

השוכר את הפועלים

If one hires day laborers,
they must be treated as per the local custom, in regards to their start and stop times,
being fed, quality of food, etc.

American law has a similar principle. Many things are governed by the phrase,
'usual and customary'.

Two people can agree to different terms but this must be:

- a. Done before the work begins, not afterwards.
- b. Any detail not stipulated to and agreed to, is governed by the local custom rule.

The Gemara discusses what do you do in a new town, where there is, as yet, no local custom? Analyze where most of the residents came from and use those customs.

Reish Lakish's rule: 83a1 - A (day) worker works from sunrise, to when the stars come out. The trip to work comes out of the employer's time. The trip home comes from the worker's time.

הָא דְּטַפְאֵי לְכוּ אֶגְרִיִּיכוּ

He could tell the workers, “That, which I added to your wages,

was with the understanding, that you would rise early and stay with me until dark”.

Reuven hired Shimon to make a delivery and paid 10 dollars. Shimon did the delivery and came to Reuven asking for expenses. Reuven said, “I paid you more than usual for the delivery and we never mentioned that I would pay you expenses”. Shimon said, “Here, it is the custom to pay expenses”.

What prevails - agreed upon price, or local custom?

If the local custom for the usual price was not followed, i.e., more was paid to him than is local custom, he can’t come later to ask for local custom to rule.

If he wanted expenses, he should have asked for it before his trip.

בִּיצִיָּאתוֹ

When he goes out,

means ‘goes out of the city’, in order to come to work. It is at the employer’s expense.

We see that the preparation to do work, is just like work itself. Similarly, to do a mitzvah, is like the mitzvah itself. One cannot do a mitzvah properly without preparation.

That’s why we say, “Behold we are prepared and gathered to fulfill the mitzvah of”. We are preparing ourselves, in order to do the mitzvah properly. Not in haste, not quickly, not by rote, but by taking time to think carefully about what we are about to do.

וְנִיחָיו מֵהֵיכָא קָא אֲתוּ

Let us see from where these residents originated.

You hire a person as a day laborer, what are the terms of employment?

Some are based on custom. Unless it is a new town, they should follow these customs.
The end of the day is calculated when the stars become visible.

The time for the worker to get home, is on his own time.

The day starts:

The worker is to leave his house at sunrise and is to be at work immediately after the time it should take him to travel. The travel time, from sunrise, is at the expense of the employer.

The citizens of the city can make their own customs, or they may follow the customs of the town from which most of them came.

Or they may follow the customs of the nearest large town, or accept these rules of Reish Lakish indicated in the Gemara.

דְּלִמָּא שְׁקֵלָתָּ צְדִיקִי וְשִׁבְקָתָּ רְשִׁיעִי

Perhaps you are apprehending the innocent and leaving the guilty behind?

Advice: Inquire about the customary behavior of that individual.

If you encounter a person sleeping early in the morning with a cup of wine in his hand:

- If he is a rabbinical student – assume he woke early and is exhausted from work on his studies.

- If he is a day laborer, assume he is exhausted from his work.

But if neither of these, assume the person sleeping with a cup of wine in his hand is a thief and is tired from being up all night robbing.

Another story. When R Yishmael, the son of the R Yose and R Eliezar, the son of Shimon, would meet and stand face to face, a pair of cattle could pass under them and not even touch them. That's how fat they were!

(84a1 (a) line 22) - A woman once told these Rabbis, “Your children cannot be not yours, you are too obese to have relations with your wives.” An amazing comment in the Gemara!!

עַד מָתִי אֶתָּה מוֹסֵר עַמּוֹ שֶׁל אֱלֹהֵינוּ לְהַרְיָגָהּ

How long will you hand over the people of our God to their execution?

Are non-Jewish woman, thus empowered, to impose the death penalty on Jews?
Only on crimes that carry the death penalty (under Jewish law, via Jewish courts)
that are required to use the government criteria in capital cases and suspend their
own judicial authority. They are delegated authority by the King.

Can a Jew swear falsely to exonerate himself from the King's justice?
Or can we say that a Jewish person, who violates the Jewish King's law, has
violated biblical law?

אַבְתָּרִיָּה אָמַר לִיה חֵילָךְ לְאוֹרֵייתָא

R Yochanan said, “Your strength belongs to the Torah”.

Rabbi Yochanan was swimming in the Jordan River and Reish Lakish jumped in demonstrating great physical powers. R Yochanan told him, “Your energy should be reserved for studying Torah. That strength will guarantee your success as a Torah scholar”.

Reish Lakish at that time was a bandit, but when he heard these words of inspiration, he changed his ways and did teshuva.

He was knowledgeable before he became a bandit and became even more knowledgeable after his teshuva.

בְּעוֹרְבָנָן רַחֲמֵי עָלֶיהָ

The Rabbis prayed for mercy on him.

Re: Concern for suffering.

Rabbi Yochanan, in his old age, had so much grief over the death of his brother-in-law and closest colleague, that it caused his sense to slip away. The Rabbis prayed for mercy on him and he died.

The response to the suffering of their colleague was prayer.
God who determines life and death should be the final arbiter, not man.

There is no precedent for the withdrawal of medically effective treatment and certainly, no suggestion that active hastening of death is sanctioned.

יוֹמָא חַד שְׁמַעִי בְּזוּלוֹתָא דְּצוּרְבָּא מֵרַבִּין

One day, I heard the disparagement of a rabbinical student.

The definition of a Talmid Chacham – is one who devotes his entire and exclusive occupation, to learning Torah.

How can you correct faults if you can't criticize; if every comment of criticism is viewed as Lashon Hara; or a disparagement of another person?!

The concept of 'Lashon Hara l'toeles' - "constructive": If you are critical, but not in a judgmental and self-righteous manner, and request a cooperative effort to work together to solve the problem, that is constructive Lashon Hara.

נִפִּיק קָלָא מֵעִלְיָתָיָה וְאָמַר אִישׁ פְּלוֹנִי אֶתָּה חָיִיב

A voice came from his attic and declared, “So and so you are liable, etc”.

A long period of time elapsed between R Elazar ben Shimon’s death and the time of his burial. During that time, people who were in need of judgment could visit him, present their claim, and a voice would be heard and declare which party is guilty or innocent. A voice from the other would!

We have other examples: (B Metzia 114b) Rabban bar Avuha asks Eliyau Hanavi, “Do gentile graves convey tumah?” Elijah, said “No”. In Shabbos (108), “Can we write Tefillin on the skin of fish?” Eliyahu Hanavi will be asked to answer us in the future.

However, we have learned that no ruling on Halacha can come from Heaven, after the Torah was given. “The Torah is not in Heaven”. It is only true that a prophet cannot give us an answer based on prophecy, but he can share with us his accumulated Torah knowledge regarding a fact situation. It must be that all these examples are halachic rulings based on fact, not prophecy, and that is acceptable.

אָמַר לָהּ שְׁבִקֵנָהּ כְּתִיב „וְרַחֲמָיו עַל-כָּל-מַעֲשֵׂיו”

He told her, “Leave them be”, since the posuk says, “His compassion is on all His creatures”

Rav Yaakov Emden says- The prohibition against causing pain to animals is limited to work animals. There is no restriction against killing insects and rodents.

Reb Moshe Feinstein also ruled- There is no prohibition against killing insects or rodents that ruin food or bother people, but if they don't bother you, don't kill them.

In our Gemara, Rabbi did not permit his maid servant to kill the rodents, since they were not harmful to food or to people.

22 Bava Metzia 85a3 line 40 A31
Weiss 741

כָּל הַמְּלַמֵּד אֶת בֶּן חֲבִירוֹ תוֹרָה

He, who teaches Torah, to his neighbor's son

is worthy to sit in the Yeshiva of Heaven

We can say to a teacher of Torah, “I envy you your portion in the world to come”.

שְׁלֹא בִּרְכוּ בַּתּוֹרָה תְּחִילָה

They did not recite a blessing before studying the Torah.

Rav Yehuda, in the name of Rav, explains that the underlying reason for the state of decay which brought about the destruction of the first Bais Hamikdash and Jerusalem, was that the people did not recite a blessing before studying Torah.

They did study Torah. If they had not, there would have been no mystery as to why bad things happened, but to not say a blessing implies that:

- They did not consider the Torah special.
- They did not study for the sake of Heaven, “lishmah”.
- They studied to learn the way to live and act, but did not consider study of Torah a great Mitzvah, in and of, itself.

For these considerations they were punished.

22 Bava Metzia 85b1 line 9 A23
Weiss 561

אֶסְתִּירָא בְּלִגְיָנָא קִישׁ קִישׁ קָרִיא

One stone in a pitcher comes out “rattle, rattle”.

When a pitcher is filled with stones, they have no room for rattling.
But when they are empty, one stone makes a great deal of noise.

Empty headed people advertise the little scholarship they possess.

חֵלֶשׁ רַבִּי בְּעֵינָיָה

One day Rabbi suffered an eye ailment.

