said (prior note) might accept any amount if sufficiently in need. But Rashbam's language itself suggests that wages were principally intended to secure basic sustenance, responsibility for which extended to wife and minor children.

⁹ Mishnah Bava Kamma 1:1 – וכשהזיק חב המזיק – There are four major types of damages... similar in that all are likely to cause damage and one is responsible to guard them, and when they cause damage, the person causing damage is required to pay the cost of the damage.

placed in a public property, whereas the requirement of a parapet refers to one's own private domain. In that context, a pit in one's own property is similar to a roof, and both are mentioned in a single paragraph of Shulchan Arukh, in the very last section of Choshen Mishpat (427), the fourth and last column of the Arba'ah Turim. Again, the title tells the story:

מצות עשה להסיר כל מכשול שיש בו סקנת נפשות

It is a positive commandment to remove any stumbling-block that might endanger life.

Thus it is hardly surprising that an employer maintains the fundamental obligation that we all do of assuring that his possessions, in this case his business and all its physical parts, are not the agents of causing harm. Yet, as Arukh HaShulchan explains (Choshen Mishpat 410:4), this is a religious obligation, not one that is expressed as a financial obligation to pay damages if someone is injured where they could be assumed to exercise responsibility for their own safety.

וודאי ברשות עצמו יכול האדם לעשות כל מה שירצה, וא[ף] ע[ל] ג[ב] דחייב כל אדם להסיר מכשול נזק גם מרשות עצמו כמו שחייבה התורה במעקה – זהו לענין מצוה וחובה ולעבור בלאו כשלא הסיר הנזק ולא לענין חיוב תשלומין... אין שום סברא לחייבו ממון בשביל דברים שעשה ברשות עצמו... והיה להם להזהר

Certainly a person can do whatever they want in their own property. Even though a person is required to remove a hazard even in his own property, as the Torah required in the case of the parapet – that is with regard to the command and requirement, and in order not to transgress a negative commandment when he fails to remove a hazard. It does not pertain to a requirement to pay damages... There is no case to be made for requiring payment for things done in one's own property... They should have been careful.

But the employer's obligations toward his workers is greater than the standard obligation, a principle that can be seen at work in the Talmud's example (Bava Metzia 80b) of an overloaded porter. The Mishnah ruled that the employer is responsible to pay for damage incurred when work demands depart from normal conditions. Why?

אם איתא דלא מצי ביה, בר דעת הוא. לשדיה.

If he can't handle it – he's sensible. Let him drop it.

As we said, since a person can take responsibility for his own safety, why should the employer be liable? After some discussion Rav Ashi's explanation is accepted.

הוא סבור דחולשא הוא דנקיט ליה.

He is convinced that he is just suffering weakness.

As understood insightfully by the commentators¹⁰, as an employee he cedes his judgment to the employer, and is inclined to think that the conditions, though they might appear dangerous, have been considered and approved by the boss. Given that safe conditions are required of the employer and are within his purview, the laborer labors under that assumption¹¹. This case, like that on class size limits in hiring teachers (Bava Batra 21a)¹², implies an obligation on the part of the employer to maintain proper working conditions, which is also the conclusion reached by Israel's former Chief Rabbi Ben Zion Chai Uzziel¹³.

Some extrapolations of the 'overloaded porter' protect the employer. If it can be proven that the worker knew of the unsafe conditions and accepted them, the employer would no longer be obligated to pay, since a person is responsible for protecting his own safety (Bava Kama 4b)¹⁴. If the conditions are found to be safe, and the injury purely accidental, the employer would again not be required to pay. Even where the conditions were found to be unsafe, but the owner could not have been expected to know of or have yet corrected the problem, he would not be required to pay. And yet, of these very conditions where the employer is not obligated to pay the damages to his employee as a matter of law, Joseph Rosner writes:

¹⁰ The opinion of Ritba (Yom Tov ben Avraham Ishbili, late 13th-14th c. Spain), appearing in *Shittah M'kubetzet* to Bava Metzia 80b and referenced by R. Akiva Eger in his commentary to Shulchan Arukh, Choshen Mishpat 308:7 and K'tzot haChoshen there. And see ch. 24, 1-2 and notes, in Rosner, op. cit.

¹¹ Jill Jacobs, op cit., notes that overloading a porter is used by the midrash to characterize Egyptian slavery in Sh'mot Rabbah 1:27.

וירא בסבלותם – מהו וירא? רבי אלעזר בנו של רבי יוסי הגלילי אומר: ראה משוי גדול על קטן ומשוי קטן על גדול ומשוי איש על אשה ומשוי אשה על איש ומשוי זקן על בחור ומשוי בחור על זקן

He saw their burden – He saw what? Rabbi Eleazar son of Rabbi Yosi haG'lili says: He saw an adult's burden on a child and a child's burden on an adult, a man's burden on a woman and a woman's burden on a man, an old person's burden on a young one, and a young person's burden on an elderly one.

