

הַזֶּהב קוֹנֶה אֶת הַכֶּסֶף

Gold acquires silver.

Gold acquires silver coins for the buyer, not because they are gold, or greater then silver, but because it is only when the buyer takes possession (kinyon) is a transfer accomplished.

The sale of a movable item is finalized when the buyer takes it - not when he pays for it.

Two potential mistakes:

- That the fact that gold is intrinsically more valuable it trumps silver, is not the point.
- That the money -gold- supersedes the money- silver, is not true.
- It is the buyer taking (picking-up) the merchandise, that causes the transfer to occur.
Gold, here, is the merchandise and silver the payment.

How do we take possession? For the animal -we pull it (meshichah).

For movable items - we lift them up.

הַזֶּהב קוֹנֶה אֶת הַכֶּסֶף

Gold acquires silver.

A gold coin is considered merchandise, since it is not readily used as a vehicle of exchange. For example, a merchant will more readily accept a \$20 than \$1000 bill. Gold is used for other purposes, not usually for exchange.

Once the buyer lifts up, or takes the merchandise in his hand, it is sold. Neither can back out. The buyer owes the silver coins to the seller.

The seller has a claim against the buyer for the silver coins and does not need to accept the gold coin back.

Contrarily, if the seller accepted the silver coins into his hand and put the gold coins (merchandise) out on the table in front of the buyer, but the buyer did not yet pick it up, there is no sale and either can change their mind.

However, for a person who reneges after the money is paid (but before the sale is complete), the Rabbis tell him., ‘God will exact retribution’.

In a barter situation, each side has “merchandise”, so the ‘picking up’ by either one of them, finalizes the sale.

לְמַאי נִפְקָא מִינָּה לְפִדְיוֹן הַבֶּן

When does it have practical consequences? Redeeming a firstborn son.

Redemption of a first born son for 5 silver shekels.

“Redeem your son for 5 silver shekels” (Num 18:16).

Five silver shekels = 20 silver dinars.

A Biblical shekel is equal to a Talmudic sela.

In order to redeem a first born son, the parents must give something that is worth (equal in value), to 5 silver shekels.

The value of a gold dinar is considered to be constant.

One gold dinar = 25 silver dinars.

Therefore, if a father gave a Kohen 1 gold dinar = 25, but he only needs 20.

Therefore, he would get 5 silver dinars, in return.

Today, 5 silver dollars is equal to 5 silver shekels.

תָּא שָׁמַע כָּל הַנְּעִשָּׂה דְּמִים בְּאַחֵר

Come and learn: Anything used as payment for something else... that is an exchange.

Discusses 'Chalifin' – 'exchange'.

The rule is that once the buyer takes possession of the merchandise, the transaction is complete, not when the seller receives the payment.

What do we do when there is an exchange, or swap? Both items are merchandise and both are considered payment.

Rule: When either party takes possession, the deal is done.

What items can be used for chalifin?

Money can be used as chalifin, but not when it is used as money, but only when it is used as merchandise.

What determines when money is being used as merchandise, or as money?

If he hands the coin over as payment, it is a sale. If he hands over the coin as exchange, it is chalifin – exchange.

(I would say that if any other payments of the same value as the gold coin, could be used to purchase the article, the gold coin is money. If only this particular gold coin (or one exactly like it) is required, that coin itself, is merchandise, not money and the transaction is exchange – chalifin.)

מִטְבֵּעַ וְשִׁמְעַ מִיָּנָה מִטְבֵּעַ נַעֲשֶׂה חֲלִיפִין

Learn from this that coins (in fact anything) can be used as an instrument of exchange.

A wealthy man bought books and paid for them, but before he could pick them up, the bookstore had a fire and the seforim were burnt.

As you recall, exchanging money is not a method of creating ownership. So the transaction did not, yet, result in a change of ownership. The books technically still belong to the bookseller and the purchaser can demand his money back.

That is correct according to the Rabbis (d'rabbonin)-Transfer of money alone does not transfer ownership, however, according to the Torah (d'eoreisah), it does. The Rabbis changed the rule, so that if there was a fire, etc., the bookseller would still trouble himself to try to save the purchaser's books, out of fear that they might still, actually, be his own.

קָנָה אֶת עַל גֵּב דָּלָא מִשֵּׁךְ

He acquired it, even though, he did not pull it.

The law of barter, exchange, (chalifin) is important, because it is an agreed-upon exchange and has no basis in value.

Therefore:

1. You can't invoke the rules about fraud, i.e., "I paid more than 1/6th more than it was worth. Therefore, I can cancel the sale, or get the excess back".
2. You cannot renege, if either has taken possession. Whereas, you could, only if the seller had received his money. It is not yet a deal.
3. You agree to exchange animals, one ox for a cow = or 2 donkeys, etc., and you draw near the cow you agreed to take. But, before the other person can draw near to his part of the deal, that animal (ox) dies. The deal is consummated and the ox that died is the buyer's ox. He loses.

אָמְרוּ מִי שֶׁפָּרַע מֵאִנְשֵׁי דוֹר הַמַּבּוּל וּמֵאִנְשֵׁי דוֹר הַפְּלָגָה

People who behave this way, are like those of the generation of the flood and the dispersion.

Cursed are those who deal this way.

Money has been exchanged, but not physically transferred.

It is considered as if there was no transaction, but:

-Why are those who back out of an agreement, before physical transfer has taken Place, considered like these particular evil people?

- The generation of the flood.
- The generation of the Tower of Babel.
- The people of Sedom and Gomorrah.
- The Egyptians in the sea.

Maharsha explains- The common denominator to all these people is faithlessness.

Faithfulness is considered a basic Jewish trait and those who turn their back on this trait, deserve the same fate as those who, in the past, have done the same.

אָמְרוּ מִי שֶׁפָּרַע מֵאִנְשֵׁי דוֹר הַמָּבּוּל וּמֵאִנְשֵׁי דוֹר הַפְּלָגָה

He who exacts retribution are like the people of the flood and of the dispersion.

Discusses the “curse” mentioned in the Mishna, of a person who reneges on a deal, after the money has been paid, but the kinyon or meshichah has not occurred. Possession has not occurred and therefore, no sale has technically occurred.

Case: Money was exchanged. The recipient uses that money to betroth a girl.

The other party reneges. The money used was not owned, therefore, the engagement is cancelled. Therefore, he should be cursed, even though no real sale had occurred (Lesson: don't use the money, until the deal is complete).

How could this happen? (48b1)

R Chiya bar Yosef sold salt, received the money, but the buyer did not take possession.

The salt appreciated in value and R Chiya bar Yosef wanted to back out of the deal.

Partial payment:

The payment was only a part of the price. It was a down payment. Does a down payment acquire the entire purchase, or only an amount equal to the value of the money paid?

Land can be acquired without money. Therefore, a partial payment acquires all movable objects that can't be acquired without money, only meshichah.

Therefore, a partial payment does not acquire the entire purchase (48b2).

וְהַחֹזֵר בּוֹ אֵין רוּחַ חֲכָמִים נוֹחָה הַיָּמִנּוּ

The Chachomim are not satisfied with one who backs out of his verbal commitment.

Shimon asked Reuven to come to a party at his house. Reuven said yes. Then, Levi asked Shimon to come to his house for a Seudahs Mitzvah, a bris.

Should he go back on his promise to Shimon and go to Levi's for the mitzvah?