Rebbi had an eye disease and refused the treatment offered (medication into the eye) saying, “I cannot endure it”. He also refused the alternate treatment (medication on the surface of the eye) but accepted the third treatment (medication under his pillow).

This suggests that the patient has a right to refuse treatment, but only if there is another medically viable alternative available. He would not have the right to refuse the only chance to cure the disease.

חֵלֶשׁ רַבִּי בְּעֵינָיָה

One day Rabbi suffered an eye ailment.

Re: Hazardous painful or uncertain treatment.

A patient may be compelled to submit to medically indicated therapy.

But, procedures that involve any significant risk factors, or pain, or if the treatment is in doubt, are always discretionary, rather than mandatory.

Determining which of these applies in any case, depends on medical opinion and patient discretion. However, the patient's autonomy is not the sole consideration as it is in secular ethics. However, it does greatly impact the significant decisions to be made in treating the critically ill.

לֹאֲתוּי בְּאַתְרָא דְּנִהְיָי

It is included where it is customary.

A person hired workers and told them he will also give them food. He is obligated to give them better food than is customary in that locale.

This statement contradicts the dictum of ‘customary food’ in our Gemara.
Is it common that a person quote an incident that disproves his own statement?

No, therefore, it must be that some words are missing in the text.

This is the resolution to the problem: Since food is customarily included in payment for work in that locale, any mention of food obligates the employer to give even better than customary food.

A debate occurred in the Gemara over whose banquet food was more lavish, Abraham’s or Solomon’s (86b1a). The Gemara also discussed quality of different foods, whether it is proper to force feed hens, calves tongues and whether angels actually eat.

לְעוֹלָם אֵל יֹשֶׁנָּה אָדָם מִן הַמִּנְהָג

One should never change from the accepted custom.

When Moshe went up on Mt. Sinai, he did not eat for 40 days and nights.
Just as the angels do not eat. When angels came to Abraham, they ate just as human beings customarily eat.

“Do not move your neighbor’s border, that which the ancients have partitioned...”
(Deut 19:14).

This is to be interpreted in the literal sense, but also in relation to generally accepted norms of behavior.

כָּל [מַה] שֶׁעָשָׂה אַבְרָהָם לְמַלְאכֵי הַשָּׁרֵת בְּעַצְמוֹ

Every favor that Abraham did for the angels, was by his own personal action,

God did the same for the children of Israel by his own personal action.

“Abraham ran to prepare meat” (Bereshis 18:7). As a reward, God sent pheasant birds for the Israelites (Bamidbar 11:31).

“Abraham brought butter and bread,” (Bereshis 18:8) and the Jews were given manna by HaShem (Shemos 16:4).

However, because Avraham sent someone to bring water to his guests (Bereshis 18:4), therefore, the Jews were given water, only through a messenger, Moses (Shemos 17:6).

This is not to teach us about any deficiency in Avraham Avinu, but only to teach us that the best way to do good deeds, is to do them yourself.

You will then be a special example and inspiration to all who see you personally involve yourself.

You will be a great role model and a person to be emulated.

בְּשָׂכָר שְׁלֹשָׁה זָכוּ לְשֹׁלֶשָׁה

In reward for three things which Abraham did, the Jews merited three things.

In reward for cream and milk (Gen 18:8) that Abraham gave the angels, God gave the manna.

In reward for Abraham standing over the angels (Gen 18:8), God gave the pillar of cloud.

In reward for Abraham requesting water for the angels, God gave the well of Miriam.

We are told the names of the three angels and the tasks they performed.

Michael - To tell good news to Sarah.

Gabriel - Went to overturn Sodom (Gabriel alone, did that task).

Raphael - To heal Abraham.

(87a2)- Birth of Isaac - Sarah thought she was too old, but had milk to nurse Isaac.

Abraham thought he was too old, but Isaac looked exactly like him.

Therefore, there was no question that they were his parents.

אָמַר רַבִּי אֱלֶעָזָר מִכָּאן שֶׁמִּסֵּר בֵּין לְקָטָן

R Elazar said, “From here, we see that one may refuse a lesser person,

but not a greater person.”

If a person invites you, or offers to share with you, it might be merely from a sense of obligation since you are present and not a sincere desire to share his substance, or meal with you. You should politely refuse. If he really, sincerely wants you, he will insist a second and third time. Then you can accept. That rule exists so as not to take advantage of such a person’s forced generosity.

However, if a greater person makes an offer, there is no reason to doubt his sincerity. He, if not sincere, would not have made the offer. His offer can be accepted, without an initial refusal.

Case: A man was given a fruit and before he could eat it, his son entered the rooms and the father offered it to his son. The son wanted the father to have and enjoy the fruit. Can the son refuse his father’s offer? No. One should not refuse a person who is greater and there is also the issue of ‘kibbud av v’em’, “honor due one’s father and mother.”

מִכָּאן שֶׁצַדִּיקִים אוֹמְרִים מְעַט וְעוֹשִׂים

From here we learn that Tzaddikim say little, but they do much.

Rivka, (in Bereshis 24:18-19) first offers Eliezer to drink. After she gave Eliezer to drink, she said a second statement, “I will draw water, even for your camels”. She made her statements and did her tasks in stages.

- The righteous do not overstate their intentions.
- They make a statement and then fulfill it.
- They then, make another statement and then fulfill that one.
- They state only that which is relevant and practical for the moment.
- The righteous avoid unnecessary and exaggerated promises.

מִכַּאן שֶׁהָאִשָּׁה צָרָה עֵינֶיהָ בְּאוֹרְחִים יוֹתֵר מִן הָאִישׁ

We learn from here that a woman looks at guests with a more judging eye, than does a man.

(Gen 18:6) Abraham asks Sarah to prepare ‘kemach soleth’, “fine flour”, for their guests, suggesting, that otherwise, she might have given ordinary flour.

Women, generally want to give their guests the very best, to show their house to best advantage. That is a big effort and expense and so, they may be more reluctant to invite guests, than their husbands.

כְּדֵי לְחַבְּבָהּ עַל בַּעְלָהּ

In order to endear her to her husband.

The angels knew that Sarah was in the tent. Nonetheless, they asked about her whereabouts, to make Abraham realize that she was more modest than other women and did not show herself to the visitors. Abraham would, thereby, appreciate her good qualities.

Abraham and Sarah were old and married a long time. But, this episode teaches us that even such a marriage, can benefit from positive comments and inferences. Never say anything derogatory about a husband, or a wife.

Dr. Zelig Pliskin

עַד אֲבָרְהָם לֹא הָיָה זָקֵנָה

Until Abraham there was no old age.

Days, in which no spiritual growth occurs, are not worthwhile. In a sense, they don't count, certainly not in gaining credit in the life hereafter. Before Abraham, spiritual growth did not occur.

Abraham infused spirituality into the world. Those days and years, then, began to count and accumulate, and so the concept of old age came into the world.

וְאֵלוֹ אוֹכְלִין מִן הַתּוֹרָה

And these may eat from the employer's food by Torah sanction.

This Mishnah contrasts with the previous one.

These workers were entitled to food based on their contracts, or local custom, or the employer's representation.

- A. A worker, who works with produce attached to the ground at the time of harvest, is entitled by the Torah, to eat from that produce.
- B. A worker, who works with produce detached from the ground (i.e., it is still growing), or before the time it's work is completed (i.e., before tithing or challah is required), do not have a right, granted by the Torah, to eat from that produce.

The worker may eat:

- While it is still growing.
- After the tithing obligation occurs.
- or if he is not working with something that does not grow from the ground (i.e., milk, cows or make cheese).

Which sentence in the Torah teaches us this rule? (Deut 23:25)

Deut 23:25 – “When you enter your neighbor's vineyard, you may eat from the vine, but do not put any into your own vessel”.

Deut 23:26 – “You may pluck ears (of grains) with your hand, but do not use a sickle”.

„כִּי תֵבֵא בְכֶרֶם רֵעֶךָ וְאָכַלְתָּ“

When you come to the vineyard of your friend (to work), you may eat

until you are satisfied. However, you may not put any into your own vessel.

From this we learn that:

1. At the time of picking grapes, the worker may eat, but not later.
2. He must not take any produce with him.
3. He must put the produce in the vessel of his owner.
4. ‘Your fellow’, means your fellow Israelite.
5. These laws apply in Israel only, where tithes are required.

„בִּי תָבֹא בְקָמַת רֵעֶךָ וְקָטַפְתָּ מְלִילָת בִּידְךָ”

When you come into the standing grain of your fellow, you may pluck ears of corn
with your hand,

but you may not lift your sickle.

We learn that a worker may eat while he works, but not later.

The Gemara objects stating, ‘Standing grain is subject to the rules of ‘challah’.
A vineyard is subject to the laws of oleilos. We should not compare them.

They both grow from the ground. That is the common denominator which allows
us to derive laws from them.

מה לכרם שכן חייב בעוללות

The Gemara objects to comparing vineyards that are subject to the rules of ‘oleilos’.