¹² See Shulchan Arukh, Yoreh Deah 245:15 and Shimon ben Tzemach Duran, *Tashbetz* II, 64. About an overtaxed domestic, Yair Bacharach (Germany, 17th c.), *Chavot Yair* 106 and Israel Bruna, *Responsa* 241.

¹³ *Mishpetei Uzziel* IV, Choshen Mishpat, 43. In a responsum entitled, אחריות נותן העבודה כלפי הפועל – The responsibilities of the employer with regard to the employee, Israel's former Chief Rabbi Ben Zion Chai Uzziel considers what might be the Torah's view of requiring an employer to maintain insurance for his employees. The questioner wishes to know, היש בדרישה זו משום צדק ויושר ודעת תורה

If this demand is righteous and just and if it conforms to the Torah's intention.

His initial conclusion borrows from another situation that we have seen,

זכאי הוא הפועל לדרוש בשכר עבודתו ערובה כספית במקרה מיתה או הטלת מום ובעל הבית או הקבלן מהווייבים להסכים... על זה נאמר "למען תלך בדרך צדיקים..." שמצווים הבעלים ביהס לפועלים.

The worker is permitted to demand, as a condition of his work, a financial guarantee in the event of death or disability and the owner or contractor is bound to agree... It is about this that it says "So that you might walk in the way of the worthy..." which employers are commanded with regard to their employees.

¹⁴ This is elaborated by Joseph Caro in Beit Yosef 3 to Tur, Choshen Mishpat 188 citing, among others, *Teshuvot haRashba (hameyuchasot laRamban)* 20. Several other response dealing with these issues are noted in notes 28-9 on pages 125-6 of David Schnall's book, *By The Sweat of Your Brow*. Thus it follows that an employer should clearly warn employees of a dangerous condition that cannot be ameliorated.

היינו רק מדיני אדם. אבל בדיני שמים חייב לשלם כל נזק שאירע לעובד במהלך העבודה כתוצאה מעבודתו
This [is the case] only with regard to human laws, but heavenly law requires that he pay any damage incurred to a worker in the course of work and as a result of his work.¹⁵

And custom might dictate an obligation enforceable in court with regard to each of these provisions¹⁶. Hekhsher Tzedek, as we have noted before, is structured to evaluate appropriate behavior on the part of an employer, an employer's conformance with the higher standard, without making claims about the bottom line that could be adjudicated in court. In the words of Rabbi Uzziel's ultimate conclusion,

אם אמנם מצד ההלכה אין בעל הבית חייב בנזקי הפועל... נוטה אני לומר שבעל הבית מזהר מן התורה לעשות כל מה שאפשר להבטיח פועליו מסכנת מות או מום ככתוב: "ועשית מעקה לגגך, ולא תשים דמים בביתך" שכולל כל מכשול העלול להזיק כמו כלב רע וסולם רעוע וכו'. מכאן אנו למדין חובת בעל הבית או הקבלן לדאוג בדיקנות זהירה בתנאי העבודה שיהיו בטוחים מכל מכשול הגורם לאיזה אסון שהוא... ובאם לאו הוא נלכד בעוון "לא תשים דמים בביתך" וצריך כפרה. אבל אין זה דבר היוצא בדיינין.

Though it is the case that according to the law the owner is not liable for the damages of the worker... I am inclined to say that the owner is warned by the Torah to do all that is possible to insure his workers from the danger of death or disability, as it says: "You shall make a parapet for your roof and you shall not bring blood-guilt upon your house" (Deut. 22:8). Which includes any hazard which is likely to cause injury, like a mad dog or a rickety ladder (Bava Kama 15b, Choshen Mishpat 427:5). From this we learn the obligation of the owner or contractor to address the working conditions with strict care, so that they are secure from all hazards which might precipitate an accident... for if not he is guilty of the sin "you shall not bring blood-guilt upon your house" and needs atonement. But this is not adjudicable before judges.

This is, of course, part of the summary statement of Choshen Mishpat, as well (427:8):

כל מכשול שיש בו סכנת נפשות מצות עשה להסירו... ואם לא הסיר והניח המכשולות המביאים לידי סכנה,
ביטל מצות עשה ועובר בלא תשים דמים

It is a positive commandment to eliminate every hazard that endangers life... If one did not eliminate it, but preserved the hazards that cause danger, one has overlooked a positive commandment and transgressed "you shall not bring blood-guilt into your house."