Rema said that a person does not need to eat at a seudah for a bris, if there are unsuitable people present. So, it is not mandatory to be there. More so, to go back on one's word, is not what a Torah scholar would do.

Therefore, keep your original commitment.

אִיתֵּמַר אַבְיֵי אֹדְוָעִי

It was stated that Abaye said we should only inform him.

Rava - We curse him ourselves, even after a person gives money to pay for an item, the sale is technically, not consummated. It is the transfer of the item, that is the legal point of no return. Until then, a purchaser can back out of the deal. What is to stop people from reneging on their business deals?

The Mishnah warns that anyone who does not stand behind his word, is subject to the curse.

How does Bais Din deal with a person eligible for this curse? The court merely informs him of the consequences, but does not curse him. It is not permissible for a Jew to curse another Jew (Shemos 22:27).

We inform him. What if he is a Talmud Chacham? He knows the law. Does he need to be informed?

כַּמְתָּנָה מוֹעֵטָת דְּסִמְכָא דְּעֵתִיּהוּ

Regarding a small gift: One should not recant, since the recipient believed him.

Two men agreed on a price for sesame. But the value went up, and the seller did not want to part with his sesame at that low price, so he rescinded the deal.

A man agreed to have Mohel A perform the bris on his son, but Mohel B became available and he wanted to switch.

A person should honor his word, or be subject to the curse.

Also, he should not renege, but give the small gift he promised.

However, he does not need to give a large gift, since the recipient never really believed he would give him a large gift, and so no reliance, or promise actually occurred.

בְּמִתְּנָה מוֹעֵטת דְּסִמְכָא דְּעֵתִיּהוּ

Regarding a small gift: One should not recant, since the recipient believed him.

What does the curse consists of?

“The one who paid retribution against the people of the generation of the flood and of the Tower of Babel, will punish one who does not keep his word”.

Prohibited by Shemos 22:27 = Don't curse a leader.

Considerations for uttering a curse.

Sanhederin 66a – Don't curse a leader, or a deaf person, or the head of a tribe.

Must not use the name of God.

The phrase, “The one who paid retribution”, is enough of a direct reference to God, to make that phrase the use of the name of God, which is prohibited.

Considerations here:

-Rava teaches that the court should utter the curse.

A curse is not prohibited when it is directed toward a sinner. A sinner is not considered one who is among “your people”. Here, a person may not be a sinner, but merely may be a person who found a better deal, better product, or price fluctuations changed, or he no longer needs the item. That is not a sinner.

Rosh, Ravid and Rambam-The court, itself, does issue the curse.

במתנה מועטת דסמכא דעתיה

Regarding a small gift: One should not recant, since the recipient believed him.

A great Rabbi was coming to town and he was scheduled to stay at a very wealthy mans palatial home, far from the community and inaccessible to the poor people. The wealthy man made extensive preparation for his illustrious guest. When the great Rabbi heard, he changed his plans and requested to stay where people could visit him.

The Rabbi reneged on his promise to stay with the wealthy man and said, “The Gemara (in Bava Metzia 49) requires us to keep our word when it comes to small gifts, but clearly, you considered my staying with you a big gift. Therefore, I am permitted to change and it is not considered a violation. I promise to come to your house to visit and share a cup of coffee (a small gift).”

הַאֲוֵנָא אַרְבַּעָה בְּסָף מַעֲשָׂרִים וְאַרְבַּעָה בְּסָף לְסֵלַע

Price fraud is a discrepancy of four silver maos, out of the twenty four silver maos, that comprise one sela.

This deals with price fraud, i.e., overcharging.

The seller charges too much - What is the amount of the fraud?

The buyer underpays - and the period of time that elapsed.

If the amount of the fraud is $\frac{1}{6}$ the purchase price. The defrauded party is entitled to recover the entire amount of the fraud.

R Tarfon in Lod –Fraud is $\frac{1}{3}$, and the sellers rejoiced, because this curtailed the rights of defrauded party. He also extended the time to claim the fraud to an entire day.

People of Lod said, “Let R Tarfon leave us in our place and we all will follow the Rabbis”.

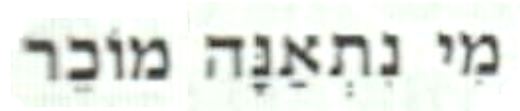
Gemara:

Discusses $\frac{1}{6}$ of the price paid, or $\frac{1}{6}$ of the value of the item.

If fraud is less than $\frac{1}{6}$, it is still fraud, but penalties are waived.

If exactly $\frac{1}{6}$, the sale stands, but the buyer, or defrauded party can demand a refund.

If more than $\frac{1}{6}$, either party may void the sale.



Who has been defrauded? The seller.

It is easy to overcharge.

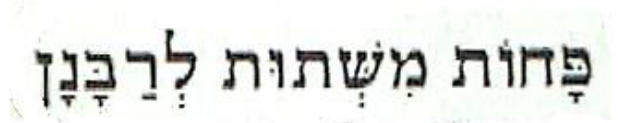
You are the expert, the buyer is a neophyte.

You offer and he agrees: That's not dishonest. It is not stealing or robbing.

The customer is willing.

The Torah, therefore, protects the parties in a commercial venture. The Torah forbids overcharging. Business must be faithfully pursued. No one should "make a killing". A profit is, of course, allowed, but we cannot take advantage.

Now, if you clearly state, "I am charging more than the going price. It is worth x, but I won't sell unless you pay 2x." That is acceptable and does not violate the prohibition of overcharging. Similarly, if a buyer says, "I know this item is worth 2x, but I won't buy it unless you sell it to me for 1x.", that is acceptable and not fraudulent under-paying.



Less than a sixth, according to the Rabbis.

The rule regarding overcharging: If the purchase price is within $1/6^{\text{th}}$ of the fair market value, the sale is valid.

If it is more than $1/6$ of the fair market value, the sale is cancelled.

Exactly $1/6$ more, the sale is valid, but the $1/6$ overcharge must be returned.

How much time can elapse before adjustment can be made?

Less than $1/6$ - Merchants usually forgive the difference. This occurs immediately and the sale is valid.

More than $1/6$ – Cancels the sale.

Exactly $1/6$ – The buyer gets a refund and has time to get advice from relatives.

אֲמַאי חֲזָרוּ

Why did the merchants of Lod prefer the Rabbis' rulings here (rather than R Tarfon's)?

A buyer could have time to show it to another merchant, or his relative

What is the rule regarding a time limit for the seller? What if he made a mistake? How much time does he have to void the sale, or request payment for the increased value?

A defrauded seller can always retract:

The seller can claim he became aware of the underpayment, only when he saw similar merchandise being sold at a higher price.

If the higher price is due to a general rise in prices for that item, he cannot make a claim now. Or, if it is known that the seller knew of the increased price and made no claim, he can make no claim now.

The merchants of Lod – Would have had a shorter time (1 day) with R Tarfon. Therefore, they chose the Rabbis' ruling (51a1).

אָבֿל בֿלוקֿה מִבֿעֿל הַבֿיֿת

But when buying from a householder.....

It may be cheaper for you to pay more.

A man hawked his wares at 6 zuz, though they were only worth 5, and he was prepared to negotiate down to $5 \frac{1}{2}$.

A buyer came along and calculated, “If I buy at $5 \frac{1}{2}$, that is less than $\frac{1}{6}$ over payment. I will waive any claim, and the price will stay at $5 \frac{1}{2}$ for to me. If I buy at his asking price of 6, that is $\frac{1}{6}$ more than it is worth. I have a right to summon him to judgment for the entire over- charge of “1” zuz. When he pays that back to me, it will only have cost me 5 zuz. It is cheaper for me to pay more.”