Re: “Incompletely formed clusters of grapes”, ‘oleilos’.

The Torah commands the owner to leave this for the poor (Lev 19:10).

We see that the Torah reduces the vineyard owner’s rights. Perhaps, the rule that the owner must feed his workers, is also because of uniquely diminished rights of the vineyard owner. Therefore, we may need a different posuk. Namely, Deut 23:26, which discusses grain. Grain is not subject to the law of oleilos (See note 8).

הָהוּא מִיבְּעֵי לֵיהּ דְּמַעֲיִל לֵיהּ דְּרֵךְ שַׁעַר

The obligation to tithe, does not occur until the produce is brought into the house via the gate, i.e., main entrance.

The processing of the produce is complete at that time.

Torah: The produce enters the house through the main entrance.

Only certain species:

Rambam - All species of produce, except vegetables.

Tosofos - Grain (5 species), grapes and olives.

Rava - Includes, also figs, pomegranates and dates.

“Processing” is not complete until all the figs of a tree, or all the produce of a field, has been brought in.

There is a major discussion regarding the precise moment at which the obligation for tithing occurs.

תבואת זרעך ולא לוקח

The produce of your seed, but not one who is a buyer.

The owner of the field must tithe his crops. If I buy grain from a land owner, I do not have to tithe the purchased product. It is his responsibility.

What is the rule regarding a guest?

A guest must make sure his host properly tithed, before he can eat. This tells us that a guest does not own the food that the host gives him. He can't sell it, he can't use it to perform Kiddushin and since he does not own it, he can't achieve a mitzvah by using it, i.e., matzos on Pesach!!

Ideally, the host should give ownership of the matzah to his guests.

However, other poskim justify the more common practice of not going through this formality.

אֲשַׁכַּחַן אָדָם בְּמַחוּבָּר וְשׁוֹר בְּתֵלוֹשׁ

We have found the source entitling a human, a donkey, and an ox working with attached produce.

Don't muzzle an ox when he treads the corn (Deut 25:4).

The source in the Torah for the entitlement of a worker to partake of produce that he is working with, is derived from a 'kal v'chomer'. If an ox, which does not eat when working with attached produce, eats when working with detached produce, certainly (kal v'chomer), a human, who may eat attached produce, can also eat detached produce.

Note: How humans benefit by the Torah's sensitivity to the needs of animals.

איבעיא להו פועל מהו שיהבהב באור ויאכל

They inquired, “Is a worker allowed to roast stalks and eat them?”

(Deut 23:25-26) A worker is allowed to eat from the produce that he is working with and eat what he wishes. However, he is not allowed to add spices, or other additives to the fruit, or grain, to make it more tasty. Thereby, making it easier to eat an extra amount. For example, “He is permitted to eat grapes, but nothing with it”. “Grapes, but not grapes plus something else”.

What is the rule regarding roasting the stalks? It makes them sweeter and easier to eat and therefore, he could eat more of them, is this allowed, after all, he is not adding any additional item?

Rabbeinu Tam - Yes, he may heat them, it is permissible. He is not adding an additive or a spice.

כִּי קָמִיבְעִיָא לֶן לְאַכְשׁוּרֵי פִירָא

We are not questioning whether he may embellish the produce with techniques that allow him to eat more.

We have established

- The workers entitlement.
- The Biblical source of that entitlement.

As the Gemara reports:

The worker is not permitted to do anything that will increase the amount of produce he uses For instance, he may not sweeten it, put it on his bread, put salt on it, eat two at a time, etc.

The owner is not permitted to do anything that will decrease the amount the workers eat, i.e., feed them produce in brine, etc.

תָּנוּ רַבָּנֵי פְּרוֹת הַמְּרֻקָּסוֹת בַּתְּבוּאָה

(Deut 25:4) Do not muzzle cows that are threshing grain.

Ordinary threshing, i.e., to remove kernels from the husks is permissible.

Discussion of the muzzling prohibition.

A person does not violate the muzzling prohibition if the animal is -

- Trampling grain – this is a later threshing.
- Threshing terumah - this is a later threshing.
- Threshing Maaser - This is a later threshing.

There are 3 types of Maaser:

1. Maaser Rishon - is separated every year and given to a Levite.
2. Maaser Shani - separated on the first, second, 4th and 5th year –Then owner must eat it in Jerusalem.
2. Maaser Ani –separated on the 3rd and 6th year and given to poor people.

A Jewish cow lent to a non-Jew, he may muzzle.

A Jew who muzzles a non-Jew's cow – violates this law.

We can solve the problem by giving the animal a feed bag. A feedbag is not muzzling. Even though it is a second threshing and muzzling is permitted, it looks bad. Therefore, we can solve the problem by adding to the feedbag:

- a. The material being threshed.
- b. A different food.
- c. Better feed (The best being 'vetch' – a cow's ideal food).
- d. May feed the cow full before she threshes.

We may muzzle cow so she will avoid eating that which will make her sick.

כִּי אִמְרֵינָן אֲמִירָה לְנֹכְרֵי שָׁבוֹת

Instructing a gentile to perform something that is prohibited to Jews, is called a ‘Shvus’ (Rabbinically prohibited).

Shvus = Cessation (originally relates to Sabbath, but is anything a Jew can’t do).

There is a prohibition of a Jew asking a gentile to do work on Shabbos. The verse says, “Neither you, nor your friend, may perform labor on Shabbos. Nor may one ask a gentile to perform your labor on Shabbos”. When the gentile performs labor on the instruction of a Jew, he is acting as his agent. However, a gentile cannot act as an agent. Second, a Jew can’t discuss work on Shabbos, so the Jew could not instruct him on Shabbos, as to what he needs to have done.

מִי אֶמְרִינָן אֲמִירָה לְנֹכְרֵי שְׁבוּת

Can a Jew instruct a non-Jew to do something that is Rabbinically forbidden?

For example, can a Jew ask a non-Jew, “Muzzle my cow and thresh with her”. It seems that only in the case of Shabbos, are we prohibited to have a non-Jew do things for us. But violation of Shabbos is punished by stoning and violation of muzzling is punished by lashes.

In both, there is a Rabbinic prohibition from instructing a non-Jew to do something which Jews are forbidden to do.

The story of bulls being castrated by non-Jews, who ostensibly steal them to increase their value for plowing and then return them to their Jewish neighbors, who look away, since they benefit by the rent money.

The law says – Such a bull must be sold for meat.

The Jewish owner must not benefit from this practice. Therefore, we learn that a Jew must not have a non-Jew do, that which is prohibited to him.

אֵינוֹ עוֹבֵר מִשּׁוּם בֵּל תַּחֲסוּם

He does not violate the law of, ‘don’t muzzle’.

A Jewish man rented his field to a non-Jew, who plowed the field with a muzzled cow, or with an ox and a donkey. These are prohibited in Jewish law. The non-Jew refused to stop.

The Rabbi said that the Jew was not required to prohibit the non-Jew, since, for the non-Jew, there is no obligation to avoid plowing with different animals.

A Jew can only tell a non-Jew to follow the Rabbinic prohibitions, if:

1. The Jew will benefit by the activity.
2. The activity is to occur on the Jew’s property.
3. The activity is to occur with the Jew’s property.

Others say, he can instruct the non-Jew to apply Rabbinic law, even if the Jew does not benefit.

הוֹשִׁיב לָהּ קוֹץ בְּפִיהָ מֵהוּ

He lodged a thorn in her mouth. What is the law?

He did this so she could not eat.

The Gemara discusses other ways to effectively muzzle:

- 1 A thorn lodges in cow's mouth.
- 1 Owner places a thorn in the cow's mouth.
- 2 A lion lies nearby.
- 2 Places a threat (a lion nearby).
- 3 Her calf is nearby.
- 3 Places her calf nearby.
- 4 The produce is covered.
- 4 He places a cover over it (a boiled hide), the cow does not see it and is not enticed.
- 5 Spreads hay over the produce to hide it.
- 5 Never fully hidden, cow just eats less produce.

If it is a natural act- it is not called muzzling.

If he did something to cause it - it is muzzling.

If the cow can't see it, i.e., under the hide – this may not violate the muzzling law.

חַיִּיב עֲקִימָת פִּי הוּא מַעֲשֶׂה

The movement of the lips constitutes an action.

Punishment is only incurred for an actual action, not a thought.

You can't be held guilty for bad thoughts, what is the rule regarding using bad words? Yes, using bad words can be a sin.

Example: Intimidating an animal or a worker, who has a right to eat some of the food that he is working with, i.e., shouting at them, is an act and is a sin.

The worst such example is a person who says one thing, but feels differently in his heart.

חַיִּיב עֲקִימַת פִּי הוּא מַעֲשֶׂה

The movement of the lips constitutes an action.

Can one walk into the range of a surveillance camera, or a motion detector light switch on Shabbos?

Our Gemara debates what constitutes ‘a movement’:

R Yochanan regards a command, or shout to animals, as an “act”.