Extrapolating from these worker concerns to others, it is in this section that the Hekhsher Tzedek working guidelines address the requirement that companies "have demonstrated a hospitable and progressive relationship with their employees and the labor organizations that represent them." This follows from the straightforward acceptance of unions and

¹⁵ Rosner, op cit, ch. 24, 5 and note 16.

¹⁶ Shulchan Arukh, Choshen Mishpat 333:5. But the custom for an employer to pay for the illnesses of his traveling salesman, for instance, is reported in *Responsa Ruach Chayim* by Chaim Palaggi (Palache), 334:4 and a similar obligation toward a domestic employee was specified in the communal Takkanot of Cracow in the 16th c. (see S. Warhaftig, *Dinei Avodah BaMishpat HaIvri* I, p. 455). Today, Worker's Compensation is generally mandated by law, and as such would be a halakhically required benefit even though it had not been contemplated by classic halakhic sources. See to that effect Rabbi Uzziel's responsum, op. cit.

other workers' organizations by halakhic authorities. In a second responsum addressing workers' rights (*Mishpetei Uzziel* III, Choshen Mishpat, 42) Rabbi Uzziel writes:

ר[בותינו] ז"ל הכירו בתקנות אירגון בעלי אומניות או הסתדרות של פועלים... כדי להגן על עצמו נתן לו המשפט [= לפועל] זכות חוקית להתארגן ולתקן תקנות מועילות לחברתו.

Our sages recognized the regulations of a craftsmen's guild or of a workers' union... In order to protect himself, the law gave him [= the worker] the legal right to organize and to enact provisions that are beneficial to his association.

CJLS recently confirmed this as well. In the words of Rabbi Jill Jacobs¹⁷:

In most cases, unions offer the most effective means of collective bargaining and of ensuring that workers are treated with dignity and paid sufficiently. Jewish employers should allow their employees to make their own independent decisions about whether to unionize, and may not interfere in any way with organizing drives by firing or otherwise punishing involved workers... or by otherwise threatening workers who wish to unionize.

Perhaps best are the words of former Israeli Chief Rabbi Abraham Isaac Kook, prefiguring the project and the terms of Hekhsher Tzedek:

בארגון הפועל לשם שמירה והגנה על תנאי העבודה יש משום צדק ויושר ותיקון עולם...

In the workers' organization formed for the purpose of guarding and protecting work conditions there is an aspect of righteousness, uprightness and *tikkun olam*.¹⁸

Product Development

The matter of negligence, of course, extends to the matter of putting out products that are safe for consumer use. Indeed, we noted that the parapet principle was applicable to dangers within one's own domain, but that there was a separate and greater responsibility for hazards placed in the public domain. Thus the manufacturer's responsibility to assure product safety is self-evident.

Halakhah has also always been exceedingly concerned with areas of commercial fraud and deception. Examples are forthcoming and uncompromising.

אין מערבין פרות בפרות... אין מערבין שמרי יין ביין... מי שנתערב מים ביינו לא ימכרנו בחנות אלא אם כן הודיעו, ולא לתגר אף על פי שהודיעו, שאינו אלא לרמות... אין מפרכסין את האדם, ולא את הבהמה, ולא את הכלים

Produce may not be mixed with other produce... One does not mix the lees of wine with wine... If one's wine was diluted with water one must not sell it in a shop unless one informs [the customer], nor to a merchant, even if one informs him, because [the latter buys it] only in order to deceive [others]... People, cattle, and utensils may not be made up. [Mishnah Bava Metzia 4:11-12]

¹⁷ Op. cit., footnote 7.

¹⁸ From a 1933 article which is cited by Tzvi Yaron, *Mishnato shel ha-Rav Kook*, Jerusalem 1974, p. 164 and Meir Tamari, *With All Your Possessions*, NY / London 1987, p. 155.

אין מפרכסין לא אדם ולא בהמה ולא כלים, כגון לצבוע זקן עבד העומד למכור כדי שיראה כבחור ולהשקות בהמה מי סובין שמנפחין וזוקפין שערותיה כדי שתראה שמנה... ולצבוע כלים ישנים כדי שיראו כחדשים...

One does not apply make up to a person, a beast or a utensil, for instance, to dye the beard of a slave who is to be sold so that he appears younger, or to give cattle a potion that causes it's hair to fill out and stand on end so that it appears fatter... nor do you paint old vessels to appear new... [Shulchan Arukh, Choshen Mishpat 228:9]

המודד או שוקל חסר לחבירו, או אפילו לעכו"ם עובר בלאו דלא תעשו עול במדה במשקל ובמשורה. חייבים ב[ית] ד[ין] להעמיד ממונים שיהיו מחזרים על החנויות, וכל מי שנמצא אתו מדה חסרה או משקל חסר או מאזנים מקולקלים רשאים להכותו ולקנסו כאשר יראה לב[ית] ד[ין]. אסור לאדם להשהות מדה חסרה בביתו, אפי[לו] שאינו מודד בה, ואפי[לו] לעשות עביט של מי רגלים, שמא יבוא מי שאינו יודע וימדוד בה.