אָבֿל בֿלֿוקֿה מִבֵּעַל הַבַּיִת

But, when buying from a householder.....

However, a customer, who purchases from a private person, does not have a claim of overcharging.

Why? The person is selling his personal items and the customer knows he may not charge the market price and accepts that.

-When does it pay to pay more and not bargain to pay less?

Story: A man knew an item was worth 5.

A seller offered it for 6, but would be able to be bargained down to $5 \frac{1}{2}$.

The man thought: If I pay $5 \frac{1}{2}$, I have waived my right to claim overcharge, because the $5 \frac{1}{2}$ is not $\frac{1}{6}$ th greater than the price of 5. But, if I give him what he asks, I can claim overcharge and get the entire $\frac{1}{6}$ th given back to me.

כָּשֶׁם שְׂאוּנָאָה לְהַדְרִיּוֹט כִּכְּ אֻנְאָה לַתְּגָר

The law of price fraud is the same for the person as well as the merchant.

It is more important to improve one's adherence between man and man vs. man and God. Every act, every day, if done with integrity, can sanctify man, God, and the entire world.

A story is told of a shoemaker, who at each stitch, would utter the phrase, “Baruch Shem Kavod”.

A Rabbi's job is to assure this. He must check the shoichet's knife, the scales of the fish, produce markets, and be alert that they are honest, also.

עֲשִׂיָּק לְגַבִּיךָ

Overpay for your back.

People say, “Overpay for your back, but only pay proper value for your stomach.”

We have learned that in the transaction of items more than $1/6^{\text{th}}$ its true value, invalidates the transaction.

Regarding coins, a difference of $1/24^{\text{th}}$ or $1/12$ or $1/6^{\text{th}}$ is spoken of as the critical amount.

How could you pay more for a coin than it is worth? The coin states on its face its value! The coin could be eroded, have a hole in it, be worn such that the usual amount of metal is not present.

Why is the difference not the same as with other items? Coins are different, they are unique and even small discrepancies in value, are problematic.

וְאִם הָיָה מִכִּירָה אֶפִּילוֹ לְאַחַר שְׁנַיִם עָשָׂר חֳדָשׁ כּו'

If he recognizes the defect in the coin he would accept it back even after 12 months.

Reuven repaid the money Shimon lent to him. Later, Shimon tells Reuven that one of the coins Shimon gave to him was counterfeit. Shimon asks Reuven to please replace it.

Reuven does not know whether one of the coins he gave Shimon was, in fact, counterfeit.

How do we decide?

If a loan relationship existed and the borrower is not sure if he paid it back, he must now do so. For example, Reuven must replace the coin. Or, if we say the debt was paid back, and there no longer is any lender/borrower relationship, then this claim by Shimon announcing a new debt, which Reuven states he has no knowledge of, then Reuven is not obligated to replace the counterfeit coins. Since the majority of coins are not counterfeit, or has 'the presumption of paying with a good coin', 'chezkas kashrus'. Therefore, Reuven does not have to pay. If there is a question about a coin, Reuven is in the position of a person who is not sure if he fully paid back his loan. Therefore, he must pay, as the question not resolved!!

הָרִי אֱלֹהֵי בְּתֻרֻמָּה וּבְכוּרִים

These laws hold true for terumah and bekurim.

The Brisker Rav lamented that people were not careful regarding terumah and maaser, but there were a lot of complaints about Shemittah and also strong insistence that it be followed. All are vitally, important, Biblically, ordained commandments, why are they regarded differently?

The Brisker Rav believed that the government and commercial interests try to nullify the laws of Shemittah and the notoriety of those efforts, caused people to react to support the laws.

Perhaps, if there were more active effort to nullify the laws of terumah and maaser, we would all fight to retain them.

Why! Since Adam and Eve, people wish to do what is denied them? Tell a child and the forbidden fruit becomes more enticing!!

דְּאוּרֵייתָא וּדְרַבָּנָן לֹא מִצְטָרְפִי

Biblical and Rabbinical items do not combine.

A person took 2 pieces of cloth, one of sheep's wool and one of goat's wool. Neither large enough to require tzitzis, but when combined, they were above the minimum size obligated to have fringes. The piece made from sheep's wool was larger, and it is a material which is Biblically obligated to have tzitzis. Since it does not reach the requisite size, except when combined, perhaps it is not considered a fulfillment of the Biblical obligation (since we are not to combine a Biblical & Rabbinical obligation to fulfill a Biblical obligation).

We could, however, combine threads used from the warp that are Biblically obligated, with wool threads that are only Rabbinically obligated. Since the warp threads contain the minimum size necessary to obligate a garment to have tzitzis and we look at the wool threads, as doing nothing more than holding the warp threads in place.

חֲדָא דְכִתִּיב „וְקָרָאתָ לַשַּׁבָּת עֹנֵג”

And you should call Shabbos “A day of pleasure”.

For example, it is a Mitzvah to eat and drink on Shabbos.

Rambam teaches that the Mitzvah of oneg Shabbos is Biblical in origin.
Sefer Hachinuch says -It is Rabbinic in origin.

Why is there no bracha for deriving pleasure from Shabbos? One answer is that when the mother of the household makes the bracha over the candles, that bracha covers all the different varieties of oneg (pleasure) of the Shabbos for the household.

Oneg is defined, as obtained by drinking wine, eating meat, or preparing something special for Shabbos, but is not based on reliance on the generosity of others.

Also, your oneg must not be at the expense of others. For example, a cook who must slave all day to cook and then serve you through a long meal.

וְהִגְזִיל אֶת חֲבִירוֹ שְׁוֵה פְּרוּטָה

Someone who steals less than a perutah, from his friend.

Rambam – A person steals, when he takes any amount.

Gemara (Sanhedrin 57a) – The victim is ‘mochel’, when what is stolen is less than a perutah. However, at the time of the theft, the victim experiences distress.

Rashi says – No, it is not considered stealing if one steals less than a perutah, since he is not obligated to return less than a perutah.

Sefer Hachinuch agrees with Rashi -It is not a violation of the prohibition against stealing, since that amount is not considered money.

All agree it is not permitted. If everyone would take the value of a 1/2 a perutah from the victim, the victim would soon be left with nothing.

אלו דברים שאין להם אונאה

These are items that are not subject to price fraud.

An employee :Even though you may not have paid him the going rate, he may have agreed to that rate, in order to get any type of work. Therefore, it is openly and above board agreed upon.

Others say, if you paid him less than 50% of the going rate, you have charged interest, i.e., improper enrichment. You must adjust the wages to no less than 50% of the usual and customary rate.

השוכר

Someone who hires.

Someone is hired to watch a child. He is not given payment on Shabbos, for the work he did.

One is not permitted to accept payment for work performed on Shabbos, even if he violated no prohibitions.

For example:

A babysitter, a doctor, a chazzan and a shofar blower, a mikvah attendant, unless -

1. He is paid in an adsorbed fashion, i.e., for other activities and he gets a lump sum.
2. He is hired to perform a mitzvah. He is paid, not only for that activity, but for all the preparation, practice, etc. That justifies his payment for Shabbos.

נוֹתֵינִין לוֹ שְׂכָר שַׁבָּת

They may pay him a wage for Shabbos.

Business open on Shabbos.