Resh Lakish disagrees- considering the deminimus movement of lips, to be below the threshold of movement that constitutes an “act”, a ‘maaseh’.

An action which occurs in the normal cause of life, which as a secondary effect, gives no benefit to the person, is called “cutting off the head that provides no benefit”, and as such, is not prohibited, even if you know that the secondary effect will occur (i.e., pulling a bed across the ground which makes a rut on Shabbos). If you don’t benefit from the rut, pulling the bed is permissible.

הֲיָה עוֹשֶׂה בְיָדָיו אֲכָל לֹא בְרַגְלָיו

Even if a worker works with his hands and not his feet,

or with his feet and not his hands, or only with his shoulder; he is entitled to eat from the produce with which he works.

R Yose ben Yehudah - No, only after he works with both hands and feet.

Gemara - (Deut 23:20 “When you come into the vineyard of your fellow”. Whatever manner of work the worker does, he is entitled to eat.

R Yose – No, only if he works like the ox, employing both his hands and feet (Deut 25:4) (Don’t muzzle an ox).

What if he threshes with geese or chickens, may he muzzle them? They only have legs to thresh with, perhaps we only require that the creature work with all his power and not, literally, like an ox?!

אֲבָל מִלְמַדִּין אֶת הָאָדָם שֶׁלֹּא יִהְיֶה רָעֲבָתָן

Therefore, we teach a person not to be a glutton.

A worker has the right to eat as many grapes as he wishes while he is working. However, we should caution against gluttonous behavior, since that behavior will discourage people from hiring him in the future.

Just as the employer has the responsibility to pay wages honestly and on time, the employee has the responsibility to give the employer an honest days work, in quantity and quality, for his salary.

Yaakov Avinu said of his service to his father-in-law, “I served with all my might.” That is how hired labor should behave.

אִיבָעִיָא לְהוּ פּוּעֵל מִשְׁלוּ הוּא אוֹכֵל אוּ מִשְׁל שָׁמַיִם הוּא אוֹכֵל

At what point does the worker eat of his own produce, or does he eat of the produce of Heaven.

If we view the food that a worker may consume while on the job, as payment for his working (a benefit much like salary), he could direct it to his family.

If, however, it is granted to him from Heaven, as a special kindness from HaShem, but not part of his salary, it is only his when it reaches his hands. Therefore, he cannot give it to his family.

Rashi - The worker does not own the produce until it reaches his hands. Then, he could give it to his family

Tosophos - The worker owns it only as he chews and eats, and not before. Therefore, he can't give it to his family.

גָּנָא פּוֹרְתָא בְּעִידָנָא דְּגָנוּ אִינְשִׁי

If the watchman slept a little, at the time that others sleep,
is he also exempt?

Most Amara'im say - If a paid watchman falls asleep, he is liable and is obligated to pay for the object stolen.

What if he contracted to watch for more than three days?

It is understood that a person cannot go three days without sleep. Therefore, he must hire someone else to keep watch while he sleeps.

Even according to those who say that if a paid watchman falls asleep, it is considered an 'ones', 'accident' and he is exempt; if that 'watching' is in a public place, i.e., a train station, or if a known thief is seen in the vicinity, all agree that the watchman is liable.

One, who hired a watchman to watch in a train station, or a market place, is considered to have hired a person who will not sleep. Therefore, if the watchman sleeps, he is liable.

אִי הָכִי אִמַּאי פֶּטוּר

If it is so, (that he abandoned his post early) why is he not liable?

The law is that if a situation started with negligence and ended with an unavoidable accident, the negligent party is liable.

The obligation of a paid watchman, i.e., a shepherd, is, according to:

Rabbah - To guard and protect the sheep. Just as a full time shepherd, i.e., he may take a break, a nap, and would be exempt if anything happened to them at those times.

Abaye - He is responsible if anything bad happens to them, period.

Our case - The watchman took a break and the sheep were attacked by a wolf.

If the shepherd could have prevented the attack by being present, he is liable for the loss sustained due to his absence. But, if not, it is considered an 'ones', "an unavoidable mishap", for which, he is not liable.

אָפּאָר

Why
is such an attack considered avoidable?

A paid watchman was accosted by two unarmed hoodlums, who demanded the object he was guarding.

He was in a place where shouting for help would not have been effectual.

He gave the object over without resistance.

The owner was furious.

Should the watchman pay, or is he not accountable?

Owners:

You were paid to watch and protect.
They were not armed.
You did not yell for help.

Watchman:

- Two people can overpower one person, even if he fights.
- Running /or shouting was futile.
- I would have relinquished my own property just as readily.

This is a case of unexpected occurrence, ‘ones’, for which, I am not accountable.

R M Feinstein (BM 93) says, “A watchman is considered coerced against one armed robber”.

He must resist one unarmed robber, but two constitutes an ‘ones’ – “coercion” and he is not accountable.

גִּנְבָא סְרִיא

Rotten thief.

If a lion attacks sheep, or if an armed robber steals sheep, is the hired shepherd liable?

No, we cannot expect him to protect the sheep from a lion, or an armed robber.

But, if the shepherd led the sheep to a lion infested area, or he approaches a notorious cattle thief, and tells him, “We intend to bring our sheep to pasture in the south pasture and you, you rotten thief, better not bother us, because we have guards, dogs and many shepherds and we will kill you”.

If the thief steals, is the shepherd liable?

He can't claim innocence if he led the flock to the lions, or incites a known cattle thief.

הֵרִיזָה גִּיטָךְ

“Here is your Get”.

A man refused to give his wife a Get, unless she accepted upon herself, all of the sins he had ever done! She refused, and went to the Rabbi. Can a person transfer his sins to another person? This seems like a non-Jewish concept.

The Rabbi said - “No problem, in fact, I will accept his sins and you take your “Get”. First – One who wishes to rid himself of sins, shows that he regrets the sins he did. Second - I can accept his sins, yet God will decide to punish whomever He wishes”.

Any stipulation to a Get, even if not fulfilled, or is impossible to be filled, is regarded as merely tormenting the women and the Get is valid.

Intro:

Unpaid custodian:

If it is stolen and he must swear that he did not steal it.

Paid custodian:

If an animal, given into his custody died or broke a limb without an eyewitness, he takes an oath that he did not lay his hand on the property of his fellow. He pays nothing.

If it is stolen from him, he shall pay its owners.

If it was torn to death, he shall produce a witness and pay nothing.

Borrower:

He borrowed and the animal suffered an injury or death.

If the owner was with him – no payment.

If the owner was not with him – he must pay.

With him, means in his employ; he was using it.

דָּהָא שׁוֹאֵל כָּל הַנָּאֵה שְׁלוֹ

Because a borrower has all the benefits of the arrangement.

Ran – One who borrows a sefer is exempt from liability, if an ‘unavoidable mishap’ (an ‘ones’) occurs, because the owner benefits also. He gets a mitzvah and while engaged in a mitzvah, he need not be involved in any other mitzvah, such as giving tzedakah!!

How long does the exemption to give tzedakah last?

The exemption from tzedakah is limited to the moment when the loan occurs, but once the borrower is in possession, the obligation to give tzedakah returns.

עַד שִׁפְרוּט לָךְ הַכָּתוּב יַחְדָּו

Unless scripture specified for you, ‘together’.

Since, regarding plowing with an ox and a donkey together, the word ‘together’ is in the Torah.

Since, in the case of cursing a father and a mother, the word ‘together’ is not mentioned. Therefore, cursing either, would warrant punishment.

נִימָא לֹא לְאֻקְמָא בְּכִילְתָּא שְׂאִילְתָּהּ

The borrower may say, “I did not borrow your animal to merely keep it in an enclosure”.

A borrower is liable for whatever happens to this animal in his charge:

Except:

If the animal loses weight, or dies when working under normal conditions, the borrower is exempt.

Reason:

I did not borrow the animal just to keep him in a cage.

The Rabbis say – If the animal was not capable of withstanding normal work, the owner should not have lent him out. This is negligence by the owner and the borrower does not need to pay for the owner’s negligence.

But, if the animal dies naturally, without working, the borrower is liable due to unforeseen circumstances. This is not negligence by the owner, but a risk taken by the borrower.

However, if the borrower over-worked the animal, or it became ill and he still worked it normally, the borrower is liable, because the owner was not negligent.

אַלֵּא אֶפִּילוּ מֵתָה מִחֲמַת מְלָאכָה

Even if it dies as a result of its work, the borrower is exempt.

The majority agree that if an animal dies as a result of its normal work, even if it does not die until after it is done working, this is considered on the owner's responsibility, not the borrower.

The Rambam rules that it is more certain that the death is due to the work of the animal if it dies while working. So if the animal dies before or after working, it should be the borrower's liability.

We assume since the animal was not then working, something else is the cause. This exception should be called, 'misah bshaas melachah' "death while working", rather than, 'misah machmas melachah', "death as a result of working".

אֵלֶּא אֶפִּילוּ מֵתָה מְחֻמַּת מְלָאכָה

It died while performing usual work.