One who shorts a customer in weight or measure, even a non-Jew, transgresses the Biblical prohibition, "Do not behave sinfully with yardstick, weight or measuring-cup." (Leviticus 19:35). The court must appoint inspectors to circulate through the stores. Should they find anyone with a defective measure, weight or scale they may punish and fine him as the court sees fit. A person may not keep a defective measure in his home, even though he does not use it, even in use as a urinal, lest someone who does not know should come along and use it. [Shulchan Arukh, Choshen Mishpat 331:1-3]

As we noted before, Caro's titles to these paragraphs summarize well their content:

אסור... לרמות במקח וממכר [228]. שלא לרמות במדה ובמשקל [331].
It is forbidden... to deceive in sales [228]. One should not deceive in weights and measures [331].

The area of price gouging is a difficult one to assess, but there are investigations into illegal monopolistic practice and windfall profit that rise to actionable items in court in this country, and there is a similar concern for such matters registered in the halakhah.

אוצרי פירות ומלוי ברבית ומקטיני איפה ומפקיעי שערים – עליהן הכתוב אומר: לאמור מתי יעבור החדש ונשבירה שבר, והשבת ונפתחה בר להקטין איפה ולהגדיל שקל ולעות מאזני מרמה
Hoarders, usurers, shortchangers and profiteers are the subject of the verse: "saying: when will the New Moon pass so that we may sell grain, [when will] the Sabbath [pass] so that we may set forth wheat, shorting the measure, overcharging, and falsifying with crooked weights" (Amos 8:5) [Bava Batra 90a]

These points of law correspond to the areas of Product Safety and Product Marketing to be weighed by Hekhsher Tzedek.

Hekhsher Tzedek has set itself the task of raising the level of businesses supplying the Jewish public to a level of which we can be proud. When imagining what human behavior by a Jew might cause God's name to be defiled, the Talmud (Yoma 86a) lists only two things, dishonesty in business and lack of courtesy toward others. "What do

people say about him?... ‘This man studied the Torah: Look, how corrupt are his deeds, how ugly his ways.’” Both are implied in the items considered here¹⁹.

There is one more sub-area of product development that requires consideration. It is the area of animal welfare which was the area which first called attention to the need for a Hekhsher Tzedek. But before going on to address it, the other area of Corporate Integrity wants to be addressed very briefly at this point.

Corporate Integrity

The Hekhsher Tzedek Policy Statement identifies Corporate Governance and Accounting Controversies as an area of monitoring. It refers, under those categories, to “allegations or convictions of bribery, insider trading, or other fraudulent activities” and “controversies regarding accounting practices”. Unlike the prior category of product development and marketing, these are internal matters of which it might be asked, to the extent that they do not affect the consumer directly, are they rightly in the purview of a consumer seeking to guide their consumption by the paths of righteousness. Here, too, the reach of halakhah is long, and does not allow us to absolve ourselves of the wrongdoing of our neighbors.

In the first instance there is the command הוֹכַח תּוֹכִיחַ אֶת עַמִּיתְךָ – you shall surely remonstrate with your fellow (Lev. 19:17) which, at very least, sets an aspirational goal of communal responsibility for and intervention in the acts of others²⁰. That is properly the domain of Hekhsher Tzedek. But whereas there are numerous exceptions to this directive²¹, there is an unambiguous obligation to avoid abetting or supporting wrongdoing directly. Thus, the clear ruling concerning purchasing stolen goods in Shulchan Arukh, Choshen Mishpat 356:1:

אסור לקנות מהגנב החפץ שגנב. ועון גדול הוא, שהרי מחזיק ידי עוברי עבירה וגורם לו לגנוב גניבות אחרות, שאם לא ימצא לוקח אינו גונב.

It is forbidden to purchase a stolen article from a thief. This is a great sin, for one supports the hands of sinners and causes him to steal other things, for if he does not find a buyer he will not steal.

The behavior contemplated here, purchasing a licit item from a person suspected or found guilty of wrongdoing in the course of his business, while it does not rise to the level of the technical prohibition as did the earlier matters reviewed here in which the consumer could be likened directly to one who purchases from a thief, is clearly still within the

¹⁹ Similarly general statements about the importance of honesty in business are found in other Talmudic saying. “One who wishes to be righteous should observe the laws of Nezikin” [damages, n.b. the seat of business ethics] (Bava Kama 30a). “When a person is judged, they will be asked: Did you do business with integrity...” (Shabbat 31a).