A lease, between the owner and a renter:

The non-Jew is a tenant. He, then, is the Jew's agent and an agent is like yourself.

This not acceptable in Jewish law.

A partnership:

In a true partnership, they could stipulate that the income (profits or losses) on Shabbos and Yom Tov, for a vacation or illness would be adsorbed by the business throughout the week. But partnership, means the non-Jew actually owns and has rights in the business.

A closed corporation:

There are tax liabilities and inheritance problems regarding non-Jewish ownership of the stock, which he can sell, or pass on to his heirs.

There is no ideal system.

אם הוא בן גרים

If he is descended from proselytes.

A person is not to be reminded that he or she is a convert, so that it does not cause embarrassment. However, our law says that mamzer may marry a convert, but not someone who was born Jewish.

This deprecates the status of converts.

הַמַּלְבִּין פְּנֵי חֲבִירוֹ בְּרַבִּים

One, who shames his fellow man in public,
is as though he shed blood.

The word ‘ha’malbin’ literally means, “One who makes pale”. When a person is humiliated in public, the blood drains from his face – the blood leaving his face, is akin to shedding blood.

You drive a person into solitude.

You desecrate man, who is made in the image of God. This is an immeasurable sin.

אֶבֶל הַמֵּלֵבִין אֶת פְּנֵי חֲבִירוֹ בְּרִבִּים

One, who shames his fellow man in public.

Someone, who publicly embarrasses his friend, does not have a portion in the world to come.

A person should not be put into an embarrassing situation.

-A person, who is blind in one eye, should not be called to read the Torah portion (refers to the disqualification of a Kohen who is blind).

-A person who has Tzaraas on his forehead – Read Torah portion on Tzaraas quickly.

–A person who is guilty of having of illicit relations- Should not read the Torah portion reading that speaks about illicit relations unless it is to embarrass him to change his ways. However, if you know he won't change, you should not embarrass him.

אֶבֶל הַמַּלְבִּין אֶת פְּנֵי חֲבִירוֹ בְּרַבִּים

One, who shames his fellow man in public.

He, who humiliates a person publicly, has no place in the world to come.

Once there was a Chazan, who repeated words for the sake of cantorial style. The congregation banged on the tables and booed and shouted for him to stop this practice. As soon as prayers were over, the Chazan quickly left the Shul.

The Bluzhever Rebbe spoke to the remaining congregants, “Nowhere, does it say that repeating words of the prayer text causes one to lose his place in the world to come. However, shaming a person has that punishment. The outburst today was a serious mistake!”

אִינְשִׁי

If your wife.

If your wife is short, bend down to hear her whisper.

One should listen to his wife's counsel.

It is symbolic of perceiving the relationship, as that between two respectful equals.

One Friday night, the Alter of Slobodka was speaking for a very long time.

His wife opened the kitchen door a crack and whispered, "They have wives".

He quickly concluded.

לִישְׁנָא אַחֲרֵינָא

A different version.

In matters of heaven, the husband decides. In earthly matters, the wife decides.

R Elazar ben Azarya was appointed head of the Academy, instead of R Gamliel. He told the committee that he first had to consult with his wife and family members, before he could accept the position (Berachos 27b).

If the leaders chose him to lead them, how could he say it was up to his wife and family to decide if he would do so?

R Elazar knew that to lead the people, he must first prove he can be a leader of his own family as in Bamidbar 1:4 “A man who is a prince in his father’s house”.

They, after being leaders in their family, could become leaders of their tribe.

Here, R Elazar wanted to check that he was indeed a good leader of his family and it is always good advice to check with one’s wife, before taking on new responsibilities.

22 Bava Metzia 59b1

line 3

B9

לֹא בַשָּׁמַיִם הוּא

The Torah does not reside in Heaven.

וְחַכָּמִים אוֹמְרִים זָכוֹר לְטוֹב וְכוּ'

Chachamim say, “He should be remembered for good.

What is the reasoning of the Chachamim?

A liquor salesman set up shop in a poor, low-cost neighborhood.

Therefore, his rent and the pay to his employees was low. He could sell his wares at a low price, less than his competition. They complained about his charging less than they, because they could not make a living.

The Rabbi’s answer was that one who lowers the price is to be remembered for good, since that will force the wholesalers to reduce their prices also and all the merchants will benefit.

It is forbidden to touch up
an item, which is for sale, to mislead the buyer.

This is specifically related to the sale of a non-Jewish slave. For example, one should not adorn him, dye his hair, etc., to make him appear younger and thus command a higher price.

This is viewed as dishonest intent.

It also might violate the rule not of not allowing a man to wear woman's clothing.

However, if it is not done for dishonest intent, or to appear like a woman, but done for health reasons, or business reasons to appear younger and stronger; there is no violation to Torah law.

A lowers price: B tells supplier, “ I make no profit since my overhead is high.
Therefore, please lower the wholesale price, or I will stop selling your product.”

Chapter 5 Eyzeh who Neshech?

איזהו נשך

Chapter five deals with the laws of interest on loans, which is forbidden.

There are five separate injunctions against it:

- Ex 22:24

- Lev 25:36-37

- Lev 25:3

- Deut 23:20

- Deut 23:21

To take interest is not ethically wrong. An agreement, without coercion, could be reached regarding a return on capital used, is reasonable. The Torah's prohibition is to encourage us to perform acts of kindness. Any payment or reward given, while waiting for one's capital, is forbidden. Many such transactions can be restructured as an 'Iska', a 'profit sharing venture', where one partner invests capital and the other uses his time managing the business. This way of earning money is not prohibited, if done in this manner.

There is a standard form that legalizes interest – A Heter Iskar, or a joint venture.

What is an example of ‘Neshech’?

One who lends 4 dinars, for 5 dinars and he takes a bite out of the borrower?

Tarbis – One who increases his assets by trading produce – a future contract.

A gives B \$1000 for wheat, to be delivered in 3 months. B has use of the \$1000 now, and still has the wheat.

The value of wheat goes up to \$1500. A requests his wheat, now worth \$1500. The added value of \$500 occurred while B had A’s \$1000, in effect, a loan. Therefore, it is not permitted (It is considered interest).

Phrases from the Torah, which discuss interest.

Lev 25:36

Do not take from him interest and increase and you shall fear your God and let your brother live with you.

Lev 25:37

Do not give him your money for interest and do not give your food for increase.

לְמָה לִי דָכַתָּב רַחֲמָנָא לֹא בְּרִבִּית לֹא בְּגָזֻל

Why does the Torah write a prohibition against taking interest, robbery, and fraud?

There are 2 Psukim regarding interest.

#1-Deut 23:21

Don't collect interest from the person you lend to.

and

#2-Deut 23:20

Don't pay interest to the lender.

#1 We understand, the lender may make paying interest a condition of the loan and force the borrower to pay. We must prohibit that. But #2 should not be necessary. We can learn the same thing from #1; if he can't collect, of course, #2 should not pay. However, we need #2, because we might think that the voluntary payment of interest, by the borrower, would be permissible. The posuk teaches us that it is not.

Deut 23:20

Not only is a lender not permitted to take interest, a borrower is not allowed to pay interest.

Do not cause your broker to take interest:

- Interest of monies.
- Interest of food.
- Interest is any thing that he may take as interest.

Deut 23:21

You may cause a Gentile to take interest, but not your brother.

So that HaShem, your God, will bless you in your every undertaking, on the land to which you are coming, to possess it.