If you borrow a new and beautiful book and study it many times, renewing and reviewing it and return it to its owner, as a well worn used book, do you have to pay for any wear and tear on that book? The book was in perfect condition and now it looked very used.

If something dies as a result of its usual and customary use, the borrower is not liable and that is the situation in this case.

לֹא דִינָא וְלֹא דִינָא

No rhyme or reason – “There is no judgement and no judge”.

When the Jewish people are faced with any circumstance, they should never claim it is mere happenstance. There is no such thing as a coincidence – but rather it is a ‘Kah-incidence’, ordained by HaShem.

Some consider bad events to be a spur to change our ways, to do teshuvah.

Others reject this explanation as a cruel implication of a person’s righteousness. Namely, that bad fortune is a result of his own bad behavior.

This topic remains a dilemma.

מתוך שאינו יכול לישבע משלם

In a situation where he cannot swear, he must pay.

“I do not know....”

Three animals were given by Reuven to Shimon. Reuven claims two were lent and a third was rented. Shimon claims that only one was lent and it died. He will pay for that one. A second animal died, but Shimon is not sure if it was the borrowed one, or the rented one. If it was the borrowed one, he would have to pay, if it is the rented, one he is exempt.

This is considered a case of “partial admission”, ‘modeh bemiktzas’, and in such a case, the person must swear that he owes only, that which he admits to. But here he does not know which cow died, so he can’t swear. The rule is, if you can’t swear, you must pay.

מתוך שאינו יכול לישבע משלם

In a situation where he cannot swear, he must pay.

A tainted reputation.

A person whose reputation is legally tainted and whose oaths would be suspect, cannot take an oath. If someone lent him a small amount, they could claim they lent him a large amount. If he was ‘modeh bemiktzas’, he would have to swear on the remaining amount and he cannot swear, because his oath is tainted. Either he would be subject to paying unfounded and inflated claims, or he could never borrow.

The rabbi’s made an exception for such an individual.

The person who is claiming from him, must be the one who makes an oath and then, he can collect.

או ביד בנה ביד עבדך ביד שלוחך

Send, in the hand of your son, the hand of your slave, or the hand of your agent.

If the borrower sends an agent to pick-up the item he borrowed, he becomes responsible for it the moment it leaves the owner's hand and is given to the agent. Once the delivery person accepts the object, he becomes the agent of the borrower, and the borrower is responsible if anything happens to the object.

If the borrower said, "I am sending my agent to pick up the cow", it is the borrower's responsibility from the moment the agent receives the cow. If the lender says, "OK", he relinquishes the rights, by consenting to have these people bring the cow to the borrower and vice versa.

הָאִי מֵאֵן דְּגָזִיל חֲבִיצָא דְּתַמְרֵי מַחְבִּירוֹ

Regarding one who stole a cake of dates from his friend.

Shimon borrowed a pair of earrings from Reuven, but lost one of the earrings. The pair were worth \$100, so Shimon gave Reuven \$50 and the remaining earring. Does this sound fair to you?

Reuven asked to be paid \$70, because the value of the pair was now destroyed.

A person stole a barrel of dates worth \$100 and offered to pay \$100 to the owner.

The owner claimed, as a barrel of dates, it was worth \$100, but he had intended to sell the dates individually, at a much greater, aggregate price.

For a borrower, or a watchman, we do not judge leniently. Therefore, in the first case, the person who lost the borrowed earring, must pay the damage to the pair \$70. In the second case, the person who stole, we do judge leniently and he pays only \$100.

נְתָנָה לַחֲבִירוֹ

He gave it to his friend.

He misappropriated it and his friend did not.

A person who has the gift of insight and the ability to perceive and calculate Torah knowledge to others, must consider himself a resource to his people. He must designate a portion of his time to share and teach others. He will, then, merit even greater levels of wisdom and insight as a reward.

Just as giving of one's wealth to tzedakah, is rewarded by further wealth; so giving of one's wealth of knowledge will result in being rewarded with greater intellectual capacity.

הָנִי שְׁקוּלָאֵי דְתַבְרֵי חֲבִיתָא דְחִמְרָא לְחִנּוּאָה

Porters broke a shopkeeper's jug of wine.

Figuring the price of a barrel of wine:

Men were hired to transport a barrel of wine, and through their negligence, it fell and broke. They could buy a new barrel of wine on a market day for 5 zuz and on a non- market day for 4 zuz.

If they replace the barrel before the next market day, they may buy it for 4 zuz, but if on, or after, they must pay 5 zuz, because of the owner's lost opportunity to sell it at the market.

If however, the owner has another barrel and he does not try to sell it on the market day, that shows he would not have sold the broken one either.

Therefore, they can buy a new barrel for 4 zuz.

אִמַּאי יַחְלוּקוּ

Why do they divide?

A cow was exchanged for a donkey by the method of ‘chaliphin’, “pulling”. The moment the owner of the cow pulls the donkey, in order to acquire it, the former owner of the donkey immediately acquires the cow (where ever it is), even though he has not performed any ‘kinyon’ upon it. That is how the ‘chaliphin’ works.

In this case, the cow delivered a calf and we do not know if it gave birth, before, or after the donkey was pulled. The law is that we divide the value of the calf between them. But why, should not the person who owns the cow, possess the calf as well? And, should not the other party have to prove that he has a claim on the calf? Here, the cow was in a meadow and in no one’s possession. Therefore, ‘yachloku’, “they divide it”.

22 Bava Metzia 101b1 line 2 A11
Daf Digest

משום ישוב ארץ ישראל

Because of the importance of settling the land of Israel.

Is it better to plant an orchard, or build a house in land of Israel?

It will be best built up with people living there, so it is better to build a house, than to build an orchard.

He cannot evict him in winter.

If you have a lease that does not specify length of time, you may not evict a person in the winter, i.e., from Succos, until after Pesach.

Nor may you evict a person in the summer, unless it is with 30 days notice.
In a large city, you must give 12 months notice.

If the rental was specified to end on a particular date, the tenant may be asked to leave on that date, even in the middle of winter.

לַעֲשׂוֹת לוֹ מַעֲקָה

Make a fence for yourself.

Who is obligated to place a fence on the roof of a rented property?

The owner, but since he is not living there, he may not fulfill his responsibility and an accident might happen. Therefore, the Rabbi's put the responsibility on the renter.

Biblically, it is the owner who must put a fence on property he inherits, purchases or rents out.

He has the primary responsibility. But, if he does not do so, the tenant must do so by Rabbinic decree.

Introduction

Chapter Nine: Leased fields and tenant's rights and responsibilities.

A sharecropper pays a fixed percentage of the crop and the sharecroppers keep the rest.

Rental (tenant farming) – The farmer, 'chacheir', pays a fixed rent.
If the land produces it, good. However, if not, the farmer must pay the rent anyway, from other assets.

הַמְקַבֵּל שְׂדֵה מַחְבִּירוֹ

If a person leases a field from his fellow.

Any disagreement, as to how the land or crops are to be treated, goes according to local custom, i.e., are the crops to be cut with a sickle, or pulled from the earth?
Does the renter get the produce from any trees in the field, also?

(Mishnah #2 103b3 – to 104a3) - A farmer leased a field with a stream on it and the stream dried up. This was no one's fault. He still must pay the full rent, unless he says, or it is written in the contract, "to rent in this irrigated field". Then, we know he only paid a premium, because of the stream, and if the stream dries up, we adjust the rent.

Gemara - How do we make the adjustment? We ask the Bais Din to assess the rental fee for a similar field, without a stream.

הַמְקַבֵּל שָׂדֶה מֵחֲבִירוֹ

One who leases a field from his friend.

If an irrigated field has the stream dry up, he may not deduct from his rent, unless the lease so specifies.

A man rented an apartment and hoodlum moved downstairs. He was afraid to continue to live there.

It could have been ruled that a contract is a contract and he must continue to pay rent.

But, it was ruled that the danger made the apartment unlivable, as though it had collapsed on itself and therefore, he does not need to pay any more rent.

הַמִּקְבֵּל שָׂדֶה מֵחֲבִירוֹ

One who leases a field from his friend

and the stream dries up.

If Reuven arranges for Shimon to be a sharecropper on a field that has a stream of spring water on it and the stream dries up, does Shimon have the right to adjust the rent (since he does not get the spring water he expected and needs for proper use of the field) or not?

Just as the bais kor could be incomplete and the deal still stands, perhaps the dried up spring, also does not require adjustment to the deal.

Rambam (Hilchos Mechirah 28:24)-The agreement is valid, even if the spring dries up, or if the field is smaller than a bais kor, unless he specified that he is renting this field because it has a functioning stream.

נִימָא לִיה מַכַּת מְדִינָה הִיא

Let him say, “This is a general calamity”.

In case of a general calamity, i.e., the entire river for the province dries up, for certain categories of renters of land, an adjustment in their rent may occur.