²⁰ Arakhin 16b. Maimonides, Hilkhot Deot 6:7-8. And see the responsum of Rabbi Dr. Barry Leff, recently approved by the CJLS, “Whistleblowing: The Requirement to Report Employer Wrongdoing.”

²¹ Yevamot 65b with Rashi there and see Torah Temima to Lev. 19:17, #114, citing Ruth Rabbah 1:1. And see the perceptive review of the limitations of remonstrating with those who are not pious by Yehudah Herzl Henkin, “Mutav she-y’hu shog’gin,” *Techumin* 2, 1981.

broad outline of this prohibition²². And it is to that matter of propriety that the Hekhsher Tzedek is addressed.

Product Development: Animal Welfare

God is concerned with the well-being of all his creatures, and so must we be. The ninth verse of Ashrei (Ps. 145) announces this, and the peroration of the book of Jonah upbraids Jonah for failing to have similar compassion. There are several express Biblical commands predicated on concern for the welfare of domestic animals.²³ It is said in the Book of Proverbs (12:10): יודע צדיק נפש בהמתו -- “A righteous man considers the soul of his beast” reflecting a relationship of man to beast similar to that of God to man and the cadence of Ps. 34:23: פודה ד' נפש עבדיו – “God redeems the soul of His servants.” The Talmud extrapolates from the text of the Sh'ma, ונתתי עשב בשדך לבכמתך ואכלת ושבעת, – “I will provide grass in your fields for your cattle, and you shall eat and be satisfied” (Deut 11:15), that before one may sit down to eat, one must attend to the needs of one's animals (Berakhot 40a). A poignant midrash has Moses designated as the leader of Israel out of Egypt, because God saw that “you have compassion in shepherding a mortal's flock” and swore, “by your life, you will shepherd My flock, Israel.” (Ex. Rabbah 2:2). Another (Bava Metzia 85a) understands that Rabbi Judah the Patriarch suffered illness in punishment for his callousness toward a frightened animal bound for slaughter, whom he chased out, saying “Go. That is what you were created for,” and that eventually he recuperated on account of a later act of magnanimity toward a family of weasels.

The rabbis extracted the principle that it is forbidden to cause צער בעלי חיים – to cause suffering to living things, and utilized this as a test of the propriety of various actions throughout the Talmud²⁴. They debated if this was a Biblical prohibition or a Rabbinic one, and, on the whole, concluded that it was a Biblical precept, wherefore it requires greater strictness or vigilance²⁵. But the tradition was taxed by the Biblical permission to slaughter animals for eating and sacrifice and, balancing them, concluded that animal suffering might be justified for human needs but must always be minimized in that context. The laws of slaughter were interpreted in that light.

²² The prohibition against lending support to a sinner comes under the broader prohibition of placing a stumbling block before the blind. It is discussed in *Sefer haChinnukh's* Commandment #232, “Not to Cause the Unwary to Stumble.” As he notes, one of the limitations of that prohibition is that we are warned “אלפני” but not “לפני דלפני” – about leading to a stumble or transgression but not actions that are further removed in the causal chain, or those that cannot be convincingly linked in a causal chain. But distance from sinners and sinfulness is generally preferable, and the most common justification for some measure of involvement with sinners is מפני דרכי שלום, that is, to maintain communal peace -- see, e.g., Mishnah Gittin 5:9. Note the language there – “one should not support sinners. They only gave these [permissions] to maintain communal peace” -- but for the interests of community amity, the preference for distance would have prevailed.

²³ E.g. Ex. 23:5, 12, Deut. 22:4-7, 10, and 25:4.

²⁴ Shabbat 117b, 128b, 154b, Beitzah 26a, Bava Metzia 31a, Bava Batra 20b, Avodah Zarah 13a, Chullin 7b.

²⁵ See David Bleich, “Animal Experimentation,” *Contemporary Halakhic Problems III*, Yeshiva Univ. 1989, pp. 200-202, notes 10-11. The article begins with an extended discussion of the history of the interpretation of cruelty to animals in Jewish legal writings.