Rabbi Zucker 9-3-06

שְׁנַיִם שֶׁהָיוּ מֵהַלָּכִין בְּדֶרֶךְ

Two people going on the way,

away from all others – one has a “kitah shel mayim”, ‘a flask of water’.

If one drinks it, he will survive - if they share, both die.

Ben Retura says – Share and both die. It is a sin to drink it all.

Akiva says – No, my life takes precedence over his life, if I have the water.

Sin if you drink it all – “Don’t stand by and let your friend die”. If you see him drowning, you should save him, if you can.

If you keep all of the water, you permit him to die.

In a case of retzichah –If your life is in danger, there is no law of “living with your brother”, ‘v’chai bahem’.

Should you give the other person the whole thing? No, he can’t take it all either, because , “Don’t stand by idly, if you are able to save him (but not if you will endanger yourself). If you can’t, you must even pay someone to save him.”

Rambam - If a bad person comes and says, “Handover a Jew, or we will kill all of you.” He did not identify a specific person, therefore, you cannot hand anyone over. However, if the bad person specifies a particular Jew, and says that the Jew is guilty of murder, you may hand him over.

שְׁנַיִם שֶׁהָיוּ מֵהַלֵּכִין בַּדֶּרֶךְ

Two people going on the way.

The rules of personal priority:

The rules of medical priority:

- First come, first served.
- One life does not take priority over the other.
- Danger, prognosis, sake of society.

The allocation of 'Scarce' medical resources:

Peace Time

Sickest first

First come, first served

War Time

- Least injured soldier, fix first

- Civilians last

- Soldiers too injured to fight

Disaster Time

- Resources not available.
Therefore, don't treat
- crush myoglobinuria
- dialysis
- extensive rehab
- spinal cord injury

חַיִּיךָ קוֹדָמִים לַחַיִּי חֲבִירְךָ

Your life takes precedence over the life of your fellow.

“And your brother shall live with you”

“With you”, creates an obligation to preserve the life of one’s fellow, but only after your life is first, guaranteed.

(Lev 18:5) “And he shall live by them.”

Another commandment, commanding the preservation of life, – “Live by them, not die by them.” (Yoma 85b) Mitzvahs can be suspended to preserve life.

Deut 22:2 Mandates, “and you shall restore it to him.” This mandates, not only the return of a lost object, but the obligation to return the person’s health to him, as well. Accordingly, a doctor is obligated, if he is able to provide medical care, “You may not hide yourself”, (Deut 22:3) and “You may not stand idly by the blood of your fellow” (Lev 19:16).

These commandments establish an obligation on the individual to act to save a life, to save health, to avoid a financial loss to his fellow.

חַיִּיךָ קוֹדָמִים לַחַיִּי חֲבִירְךָ

Your life takes precedence over the life of your fellow,
avoiding even one's possible dangers to himself , takes precedence over the certainty
of danger to one's friend.

However, the proper course of action, depends on the circumstances.
All factors must be weighed, so as not to be overly protective of oneself, with the
resultant loss of the life of another.

Rav suggests- In making a decision, the potential rescuer should ask himself, at
what risk would he be willing to rescue a cherished possession? If similar
circumstances, he should do likewise to save a fellow man.

חַיִּיךָ קוֹדֵמִים לַחַיִּי חֲבִירְךָ

Your life takes precedence over the life of your fellow.

Chazal advises- A person should not give more than 20% of his assets to charity – so that he, himself, not become a burden on others – ‘your life takes precedence’.

A person who has already given 20%, is met by a poor man, who begs for money for food or clothing. Is he allowed to give the poor man some charity?

Two people traveling through the wilderness and only one has water for his need. Should he share and perhaps, both will die, or keep the water for himself and live??

True, the Torah teaches that your life takes precedence, but that is only if there is not enough for both. If there is enough for both, the one who owns the water, or the one who has the funds, is obligated to share, even if it represents more than 20% of his capital.

הָנִיחַ לָהֶם אֲבֵיהֶם מַעוֹת שֶׁל רַבִּית

If their father left them money collected as interest,
they are not required to return it. The money has changed ownership
Whereas, if their father left them stolen money, they do have to return it. That money
never changes ownership and therefore has to be returned. The prohibition of
stealing, has been undone, when he returns the stolen property to his victim.

The requirement, to refund the interest to the borrower, is a separate obligation and
even after refunding the interest, the prohibition that was violated, is not undone.

If the lender asked for and received an object to be given as interest, he does not have
to return that precise item, but can reimburse the borrower with money or another
item.

However, in regards to a thief. The actual item must be returned. This also shows
that ownership has changed. In the case of returned interest, ownership has changed,
but does not change regarding stolen property.

הָכִי נִמִּי מִסֵּת בָּרָא

So, it stands to reason.

We understand that the paying of interest,
and the collecting interest, is a violation.

When does the violation occur and **for whom?** The lender, the borrower, or the witnesses?

There are different opinions:

-At the time the loan document is signed, is the last act of the witnesses. They may be guilty at that moment, as may the lender and borrower.

-Or for them, only later, when they actually pay and receive the interest dollars.

Mishnah 75b – All participants in one interest bearing loan, are liable for lashes,
including the witnesses.

מַתָּנָה בְּעֶלְמָא הוּא דִּיהִיב לִיה

It is merely a gift he is giving him.

Can a borrower pay back more than he borrowed? Would that extra amount be considered interest?

What if the borrower said to the lender, “This is a gift”, can the lender keep the money?

Rambam -Prohibits the lender from accepting this additional money, calling it “delayed interest”. Does it matter if he gives the money at the time the loan is repaid, or at another time?

If he gives more money, it is not permitted. If he gives more money and says it is a gift, perhaps. If he gives more money at another time and says it is a gift, it is permitted and it is not the intent of the borrower to pay interest. When intent is to give a gift, it is permitted.

Is a commission for (i.e.) cashing a check prohibited? Is it interest?

Ex 22:24

הַמְלוֹה אֶת חֲבִירוֹ

One who make s a loan to his fellow.

When you lend money to any people, to a poor person who is with you, do not act toward him as a creditor, do not lay interest upon him.

A person who makes a loan to his fellow, may not live in his courtyard for free.

Nor may he rent from him, for less than the usual price, because this would constitute “ribbis, ‘interest’.

A lender may not accept any favor, may not make any conditions to the loan and may not receive any benefit appreciation from the borrower.

Gemara – A lender, also, cannot stay in a courtyard, that is not for rent, even if the borrower loses nothing at all. Even the appearance of ribbis is prohibited.

הלוֹהוּ וְדָר בַּחֲצֵרוֹ

When the lender lives in a dwelling
owned by the borrower.

If he lives there without paying rent – this appears as though he is collecting interest for having given the loan.

Therefore, he must move out:

- Even if he has another place to live.
- Even if he has lived there for a long with without paying rent.
- Even if the borrower does not even want any rent it is still prohibited.

The lender must pay rent.

This is a case of Rabbinic ‘interest’ and to comply with his heavenly obligations.

The lender should not accept free usage of the dwelling.

הלוֹהוּ וְדַר בַּחֲצִירוֹ

When the lender lives in a dwelling
owned by the borrower.

If he made him a loan and then dwelled in his courtyard, he is obliged to pay him rent (so as not to give the impression of ribbis).

A yeshiva bochur borrowed money from his mashgiach (supervisor of the study room) and thanked him. He was bawled out, since saying thank you is like giving interest on the loan.