In the case of sharecroppers, adjustment in rent is not needed, since any eventually that harms the field and results in less produce, is adjusted in the system of payment itself. The farmer grows less, therefore, the amount to the owner, based on percentage, becomes less.

Details that determine whether rent is reduced for a tenant farmer:

- | | | |
|-----------------------|--|-----------------|
| -The tenant specified | - an irrigated field | - no changes |
| -The owner offered | - an irrigated field | - no changes |
| -The owner offered | - this irrigated field | - price changes |
| -The owner offered | - the land known as, “the irrigated field”, “the vineyard”,
etc., | - no changes |

Others say, if either specified ‘an irrigated field’ where they did not need to in order to identify the field, that should be considered an offer which could be accepted. And if accepted becomes a condition. Therefore, the price would decrease if the condition was not met during the course of the lease.

הָאוֹמֵר לַחֲבִירוֹ בֵּית כּוֹר עֶפֶר אֲנִי מוֹכֵר לָךְ

If one says to his fellow, “I will sell you a bais kor”.

The sale is good, even if the size is not that of a bais kor,

If: That field is referred to by people as a bais kor and the seller can say, “I sold you the area called bais kor, even if the area is not full size”.

He said, “This bais kor”, then the buyer knows what he is getting and they are standing on it.

He can be approximate, if he is selling it.

But if: The buyer asks to buy a bais kor, it must be precise. If they are not standing on it, it should be a full bais kor.

This bais kor can be approximate – a bais kor must be a complete bais kor.

הַמִּקְבֵּל שְׂדֵה מַחְבִּירוֹ וְהוֹבִירָהּ

If a person leased a field and left it fallow.

If a person leased a field as a sharecropper (rent is a percentage of yield) and let it lie fallow, we determine what the field was fit to yield and the farmer pays a percentage of this. It is usually written in the contract, “If I leave it fallow and do not work it properly, I will pay according to the best use of the land”.

Gemara speaks (about layman’s language) – Even if it is not mentioned in a layman’s contract, the usual and customary in the region, is controlling.

R Meir - “If I leave it fallow”. This obligates him to pay the percentage that could have grown.

“If I do not use it properly”. This obligates him to pay for the depreciation caused by the neglect of the land.

In Alexandria, women could become engaged, but before actual ‘nissuin’ and ‘chupah’, they may be seized and made to marry a different man. Therefore, their children are mamzerim.

However, this is not the case: Hillel pointed out that the custom in Alexandria was that the ketubah was written with an additional sentence, “When you enter the chupah, you will be my wife”. The engagement was conditional on entering the chupah and that did not occur. Therefore, the children are not mamzerim. What we learn about Alexandria is that the usual understanding in that area prevails, if the language of the contract is not clear.

What is the custom if an item held for security decreases in value? Add to it?

What is the custom if a dowry decreases in value?

In places where they customarily increase the dowry 2-3x the face value, to honor the bride, what does the father actually pay?

הָהוּא גִבֵּרָא דְקָבֵל אֶרְעָא מִחֲבֵרִיהּ

A certain man leased a field from his friend,

and said, “If I leave the land fallow, I will pay you 1000 zuz”, and he left 1/3 fallow.

- “He must pay him 333 1/3 zuz”, say the Nehardians.
- Rava says – No, this is an ‘asmachata’, “a reliance on speculation” and is not binding.”

A transfer of ownership requires a sincere intention to give the item up. Here, he relied on the possibility that the outcome would be favorable and he would not, actually, have to pay.

Therefore, it is not a binding agreement.

In our Mishnah, he has to pay a percentage of the best use of a fallow land.

That is not an exaggerated payment, but the actual amount lost.

The Gemara discusses what would happen if the renter promises to plant sesame and instead plants wheat? The landowner is entitled to the value of his percentage in sesame, not wheat.

Therefore, the sharecropper must pay him more.

By good fortune, the wheat crop was so plentiful, it was worth more than had sesame been planted.

Due to sharecroppers decision to plant wheat instead of sesame.

Due to a price change.

Due to high quality of the land.

Due to industriousness of sharecropper.

} All aspects are
discussed

הָהוּא גִבֵּרָא דְקָבִיל אֶרְעָא לְשׁוּמְשָׁמִי

There was a person who leased a field to plant sesame.

A sharecropper rents a field, but decides not to plant on it. The payment for renting the field is an expected portion of its produce. If none occurs, because he did not plant, can the owner collect from the sharecropper?

If you contract for the use of a banquet hall, but the wedding is called off, do you have to pay?

If you are a victim of an arsonist and your property is damaged, such that it can yield no income until it is repaired, must the arsonist pay, not only to repair the property, but for the lost income as well?

The aggrieved party must show proof that he had a customer, or a renter, or a different sharecropper, who would have paid him. Therefore, the loss he incurred, was actually not theoretical. Then, he deserves payment.

הָהוּא גִבְרָא דְקָבִיל אֶרְעָא לְשׁוּמְשָׁמִי

A certain fellow leased a field to plant sesame, etc.,

which depletes the earth severely, but is more profitable.

He changed his mind and planted wheat instead.

Since he made less profit and he depleted the earth less, he wanted a refund of some of the price he paid for the field, upon which, he would have planted sesame. Since the contract did not account for such an adjustment, he is obligated to pay the agreed upon price (for sesame).

וְלֹא לְמִשְׁתֵּי בֵּיה שְׂכָרָא

And not to sell it and drink beer with the proceeds.

Since they are partners, we can rely that if one investor spends money, it is to enhance the profits for himself and also for his partners and not use it to buy beer.

How far does this presumption go?

Two partners were trying to make a deal to earn profits and things were not going well. One decided to spend a lot of money to travel to a great Rebbe and ask him to pray for the success of the venture and it worked! After they realized their great profit, he tried to get the other partner to share in the costs incurred in getting the Rebbe's help. He refused.

They went to a Rabbi for a judgment and he said, "It is not universal for people to send money to tsaddikim, to pray for your business success and therefore, partner is not obligated to share in that expense".

הָיוּ בִּי תְּרֵי דְּעֵבְדֵי עֵיסָקָא בְּהָדֵי הָדָדִי וְרִנּוּחַ

There were two persons, who embarked on a business and it made a profit.

When can a partner withdraw his investment?

Funds were invested for a specified time, and half way through, one partner wanted to take his money back. The rule is that the entire sum, including any profits, are committed to further the investment, until the agreed upon term is completed.

But why? An hourly worker may quit at any time, because he is not a slave. Why not allow one partner to pull out of the deal - he is not a slave?!! No, the issue of money is different and a contract is a contract. If they specified a time to liquidate, that must be fulfilled, unless they change by mutual agreement.

הַמְקַבֵּל שְׂדֵה מַחְבִּירוֹ

A person leases a field from his friend,

but does not weed it.

Weeds may decrease the quality of the wheat being grown, therefore, payment to the landowner would be less.

Poor quality wheat, grown on his land, gives his land a bad reputation and decreases the value of it for rental, or sale in the future.

Plowing weeds under after the harvest gets rid of the weeds, but their seeds are present and will grow again the next year.

Weeds, seen in a field, may give the impression that the land is poor and that even with diligent weeding, the weeds could not be eradicated and therefore, the land may be worth less in the future.

For all these reasons, the landowner has a right to request proper weeding.

The landowner can complain to the renter, “You may leave and it will grow weeds for me”. That is reason enough to require the renter to weed the field.

הַמִּקְבֵּל שָׂדֶה מֵחֲבִירוֹ

If one leased a field from his fellow

and it did not produce a substantial crop.

#1 - If it produced a heap, such that he could put a shovel in it and the shovel would stand up, he must care for the field.

#2 - If it produced enough to sow the field again, he must care for the field.

#2 changes with the size of the field and is more fair. He must remain on the field, care for it, and pay whatever percentage it yields, to the owner. He is forced to fulfill his contract, if the land produces enough to seed itself.

Gemara – Discusses various rulings of the Academy of R Yannai.

Case of a weak tree:

“Wicked” olives – ones that will never ripen. Are they subject to tumah?

Case of the weak man:

If you want to pray, how much can you carry? When must you put down that burden?

While wearing Tefillin, how heavy a burden can you carry on your head? The weight of four kavs (equal to 8 dozen eggs).

הַמְקַבֵּל שָׂדֶה מֵחֲבִירוֹ

One, who receives a field from his friend

that is not as productive as expected, etc.

-Or he rented a store and traffic was diverted.

-Or the government prohibited the sale of that item, i.e., alcohol.

The store renter wanted to back out of his lease.

As long as there is nothing physically wrong with the store, the tenant must honor the contract.

הַמְקַבֵּל שָׂדֶה מֵחֲבֵירוֹ

If one leases a field from his fellow

and locusts devour it, or it was blasted by the wind, or if it is a general calamity?

He may deduct from his rental, by the percentage of destruction of the land. The full rental was based on the assumption that conditions would remain the same throughout the duration of the lease.

Gemara: How widespread must the general calamity be to allow him to reduce his rent?
Teiku!!