ועוד נאמר בטעם השחיטה מן הצואר ובסכין בדוק כדי שלא נצער בעלי החיים יותר מדאי
כי התורה התירן לאדם למעלתו לזון מהם ולכל צרכיו, לא לצערן חנם

We will say further, that the reason for slaughter at the neck and with an inspected knife is so as not to cause excessive suffering to living things, for the Torah permitted them to humans on account of their preeminence, so that they might be nourished by them and for all their needs, but not to cause them gratuitous suffering. [Sefer haChinnukh #451]

כאשר הביא הכרח טוב המזון להריגת בעלי חיים כונה תורה לקלה שבמיתות ואסרה שיענה אותם
בשחיטה רעה ולא בנחירה

When the necessity for good food led to the killing of animals, the Torah chose the easiest of deaths and prohibited tormenting them through an inferior slaughter or by piercing. [Maimonides, Guide for the Perplexed, III:48]

But the concession that causing suffering to animals might be acceptable, if necessary, opens a Pandora's box of differing interpretations of how great must be the necessity and whether the amount of the animal's pain might be calibrated against that. Moses Isserles ruled broadly, although his source seemed to indicate that the exception might be limited to medical necessity:

כל דבר הצריך לרפואה או לשאר דברים לית ביה משום איסור צער בעלי חיים

Anything that is necessary for medical purposes, or for anything else, is exempt from the prohibition of causing suffering to animals. [Shulchan Arukh, Even haEzer 5:14]

He expressly extends that permission to economic benefits, continuing:

ולכן מותר למרוט נוצות מאווזות חיות וליכא למיחש משום צער בעלי חיים

Therefore, it is permissible to pluck the quills of live geese without concern for causing the suffering of animals.

But Isserles himself seemed to understand the breadth of the permission he was giving, and so hemmed it about, albeit weakly, by continuing

ומ[כל] מ[קום] העולם נמנעים, דהוי אכזריות

Nevertheless, people refrain [from doing so] because it would be cruel.

Our colleague, Pamela Barmash, has characterized this as a “prohibition of cruelty,” established here²⁶, and indeed she is not alone in doing so. Mordecai Ya'akov Breisch, a twentieth century Swiss authority takes a similar position²⁷, prohibiting causing suffering to animals even in medical experiments that are not themselves immediately therapeutic, or on account of any other need except ritual slaughter,

²⁶ Pamela Barmash, “Veal Calves”, approved by CJLS on December 12, 2007.

²⁷ Mordecai Ya'akov Breisch, *Chelkat Ya'akov*, Choshen Mishpat #34.

ע[ל] פי חסידות להנצל ממידת אכזריות ודאי אסור... ודוקא בשחיטה מותר... אבל משום צורך אסור

As a matter of righteousness, to avoid the attribute of cruelty, this is certainly prohibited... It is only permitted re slaughter... but for [other] need it is forbidden

With regard to medical experimentation Rabbi Breisch is clearly in the minority, but without taking as extreme a position as he does, it is correct to recall the comment of Sefer haChinnukh that any suffering must be justified by the need and may not be gratuitous. In his famed responsum forbidding hunting for sport, Ezekiel Landau puts it this way:

מי שמוכרח לזה מחמת פרנסתו... אבל מי שעושה כן בשאט נפש... יש בדבר זה מדה מגונה דהיינו אכזריות
If one is required to do this for one's livelihood... but whoever does this contemptuously... that is a reprehensible trait. It is cruelty.²⁸

In the words of Rabbi Barmash,

“It is only the immediate steps leading to slaughter that fall under this penumbra of exception. Tormenting an animal for months until it is slaughtered... does not.²⁹

It is the avoidance of gratuitous suffering that Hekhsher Tzedek seeks to assure. Where, as in the case of veal, the inappropriate treatment of the animals is intended directly to meet the desires of the consumers, there is little room to deny that such consumers are indeed strengthening the hand of sinners directly, as was the case with regard to purchase from a thief, cited before. Where the inappropriate treatment is solely in the financial interest of the manufacturer, the Hekhsher Tzedek will serve to inform a buyer who seeks to maintain even greater than the halakhically required distance from such practices³⁰.

Environmental Impact

בשעה שברא הקדוש ברוך הוא את האדם הראשון, נטלו והחזירו על כל אילני גן עדן ואמר לו:
ראה מעשי כמה נאים ומשובחין הן וכל מה שבראתי בשבילך בראתי. תן דעתך שלא תקלקל ותחריב
את עולמי, שאם קלקלת אין מי שיתקן אחריו

When the Holy One created the first man, He took him around all the trees in the Garden of Eden and said to him: See how beautiful and wonderful my works are. Everything I have created, I have created for you. Be mindful that you do not ruin and devastate my world, for if you ruin it, there is no one to repair it after you. [Kohelet Rabbah 7:13]

Modern Jewish environmentalists have lighted upon this midrash as a statement of God's own interest in preserving the planet. It is not unreasonable to read it that way, for in the basic Garden of Eden story Adam is placed in the garden, in Genesis 2:15, לעבדה ולשמרה – to work it and protect it. Though much midrash tries

²⁸ Ezekiel Landau (18th c. Poland/Czechoslovakia), *Noda BiYehuda Tinyana*, Yoreh Deah 10.

²⁹ Barmash, op cit, note 30. A similar conclusion is reached by David Golinkin, “The Kashrut of Veal Raised on Factory Farms,” *Responsa in a Moment*, Schechter Institute, Jerusalem, 2001.