Next time, he was very careful not to say ‘Thank you’ and was bawled out for failing to show any desire to give thanks for the loan.

The boy was confused, so the teacher explained, “It is true that you can’t say, ‘Thank you’, but your face, should, at least, show that you would like to!!”

מַרְבִּין עַל הַשְּׂכָר

Surcharge for delayed payment of sales or leases.

A person who rents out his property may increase the rent, for payment that is delayed.

But a person who sells something, may not increase the payment, if it is delayed.

Gemara:

What is the difference between the two cases?

Rental is due at the end of the rental period. It is not an increase in price for delay. It is a cancellation of the discount which was offered for early payment!

Sale- The payment is due on delivery. The higher price is imposed, because the payment is delayed. This is actually a “reward for waiting”, and is forbidden.

A discussion of Tarsha – -The partners do not even make mention of ribbis.

וְאָמַר לוֹ

And the owner said to the renter.

Case 1 -A landlord says, “Pay me for the entire year and I will charge you \$1000. Pay me at the end of each month and I charge you \$100/mo equal \$1200/year.

Case 2 – A seller says to the buyer of his field, “If you pay me now, I will charge you \$1000. If you wait until your crops are in, I will charge you \$1200”.

The renter should pay the rent monthly. Paying early is really a discount for paying in advance. This is not usury.

The buyer should pay the money now. Holding onto it, is as though the seller grants him a loan. Collecting ‘more’ later, is “interest”, and is not allowed.

אם מעכשיו אתה נותן לי

If you pay me now,

it will cost it will cost less, but if you pay later during the threshing season it will cost more.

A lender, renting his field – says, “Pay now and it will cost \$1000. Pay later and it costs \$1200.” This means the \$1000 you did not pay now is as though I loaned it you. And the \$200 extra that you paid later, it is as though you paid interest for my lending you those dollars . It is not permitted.

If you say that the price is \$1200, but if you pay early, I will discount it to \$1000, is that permitted?

No, anytime a person pays more for paying later, there is a violation of the prohibition against accepting interest.

מָכַר לוֹ אֶת הַשָּׂדֶה

He sold him the field.

This discusses contingency sales:

A sold a field to B and B paid a part of the purchase price. B had time to pay whenever up to a specified time. He could pay the rest later and the field would be his retroactively. If he did not pay, A would return his money. This is prohibited because we don't know what to do with the produce. If the buyer ultimately pays the balance and seller keeps produce, the seller gets a benefit for having waited for his money. Therefore it is not permitted.

If buyer does not complete the deal, the seller had the use of the down payment money he received from the buyer. Therefore it is not permitted, he should not get any benefit, merely because he waited for his money.

If either (the buyer, or the seller) keeps the produce, they benefit unjustly, from produce that grew on land they did not, totally, own.

אָנִי אָמַר אֲסַמַּכְתָּא קִנְיָא

I used to say, that an asmachta is binding.

Reuven lent money to Shimon:

Shimon gave Reuven his field as collateral. Shimon strongly believed he would be able to pay back the loan, but agreed that if he did not, Reuven would keep the field, even though, it was worth much more than the loan. Shimon could not pay the loan back. Does the field now belong to Reuven? Is this considered interest on the loan, since Reuven is getting back more than Shimon borrowed?

-Yes, a mutually agreed upon arrangement should be fulfilled. This is not a case of interest payment.

-No, since Shimon was certain about his ability to pay back the loan and his failure to do so is a surprise and an unexpected situation. Therefore, the “asmachta”, ‘a conditional commitment’ was not binding.

אין מושיבין חנוני

One may not set up a storekeeper,
with a supply of produce that he will sell for half profit.

The two of us agree that I will provide the product, you will sell it, and we will divide the profit or loss. This is not permitted.

Since the retailer has assumed the risk for half of the product; by definition that constitutes a loan, as he works or sells the product, he provides a service to the supplier, because the supplier provided him with a loan. That is prohibited.

The simple solution is to pay the retailer a wage for the work he does selling the product. He cannot work for free, i.e., only because he was granted a loan.

איכא ביצים מוזרות

There are addled eggs.

I borrowed a dozen eggs from my neighbor and agreed to pay back a dozen eggs. However, as I opened her eggs, two eggs had blood spots and cannot be eaten. If I return a dozen good eggs to her, I am giving her more good eggs than she loaned me, is that interest?

Yes, and therefore, it violates the rabbinic prohibition of “ribbis”, ‘interest’.

What is the rule regarding the store owner who sold the neighbor those eggs, is that not a mistaken sale ? She thought she was buying 12 good eggs and two are useless. Yes, the storeowner should replace the 2 bad eggs. In money matters, we use ‘minhag’, ‘what is usual and custom’.

It is generally the custom, that merchants do not refund for such eggs – minhag trumps halacha.

הָנָהוּ תִּרִי כּוֹתָאִי

There were two Cutheans.

Discusses the appeal process in the Jewish legal system:

Jewish law does not recognize the right of appeal. The local court need not provide any written document of anything more than the claim and decision itself, and not the reasoning, upon which it was based.

In our Gemara – Where a judge perceived as having a bias in favor of the prevailing party, he should inform the losing party of the “reason” upon which the decision was based. Only in such a situation, does the Shulchan Aruch state that it is necessary to disclose the reason. Only an oral disclosure, not a written one, is required.

R Moshe Feinstein: In our day, there is no Bais Din that could be considered a higher court, to which one could go for one’s appeal.

הִנֵּהוּ תֵּרִי כּוֹתָאִי

There were two Cutheans,
who undertook a partnership together.

A Baal Teshuva lent money to a Jew, for interest. He was surprised and appalled to learn he had violated an important Jewish law. He quickly contacted the borrower, told him he will not accept any interest and he wants his money back.

The borrower was happy not to pay interest, but could not pay the loan back at that time. The other insisted, so they went to the Mishnah L'Melach for adjudication. Since the premise of the loan was in error, the contract is void and the money needs to be returned.

מָרָא הֶדְרָא בְּעִינָא

A spade itself is returned,

and its depreciation is recognizable. Regarding coins, they, themselves, are not returned and they suffer no recognizable depreciation.

R Chama – Rented out cash for a daily fee.

He did not use the word loan, but used the word “rental”.

R Chama continued to assume all the risks of the money, if something happen to it, i.e., it was stolen, etc.

He considered it the same as getting some income for renting someone his tools.

However, he was in error :

- A tool is itself returned - money is given to be used and spent.
- It is returned intact - the coins given are not the coins returned.
- Any depreciation observable - depreciation in value is not paid for.
- Rental fee is for consideration - fee is for the time use of money which is not permitted.
- for the use of the tool.

A tool is, itself, returned and it shows some wear and tear, you may charge for its rental. If those two conditions are not met, you may not charge.

מַעוֹת שֶׁל יְתוּמִים מוֹתָר לְהַלוּוֹתָן בְּרַבִּית

The money of orphans may be lent for interest.

Can you borrow money, with interest, for the sake of obtaining food for Shabbos, to publish a book? Yes.

The interest, being the special thanks given to the lender, since it involves returning more to the borrower, than he lent. The public expression of thanks, inspires others to support publications as well.

R Moshe Feinstein suggests that we publicize that God will bless lender for the Mitzvah.

יְתֵמִי דְאָבְלִי

Orphans should not enjoy what is not rightfully theirs.

Orphans should not follow in the footsteps of collecting interest.