A hired shepherd left his sheep, went to town and a lion killed one of his sheep. He is a paid watchman and would be exempt for an unavoidable mishap. However, he is liable if he could have chased this lion away, had he not been away from his post. If so, he is liable.

How many times must he re-sow, if locusts ate his seed? Three or four times would equal the length of a growing season.



Or perhaps, the landowner could say to the tenant,

“If you had planted it with wheat, the blessing would have been fulfilled for me”.

The entire valley suffered a regional calamity that would permit the renter to reduce his rent payment. However, he had agreed to plant wheat, but instead planted barley. The owner prayed that his renter would have a successful wheat crop and later, learned that he was praying for the wrong material, since barley had been planted and it had failed. He claimed that it is possible that his prayer would have been answered had the renter not changed and therefore, does not want to accept the lower payment.

God answers specific prayers (See Bamidbar 21:1).

Amalekites disguised themselves as Canaanites. The Israelites prayed that God help them detect the “Canaanites”, but their prayers were not accepted, since they were mistakenly directed. So here, and the Rabbis agree, no discount is given to this renter.

נְהִי דְלִנְיָסָא רַבָּה לֹא הָנָה חַיִּינָא

A large miracle, I did not deserve,

but a small miracle, I did deserve.

Women over the age of 40 will not be able to have children. A man who had not yet fulfilled his obligation of, “be fruitful and multiply” was engaged to a woman who was over the age of 40. Should he proceed with the marriage?

A woman, who is to be married, may well retain the capacity to have children beyond age 40.

The merit the man will receive for not embarrassing the woman, by breaking the engagement, will make them worthy of having children.

Maybe, we should not rely on miracles. But while we may not merit a large miracle, we may more easily merit a small miracle.

הַמִּקְבֵּל שָׂדֶה מִחֲבִירוֹ בְּעֶשְׂרֵה כּוֹר חֲטִימִם לְשָׁנָה

He leased a field from his friend and promised to pay a fixed amount, 10 kors of wheat per year,

but the crop was stunted. He may pay out of that crop. However, if the crop was extra superior, he must pay out of that crop.

Gemara - The land fulfilled the commission of its owner.

Another case: He raised grapes, but the wine from the grapes soured in the barrel. He must go out and buy good wine to pay his rent.

Why? Because the grapes were good. It was the barrels that were bad and caused the wine to sour.

הַמִּקְבֵּל שָׂדֶה מִחֲבִירוֹ לְזֶרְעָה שְׁעוּרִים

If a person leased a field to plant barley, he may not plant wheat.

If a person leased a field to plant wheat, he may not plant barley.

If a person leased a field to plant grain, he may not plant beans.

If a person leased a field to plant beans, he may not plant grain.

Gemara:

A tenant may not make any changes to that which he agreed, even if it is to the apparent benefit of the owner.

The money collected for a Purim seudah for the poor, cannot be used for any different needs of the poor. The people gave the money for a particular cause and unless the change is stipulated publicly, in front of the public.

Rabbi Shimon ben Gamliel says that this not correct. Any worthy benefit for the poor is permitted. And changes, as above, if stipulated for the proper rotation of crops, for the benefit of the land, would be acceptable, also.

אֵילָן הָעוֹמֵד עַל הַמִּיצָר

A tree that grows on the boundary line.

How to divide it? Divide it equally.

A tree that grows close to the boundary line, but it's roots grow mainly from one side, divide it as to where the trunk stands, according to the rule of Joshua.

Or, if there is a tree trunk on one side, but all roots are in the other field, you can divide the tree where the trunk stands, or where the roots bring nourishment.

בְּרוּךְ אַתָּה בְּעִיר וּבְרוּךְ אַתָּה בַּשָּׂדֶה

Blessed are you in the city and blessed are you in the field.

What does this mean? What did Rav explain these verses to mean?

City - Advantages that one has by having a Shul near his home.

1. He can be among the first 10 in Shul for a minyan. The Gemara (Berachos 47b) teaches that the first 10 men who come to Shul receive a high reward.
2. He is near a Shul, where the Shechina resides.
3. It is easy to stay in Shul late for Maariv and not have to travel in the dark to go home.

דָּאָמַר שְׂכַר פְּסִיעוֹת יֵשׁ

He said that there is a reward for the steps

that one takes to go to synagogue.

It is a blessing to live in the city, because you can live close to a synagogue.

It is also a benefit to live far from the synagogue, because you earn a reward for each step you have to take, to reach the far away synagogue.

שְׁלֹשָׁה עָשָׂר דְּבָרִים נֶאֱמָרוּ בְּפֶת שַׁחֲרִית

13 things were said of the morning bread.

It is an antidote against:

- heat
- cold
- wind
- demons
- It provides wisdom.
- It triumphs in law suit.
- It enables one to study.
- It enables one to teach Torah.
- It enables one to have his teachings studied.
- It enables one retain scholarship.
- It enables one to not perspire.
- It enables one to not desire any wife, other than his own wife.
- It kills the worms in one's intestines.

שִׁתִּין רְהִיטִי רְהוּט

Sixty runners ran

but were unable catch up to the person who broke bread (ate breakfast) in the morning.

Discusses the value of eating breakfast.

Advice: One should always eat breakfast.

Both the word ‘pas’ and the word ‘talmid’, have Gematria of 480.

Suggesting: Eat breakfast and you will be a better student.

Study in the morning and you will be a better student.

Have a daily seder of learning and especially in the morning hours.

דְּרֵבָּנִין לֹא בְּנֵי מִיִּפֶּק בְּאוֹכְלוֹתָא נִינְהוּ

But the Rabbis do not need to join the battalions, since they are not amongst those who go out in battalions.

Chazal - Exempted torah scholars from paying taxes.

Rivash - The Chazzan must pay taxes.

Rabash - Exempts teachers from paying taxes and Chazzan, also.

Tashbatz - Both are exempt.

Rema - It is proper to exempt the Chazzan from paying taxes.

Gra - The shul is like the Bais Hamikdash and all who serve (like the Kohanim), are exempt from taxes. They are “occupied with the duties of the congregation”, “oskim betzorchai tzibbur”.

וְאִי מִשּׁוּם דִּינָא דְּבֵר מְצָרָא

But, if it is based on the right of the adjoining property owner.

If a person wishes to sell his property, he must first offer it to his neighbor.
The neighbor has the right of first refusal.

If a field is ownerless, someone may come along and acquire it, even if the field is situated between two brothers, or two parameters.

The people nearby made no effort to acquire it.

Rav Nachman says, “Even so, they may now assert their claim and may take the
field from the third party

Shulchan Aruch - We do not use the rule in a case of an ownerless field.

S'ma - If the neighbor is willing to pay for the land, we require the third party to
sell it to him.

„וַעֲשֵׂיתָ הַיָּשָׁר וְהַטּוֹב בְּעֵינֵי ה' "

(Deut 6:18) “You shall do what is right and good in the eyes of the Lord”

Lost and stolen property must be returned to its original owner.

The Sotheby sale:

Sacred books were given to a Professor Guttman, as he fled Nazi Germany, by the Chancellor of the college of Scientific Studies of Jewish Culture. The faculty knew Prof. Guttman had a visa, and that he and his family would be leaving Germany using his Armenian Visa.

When Prof. Guttman tried to sell the sacred books 40 years later in America, the public sale realized 1.45 million and a private person paid another 900,000.

The U.S. attorney general stopped the sale to determine to whom the books really belonged, namely, who is the rightful owner.

If the owner despaired of recovery (yeush), the successor, in due course, is vested.

Sacred books must be purchased, even if it is known that they are stolen, to avoid sacrilege or disrespect.

Yeush can be assumed, since the Nazi's burned most Jewish books in their hands.

Conquering armies acquire title to property, as a right of conquest and purchasers need not return those objects to their rightful owners.

Ruling: The books were bought with communal funds, for communal use and should be returned to the community. Dr. Guttman was paid a fee for protecting them!!!

\$900,000.

הַמִּקְבֵּל שָׂדֶה מִחֲבִירוֹ לְשָׁנִים מוּעָטוֹת

If one leases a field, for only a few years,

he may not sow it with flax (it depletes the soil severely. It takes 7 years to recover fully and therefore, he may not plant this crop within 6 years of the expiration of the lease. Otherwise, he would be returning the land in worse condition than he found it.

Relates only to a “fixed price renter”, a ‘Chachirus’.

He has no rights to beams of Sycamore trees (takes 7 years to be large enough for a beam). But he has rights to beams, if he leases for 7 years or longer.

In case of a sharecropper, he divides whatever is grown.

יובל מי מפקע קבלנות

Does Yovel remove land that is leased?

Discussion of Yovel:

(Leviticus 25:23) “An ancestral field is not to be sold in perpetuity, to another person”.

Therefore, such a field returns to its original owner at Yovel.

But, if the field was merely leased, it will revert back when the lease is over. Therefore, there is no reason to return a leased field on the Yovel year.

At Yovel, the land must return, but any improvements in, or on it, must be paid for.