³⁰ See footnote 22.

to spin that statement toward study of Torah and observance of mitzvot, several of the commentators read the Torah naturally and understood it as a general mandate to avoid polluting the earth. Two comments stand out, one by the well known 12th century Spanish sage Abraham Ibn Ezra and the other by the much lesser known 18th century Moroccan sage Chaim ibn Attar:

לעבדה – להשקות הגן. ולשמרה – מכל החיות, שלא יכנסו שם ויטנפוהו.

To work it – to water the garden. And to protect it – from any creature, so that they not enter it and pollute it. [Ibn Ezra]³¹

וכמו שהאדמה צריכה עבודה והזרעה והגשמה להוציא מזון האדם
גם שמירה מדברים המפסידים והמריעים לצומח

Just as the earth needs plowing, seeding and watering to produce food for people, it also needs protection from things that cause loss and deterioration to growing things. [Chaim ibn Attar, Or haChaim]

These, together with the realization that “the earth is the Lord’s and all that is in it” (Ps. 24:1) and that “the Lord formed the earth with wisdom” (Proverbs 3:19) are certainly sufficient to ground a basic Jewish concern for taking care not to pollute the environment.

But the legal basis upon which Hekhsher Tzedek depends in setting environmental concerns as an area of specific social responsibility on the part of participating businesses is simply the matter of liability for the damage they cause by their operation. As we noted, above, the basic principle of the pit (בור) demands responsibility of each of us for the damage that we do to others in the common domain, and that of fire (אש) requires that we avoid causing such damage, whether through toxic emissions, hazardous waste, or, as we are only now becoming aware, through the release of greenhouse gases into the atmosphere. There are many examples in classic halakhah of specific legislation along these lines. It is prohibited to introduce pollutants to public water sources (Tosefta Bava Metziah 11:31) or to allow one’s private septic system to leach into a neighbor’s well (Shulchan Arukh, Choshen Mishpat 155:21). Various zoning laws (e.g. Mishnah Bava Batra chapter 2) are specifically concerned with the damage that may be caused by one’s licit activity upon adjacent areas through

³¹ And see Ibn Ezra’s comment to Ps. 115:16 that man is God’s manager on earth (פקיד א-להים בארץ). Contrary to the standard picture of Adam living a life of ease in the Garden of Eden, R Shimon ben Elazar insists, in Avot d’Rabbi Natan 11:1, that Adam himself did not eat until he worked (עד שעשה מלאכה). Now it might be objected that this describes reality before the expulsion from the Garden of Eden, but that it might not be true in our world. Another midrash in Shmot Rabbah 30:9 makes a similar claim outside of the Garden of Eden.

אמר רבי אבהו בשם רבי יוסי בר רבי חנינא: משל למלך שהיה לו פרדס והיה נוטע בו כל מיני אילנות... הוא שהיה משמרו. משעמדו בניו על פרקן אמר להם: בני, הפרדס הזה אני הייתי משמרו... אתם תהיו משמרין אותו כדרך שהייתי אני משמרו. Rabbi Abbahu said in the name of Rabbi Yosi son of Rabbi Chanina: A parable of a king who had a garden in which he planted all sorts of trees... and he would guard it. When his children came of age, he said to them: My children, I used to guard this garden... [Now,] you guard it as I used to guard it.

various runoff and pollution³². This is not, as in some other measures, beyond the letter of the law, rather it is the letter of the law which, at times past, we did not sufficiently understand or enforce. Indeed, the law specifies that while some damages may be waived consensually, pollution damages may not be waived (Shulchan Arukh, Choshen Mishpat 155:36) because

לפי שאין דעתו של אדם סובלת נזיקין אלו וחזקתו שאינו מוחל, שהיזקו היזק קבוע
Because a person cannot stand such harms, so that it is to be assumed that
he does not waive [his right to mitigation], for the harm is ongoing³³.

Maimonides goes so far as to state that which is morally if not legally obvious:

אסור לאדם להזיק ולשלם מה שהזיק. אפילו לגרום הנזק אסור.
One is not permitted to cause damage, planning to pay for the damage.
Even to cause the damage is prohibited. [Hilkhoh Nizkei Mamon 5:1]³⁴

Many also point to the principle of *בל תשחית* – do not destroy (wantonly) as a fundamental principle that undergirds our concern for the environment,³⁵ based on the case described in Deuteronomy 20:19. This principle may be derived from several other Biblical sources as well. For example, before he declares a house impure, the priest is to order the house to be emptied of clothes and furnishings (Leviticus 14:36), by this stratagem saving the contents of the house from themselves becoming impure^{35b}. Sefer haChinnukh explains the wider reach of the mitzvah, in mitzvah #529:

שרש המצוה ידוע שהוא כדי ללמד נפשנו לאהב הטוב... ונרחיק... מכל דבר השחיתה.
וזהו דרך החסידים... יצר עליהם בכל אבדון והשחיתה שיראו, ואם יוכלו להציל,
יצילו כל דבר מהשחית בכל כוחם.