It is permitted, for the supervisor of the estate of orphans, to invest the money of the orphans for interest. It is not a violation of halacha and he does not lose his eligibility to be a witness in a Jewish court. However, there are those who are against the practice:

- I. Perhaps the orphans will be accustomed to earning money this way and will continue to do it, when they become adults.,
2. If the loan is witnessed that is a violation of Jewish law. He believes he is doing a Mitzvah for the orphans and therefore, he does not lose his right to be a witness.

עַמִּי וְנֹכְרִי

My people and a gentile.

There is a different kind of credit rating when you lend money to my people, to the pauper who is with you. This creates an order of priority, as to whom you should offer an interest free loan, if you have limited funds.

- A fellow Jew, who is in need, comes before a gentile, even if the gentile is paying interest.
- A poor man takes preference over a prosperous one.
- A needy relative comes before a needy person from another community.

The same set of priorities also, applies to charity.
(Shulchan Aruch ; Yoreh De'ah 251:3)

עני עמי קודם

The poor of my people come first.

A poor person and a rich person. The poor person takes priority.

You have a rich relative and a poor stranger who comes to you for a loan, who should get priority?

The rich person wants to expand his business. The poor person has needs which, unfilled, will cause him to be a burden on the generosity of the city.

However, even though it is less likely he can pay back the loan, and even though he is not your relative, the poor person gets priority.

עֲנִיֶּיךָ וְעֲנִיֵּי עִירְךָ

Paupers, of your own family, come first.

Your poor relatives came first.

Your poor relatives, or the poor of your city? Your relatives take precedence.

The word “kodmin”, ‘take precedence’, also has another meaning. It also means introduction, or entrance to something.

This phrase can be used to teach that taking care of your poor relatives, which of course, is most natural, is an introduction to learning to give charity.

This should lead us to give to all the poor of the city, etc.

Giving tzedakah will become second nature to him.

עֲנֵי עִירָךְ קוֹדְמִין

The poor of your city take precedence.

The Torah presents the Mitzvah of giving free loans in a ‘layered’ manner (Devarim 15:7).

In addition, we need to take each person’s situation into account and not consider everyone as the same.

A person, raised in a wealthy home, may be accustomed to luxury. The loss of his usual and customary level, may produce the pain of poverty at a different level of need than others. Take that into account.

We are told, “Don’t close your fist against your destitute brother.”

With a close fist, each finger seems to be the same length. In an open fist, we see each finger is different. Just as the fingers vary, so should we be reminded, that each person’s needs are different and we should assist them accordingly.

יִשְׂרָאֵל שְׁלוֹה מְעוֹת

A Jew borrowed money from a gentile,
and he converted.

The interest was halachically permitted, until he converted.
Therefore, the Jewish person owes him those dollars.

At the time of the conversion, a new document is needed that excludes interest and thereafter, only principal may be paid.

If, however, a new loan is drawn up that includes interest, he is in jeopardy of losing not only the interest, but the principal as well, since a loan that includes interest is not halachically valid.

There is no loan agreement between the parties.

נְכָרִי שָׁלוּה מַעוֹת מִיִּשְׂרָאֵל בְּרַבִּית

A gentile borrowed money from a Jew.

A non-Jew borrowed from a Jew, with interest and with collateral. He could not pay the money back, but asked that the collateral be entrusted to a Jewish friend, who would sell it and acquire the lender his money. The Jewish friend sold it, but did not pay off the debt of his non-Jewish friend, for an entire year.

The lender wanted his money and his interest. Also, the extra interest he should have been paid during the year the funds were withheld. He felt it was owed by the borrower. He felt that the money was owed to him. The non-Jewish borrower said, “Go collect that from your fellow Jew, who withheld it from you.” Of course, he cannot collect interest from a Jew.

The lender consulted the Rosh- You have a right to obtain the interest from the non-Jew. The fact that he will get that interest from a Jew, to pay you, does not concern you. This approach is permissible.

אֲחֻלֵּי הוּא דְקָא מְחִלֵּי גְבֵר

They are willing to forgo the additional amount as a gift.

Reuven borrowed or bought eggs from Shimon, for the purpose of using them for food. When he cracked them open, he saw that some eggs had blood spots and are not edible. If the product is not fit for the purpose they were contracted for, the contract is void. Furthermore, if Reuven, as a borrower, pays back good eggs for the bad eggs, Reuven will have given Shimon more than he borrowed and this is considered ‘ribbis’, ‘interest’.

So, since it cannot be identified before the eggs are open, a custom evolved that regarding eggs, refunds are not made and the extra eggs which were returned to Shimon, are considered a gift, not interest. Custom trumps Jewish law.

However, if the eggs were not yet paid for, the buyer did not buy them.

This Gemara is the source of the rule that in financial matters, custom trumps halacha.

הַאִי סִיטוּמְתָא קְנִיָּא

An identification mark create acquisition.

The concept of a ‘kinyon stiumta’:

A man purchases barrels at a dealer and marks the barrels he wants to buy.
He places his identification mark. The rule is that the barrels are his.

Can a handshake be elevated to a kinyon stiumta? Yes, if that is the custom.

Can a mere verbal agreement effect a kinyon? For example, saying “mazel and bracha” in the diamond industry. Yes, since that is the custom.

Once we have a ruling that that particular verbal declaration qualifies as a kinyon stiumta, it becomes recognized halacha.

תְּלִמְיָדֵי חֲכָמִים מוֹתָרִים לְלוּוֹת זֶה מִזֶּה בְּרִבִּית

Torah scholars are allowed to borrow with interest.

This statement cannot be taken at its face value.

Of course, Torah scholars may not borrow with interest. Since they know the severe sin of interest, it is clear that when they pay back their loan, they do so, perhaps, with a gift, which they would have exchanged anyway.

This statement can only be referring to loans of food, not money.

The Shulchan Aruch (160:17) agrees.

זו היא רבית מאוחרת

There is “late” interest

Is it permitted?

I am giving you this gift, because you gave me a loan. No, the gift is given at the time the loan is paid back. No, he is giving back more than he received.

The gift is not stated as being given in appreciation of the loan and it is not given at the time of payback. It may be permissible.

But, if in the heart of the borrower (though not stated), he is giving this gift because he was extended a loan, it is not permitted.

The lender might suspect it was given because of the loan, but if he is not sure, so he can accept it.

But, the borrower knows if he is thinking about the loan and if so, it is improper.

22 Bava Metzia 75b2

line 25 B11

Weinbach 517

יוֹתֵר מִמָּה שֶׁמְרוֹיְחִים מִפְּסִידִים

Lose more than they gain.

Those who lend money with interest, when the Torah tells them not to do so, will end up losing more than they profit.

Furthermore, they cast aspersions on the wisdom of the Torah.

כָּל מִי שֵׁישׁ לוֹ מָעוֹת

Anyone who has money
and lends it without witnesses.

One is prohibited from lending money without witnesses, or is having witnesses just a pious practice?

Why, the strange wording. Of course, a person must have money, in order to lend. It is to suggest that the requirement of witnesses, is limited only to those who set aside money to lend, i.e., one in the business of lending. The borrower may deny having received the loan.

One who fails to write up a loan document, violates the law of “lefnei ever”, ‘creating a stumbling block’. However, the Chazon Ish says we are not so strict on this matter.

Rambam, Brisker Rav, R Chaim Sonnenfeld agree with the above interpretation.

חֲזָרוּ זֶה בְּזֶה לֹא קָתְנִי

The Tannah did not say that they reneged on their commitment to one another.

This is a misunderstanding, but between whom?

-The employer and the worker:

The employer told the workers, that other workers would do the job for three dollars and they agreed to do it. However, the workers later learned, that the proper price was five dollars. They were misled, but they had agreed. Therefore, they could not change.

-The workers mislead the employer:

The workers said that no one would do this job for less than five dollars. The employer later learns that the lowest price is three dollars. He was misled, but he had agreed, therefore, the employer could not change.

בְּמַה דְּבָרִים אֲמוּרִים

When is this said,
that an employee may strike, only regarding where there will be no loss.

Can teachers strike to gain better wages? Teachers of Torah cannot strike. The existence of the world depends on their teaching Torah to young students. They must not refrain from teaching.

R Moshe Sternbuch, R Moshe Feinstein- Not teaching is considered a loss and an employee may not strike and cause a loss.

פִּי קָאָמֶר רַבָּא בְּאִבְלוּשֵׁי דְמַחוּזָא

Rava stated in his ruling about the workers of Mechoza.

The muscular workers of Mechoza could finish a laborious task in less hours than others. If the employer had a less demanding job to fill the rest of their day employment, it was acceptable to add that task to their days work. To be idle, was a suffering for them.

A teacher was hired, by the day, to teach a student who was sickly and too weary to be taught on many days. Does the father have to pay the teacher, even if the student was unable to use his services?

It, clearly, depends if it was specified in the contract, that rules. However, if we have reason to believe that the teacher knew the child was sickly (i.e., he lived in the same community), than he cannot claim full wages. We must understand a teacher suffers when he cannot teach.

וְאֶגְרִינְהוּ בְּטַפֵּי זָוָא

He hired them for an extra zuz.

When even 1 zuz makes a difference: He hired them for an extra zuz.

Shimon buys from Levi, but does not pay:

Case #1-The full price: Levi can cancel the sale. We assume Levi sold because he needed the money.

Case #2-The last zuz: Levi can cancel the sale. We assume Levi sold because he needed all of the money.

Case #3-The last zuz: Levi cannot cancel the sale. We assume Levi wants all of his money, before Shimon finds out that the produce is defective.

יָכוֹל לְחַזֹּר בּוֹ אֶפִּילוֹ בְּחֶצִי הַיּוֹם

Can a worker quit even in the middle of the day?

Yes, because (Vayikra 25:55), “The children of Israel are slaves to Me” and therefore, not to others. Therefore, workers can quit in order to relieve themselves of servitude.

But, what is the rule if someone quits his job, in order to take a better paying job? It no longer looks as though he quit to relieve himself of servitude, he immediately became a “slave” to another employer. He wishes to quit the first job, not because he objects to being a slave, but wishes to continue as a slave, only for more money. -He can't quit.

הָהוּא דִּאָמַר לְהוּ

He said to him.

An individual told a king's officer, "I saw moths eating the King's garment."

A servant of the King announced, "Damage is occurring to a possession of the King."

Versions of what actually happened:

Garment moths - damaged the linen or they damaged the red dyed wool.

It the linen was damaged, the king killed the servant because moths don't ruin linen.

So it proves the servant was negligent. However, if the red dyed wool was damaged, the servant was not punished, because moths damage wool.

Garment rust - rust appeared on the silver threads - gold thread in the King's garment.

The servant was put to death because silver on a garment requires good care and tarnish shows he was not doing his job. However, gold in fabric rarely rusts so the servant was not punished.

Donkeys - white donkeys- They are very strong. If worms develop in their feet, that indicates negligence, for which the servant was put to death.

או שְׁנַעֲשִׂית אֲנִי רִיא

If one rents a donkey or it is taken into the service of the king.

You rent a donkey to travel between two towns, round-trip should take two days.

The river floods, your the trip takes four days. You must pay –More money

Your donkey is pressed into the service of the king – 100 days- No money

Donkey gets sick – trip takes four days- You pay no extra money

If the renter is obligated to give the donkey into the king's service and he chooses to give the donkey he rented, then the renter must pay more money.

If the donkey is sick from causes created by the renter, the renter must pay more money.

מִיֵּין לְמוֹכַר שְׂדֵהוּ לְשָׁשִׁים שָׁנָה

If a person sells his field for 60 years,

it does not revert to the original owner at Yovel.

Rashi- The rationale, of land returning to the original owner at Yovel, was that land not be sold forever. Here, there is a specified time, 60 years, where the land will go back to the original owner. We don't need to depend on Yovel to return it. The sale of land, which is not permanent, is allowable and not effected by Yovel.

Rambam agrees.

Minchas Chinach agrees.

Rambam disagrees.

הַשׁוֹכֵר אֶת הַסְּפִינָה

If a person rented a ship.

If a person rented a ship for a round-trip, but decided not to use his return ticket. He already paid for it, so he gets no refund. The ship's captain, however, finds a person to pay, who needs the second $\frac{1}{2}$ of the trip. Who keeps the money, the captain, or does he owe it to the first person who paid for a round trip, but only used one way?

Rav Moshe Feinstein – The captain keeps $\frac{1}{2}$ and the original buyer gets $\frac{1}{2}$.

הָרִי זֶה מִקָּח טָעוּת

It is an invalid sale.

A man rented a horse to ride to a distant city. Halfway there, the horse went lame and he promptly returned to the original city, to return the horse and to demand a refund. He was very upset that he had been so delayed and inconvenienced.

The owner of the horse agreed the horse was defective, but claims the horse was more severely injured by the hasty ride back to return it.

He offered to cancel the rental, but insisted on charging the rider for the damage done to the horse, by his having ridden it, after it was noticed to be injured.

Notwithstanding, there was no other way to get the horse back to its owner. The ruling was as above.

בְּכוֹלָם אֵינוֹ חַיִּיב עַד שִׁיקָבֵל עָלָיו בְּעַל הַבַּיִת לְשָׁמור

In all of these cases, the owner of the yard is not obligated to pay, unless he expressly accepted the responsibility to guard the other person's property.

One is only obligated as a watchman, if he accepts this responsibility on himself. A man brought a package to his friend's house, to have him take it and deliver it on his upcoming trip. The friend was not home, so he left it with a note. The traveler took it with him, but it was stolen on the way. He never, explicitly, agreed to serve as a watchman. Is it implied by his behavior?

We need an explicit agreement to accept the obligation of being a watchman.

His taking it, putting it with his own objects was more watchfulness (shimirah) than he was obligated to do and was a favor. He never accepted responsibility as a watchman, therefore, he does not have to pay the value of the stolen objects.

וּבְשׂוֹמֵר אֲבִידָה קָא

They argue about the status of one who is guarding a lost object.

Rav Yosef says the person holding a found object, or an item of collateral, is considered a “paid man”.

How can that be? He receives no wages for his efforts? While he is involved in this mitzvah, he is exempt from other mitzvahs, i.e., giving tzedakah.

This task was thrust upon him, without his consent, by God. Since he has been so chosen, he has an extra responsibility as a “shomer socher”, ‘a paid watchman’ and is responsible for the safety and upkeep of the item.

A “shomer chinom”, ‘an unpaid watchman’ also, takes responsibility to an extent, but is not benefited by saving tzedakah money.

In the case of a ‘watchman of a lost object’, the owner does not expect the watchman to service his object. Also, in the case of a lost object, the owner cannot service his own object and the finder must do so. This added responsibility raises the finder’s obligation to that of a paid watchman. .