³² Known as “his arrows” (גירי דידיה) its sources are in the Talmud, Bava Batra 22b and elsewhere, and it is well described by Maimonides, Hilkhoh Sh’khenim 10:5 למה זה דומה? למי שעומד ברשותו ויורה הציץ להצר חבירו – ואמר: ברשותי אני עושה – שמונעין אותו ואתו וזוהו דרך החסידים... יצר עליהם בכל אבדון והשחיתה שיראו, ואם יוכלו להציל, יצילו כל דבר מהשחית בכל כוחם. And see Shulchan Arukh, Choshen Mishpat 155:22-23.

³³ But see, there, that a properly adjudicated agreement is binding. This to allow the final settlement of a dispute that otherwise might continue forever.

³⁴ These damages are damages to others. In a lovely midrash on Bava Kama 50b, the rabbis also insist that in damaging the public domain one also damages oneself. “Once a person was clearing his property of stones, into the public domain. A righteous person came upon him and said: ‘Fool! Why are you clearing out property that is not yours into property that is yours?’ The first person made fun of that [righteous one]. It came to pass that the first person had to sell his land, and, when walking by in the public property, he tripped on those very stones. He then realized: That righteous person spoke well when he asked me why I was clearing property that is not mine into property that is.”

³⁵ Shabbat 67b, Kiddushin 32a, Bava Kamma 91a, Chullin 7b.

^{35b} Another example: “If the household is too small for a lamb, let him share one with his closest neighbor.” (Exodus 12:4, and see the commentary of R. Bachye there). Were each household alone required to offer a lamb, more would be left over to be burned come morning. The Talmud (Chullin 77a, Menachot 76b etc.) that the Torah watches out for Israel’s money. But this is true of gentiles as well. In Exodus 10:19 the Egyptians are instructed to protect their property from the approaching plague of hail. (This insight, from the article of Rabbi Daniel Sperber, “Friendly Halakhah and the Friendly Poseq,” the Edah Journal, 5:2, Sivan 2006).

The root of this mitzvah is well known, that is to train our souls to love that which is good... and distance ourselves... from every form of destruction. That is the way of the righteous... they are pained by any loss or destruction that they see, and if they are able, they would spare no effort to save all things from destruction.

This is the way of the righteous. It is not the standard of everyman. But as Mishnah Avot 5:10 suggests, what seems to some the standard of the average person, appears to others as too pinched and niggardly³⁶, and the gold standard is that of the ways of the righteous. In addition to insisting that Kosher food manufacturers abide by the fullness of halakhic demands, Hekhsher Tzedek is also conceived as a tool for the Jewish consumer to be able to make righteous choices about their kosher eating which were never possible before. Like consumer ingredient and health information labeling, this is one more step toward putting into action the goals that God and the Torah have set for us, and toward which we strive.

The first psalm begins and ends with these words:

אשרי האיש אשר לא הלך בעצת רשעים ובדרך חטאים לא עמד...
כי יודע ד' דרך צדיקים

Hurray for one who has not walked in the company of the wicked nor stood in the path of the sinful... for the Lord recognizes the path of the righteous.

We have a right, and we are right, to expect our coreligionists, our kosher food purveyors, to sanctify God's name by their business practices and to allow, even to aid us in, the pursuit of righteousness.

The teaching of Judaism is the *theology of the common deed*. The Bible insists that God is *concerned with everydayness, with the trivialities of life...* in how we manage the commonplace. The prophet's field of concern is not the mysteries of heaven... but the blights of society, the affairs of the marketplace. He addresses himself to those who trample upon the needy, who increase the price of grain, use dishonest scales and sell the refuse of corn (Amos 8:4-6). The predominant feature of the biblical pattern of life is unassuming, unheroic, inconspicuous piety... "The wages of the hired servant shall not abide with thee..." (Lev. 19:13)... When you build a new house, you shall make a parapet for your roof" (Deut. 22:8)... The challenge we face is a test of our integrity.

[Abraham Joshua Heschel, *The Insecurity of Freedom*, 102-104, emph. in orig.]

³⁶ – האומר שלי שלי ושליך שלך – זו מדה בינונית, ויש אומרים זו מדת סדום. "One who says, mine is mine and yours is yours – that is an average trait, but some say it is a trait befitting Sodom." Later in the Mishnah it describes the more generous approach of the חסיד – the righteous man.