The person who had bought it, is to be compensated for those improvements.

Rav Yehudah, - If a person returns the land at the end of a lease and there are improvements, he is to be compensated. For example, if a tree grew larger and is now worth more. He may also be liable for any loss, for he is obligated to return the land as it was, when he rented it.

דָּאָמַר רַבָּא

Rava said,

“A teacher, planter, butcher, circumciser.”

A community worker can be dismissed, without warning, for an error that causes irreparable damage. That includes teachers, gardeners, butchers, shoichets, doctors, barbers, one who writes sifrei Torah, or one who writes documents for the city. These categories are considered warned and need no additional warning.

A Torah teacher, who teaches children, makes an indelible impression on the child and it is hard to correct, if he teaches incorrectly. Some mistakes will be corrected with time. The students will learn from another teacher. But, if the teacher is not competent, he should be given another job.

The actual irreparable damage, says Tosphos, is the waste of one's time. The problem is a function of the unproductive time, which cannot be recaptured.

מְקַרֵּי דִרְדָּקִי שֶׁתֵּלֵא טְבַחָא וְאוֹמְנָא

A teacher of children, a planter, a butcher, a circumciser.

A person, in a position to do irreversible harm, is considered forewarned.

A teacher - If a child learns something which is incorrect, he may always make the mistake.

Planter - If not efficient, the time is forever lost.

Butcher - If not slaughtered properly, the meat is lost forever.

Circumciser - If not done properly, the child may be in mortal danger and may lose his life by a repeat operation.

Torah scribe – A Torah scribe's mistakes (5 in 1 column) cannot be corrected and the project must be started fresh.

הַמִּקְבֵּל שָׂדֶה מִחֲבִירוֹ לְשָׁבוֹעַ אֶחָד

- a. If one leases a field for a septennial period,
for 700 zuz, the 7th year is included, even though he can't work it.
- b. If one leases a field for seven years, the 7th year is not included and the owner must give him another year.

Because, 'septennial' year means a Yovel cycle, "seven years", means 7 working years.

שכיר יום

One who is hired for the day.

Discusses timely payment of a hired worker:

A hired worker may be paid his wages, anytime during that night and all night and next day.

One who is hired for the night, gets his wages all day.

One who is hired for several hours, collects all day and all night.

One who is hired for a week, month, year or septennially:

-If he leaves by day- he gets paid all that day.

-If he leaves by night- he collects all that night and the following day.

Gemara:

“Do not delay, the wage of a worker shall not stay with you overnight” (Lev 19:13).

“On his day, shall you give his pay” (Deut 24:15).

Technicalities:

- a. If the owner does not pay - He violates this law, but only that first day. Any subsequent delay is only a Rabbinic violation
- b. It says, “The worker he hires”, therefore, if someone else hires for you and you (110b4) delay payment, you are not in violation!!

(N.B. - Agency should apply!! Why does it not apply?)

שְׂכִיר יוֹם גּוֹבֵחַ כָּל הַלַּיְלָה

A day worker collects his wages all night.

Does paying a day worker with a check, fulfill the mitzvah of paying on time?

If the check is dated on the day of the work and the bank is open, it is permitted, but only if the employee agrees.

The boss can put money directly into employees account, but only if the bank is open, so the worker can withdraw it.

צא שכור לי פועלים

“Go and hire workers for me”.

If the worker has no expectation, no violation has occurred.

We say – The worker understands that if he is hired by an agent, he will not be paid on time and therefore, there is no delay. The owner did not hire the worker and the agent did not owe the worker, because the work was not done for him.

Work for day traders – Workers know owners rely on the proceeds of their market days and therefore, they know they will not be paid until the next day.

Five prohibitions re: workers + 1 positive commandment:

- Don't retain what belongs to your fellow man. (Lev 19:13).
- Don't rob. (Lev 19:13).
- Don't retain wages of an employee who is poor. (Deut 24:14).
- Do not hold wages overnight (refers to any employee, rich or poor. (Lev 19:13).
- On his day, you shall pay him (positive commandment). (Deut:24:15).
- The sun shall not set on him. (Lev 19:13).

כָּל הַפּוֹבֵשׁ שְׂכָר שְׂכִיר

Anyone who withholds the wages of a worker.

Discusses not paying wages on time, or delaying payment.

If you do withhold wages, you cannot correct that sin, merely by paying the wages at a later time. The problem is that there was a delay in payment, not simply the fact that the worker was not paid. This sin cannot be repaired by paying him now. Therefore, an additional punishment is needed.

Lashes are administered to one who violates this mitzvah.

Re: 2 offenses*.

*see Note 34

לך נשוב לך נשוב

Go, and come back; go, and come back".

A comparison between the posuk, Lev 5:21, about monetary law, and our problems of owed wages, is attempted. From that the following is derived:

What is considered retention? The employer says to the worker:

- | | |
|---------------------------------------|---------------|
| "Go and come back, go and come back." | - Rav Chisda |
| "I don't owe you the wages." | - Rav Sheshes |
| "I already gave you the wages." | - Rav Sheshes |
| "I never hired you." | - Abaye |

What is considered robbery?

- | | |
|---|---------------|
| "I have your wages in my possession, but I am not going to give them to you". | - Rav Chisda |
| | - Rav Sheshas |
| Denies owing any money to the worker. | - Gemora |
| "I already gave the wages to you." | - Abaye |

Last Explanation

Retention is the same as robbery, and the Torah listed them separately. Therefore, the perpetrator would be liable for transgressing two prohibitions.

אַחַד שְׂכָר אָדָם

Whether it be the hire of a man,

or of an animal, or of utensils.

This elaborates on the prohibition regarding delaying payment to an employee.

Whether you have a man, his animal, or his utensils, the principle applies (Lev 19:13 and Deut 24:15).

Qualification:

- The worker must request his wages. If he did not, there is no violation.

- If the employer transferred the debt to a storekeeper and directed the employee to the store, he is not in violation.

- a. If the employee demands his wages during his time, he may swear and collect.
- b. If the employee demands his wages, but his time has passed, he may not swear and collect, unless there are witnesses that he requested his wages in the proper time frame. Then, even the next day, he could swear and be paid.

Discusses rules regarding: A ‘Ger Toshev’, ‘a non-Israelite who lives with you’. He, too, is subject to (Deut 24:15), “On his day....”, but he is not subject to (Deut 24:14 or Lev 19:13) where it says, “Amongst your brethren”.

הָהוּא מֵיבְעֵי לְהַקְדִּים עָנִי לְעָשִׁיר

The poor take precedence over the rich.

If two people are saying Kaddish, who takes precedence?

A poor person takes precedence, over a wealthy person.

Each for a mother, each for a father - ‘Yachloku’, “divide”, two turns.

One for a father, the other for a mother, the father takes precedence.

A man has more sins than a woman.

Man has a perpetual obligation to learn Torah, so as to control their base nature.

One who needs merit more, is a deceased father, not a mother.

Women have many merits to protect them, unlike men.

The Halachahs are predicated on custom.

If there is no custom in that community, they could throw lots.

Why did this worker climb a high ramp to work

And place himself in mortal danger, was it not for his wages?

Is Dr. Guttman to be rewarded for self endangerment? Not unless it is for a livelihood. This is an exception to the general principle against exposing oneself to danger.

And for it, he risks his life.

Sport of hunting - not permitted.

Hunting for a living - permitted.

Going into a forest to hunt - if for a living –permitted.

Merchants traveling by boat - permitted.

Professional football or baseball? R Moshe Feinstein ruled it is permissible and said:

May injure himself - permitted- to earn a living.

May injure others - permitted -if to earn a living, but required to exercise greater caution regarding the well- being of others.

Is it permitted to hire, as an employer, someone (or employee) who will do a dangerous job that puts their life at risk? Yes.

מִפְּנֵי מָה עָלָה זֶה בִּכְבֹּשׁ

Why did this worker climb a high ramp to work?

“Be exceedingly careful to guard your lives” (Dev 24:15).

This teaches us that to withhold wages is tantamount to stealing the life of the worker, because he was willing to risk his life for those wages.

It is generally prohibited for a person to put himself in danger, but it is allowed for a worker to do so, in order to earn a living (Dev 24:15).

However, a person, who needlessly and irresponsibly engages in risky behavior, is in violation of Dev 4:15.

Even risky behavior, when done cautiously, the risk of danger should be limited.

Putting a fence around a roof -the Chazon Ish rules that it is not necessary, if the roof is not used for any purpose and the occasional going up on the roof to inspect, or fix it, will be with proper care.

לֹא יִמְשְׁכְּנֶנּוּ אֶלָּא בְּבֵית דִּין

He may not enter his house to take his security.

This topic relates to the lender's right to take security for a loan.

- a. Lender may take security only with the authority of a court.
This means that the loan fell due and the borrower did not pay on time.
- b. Lender may not go into the borrower's house to obtain the security because of the verse, "Outside you shall stand" (Deut 24:11).
- c. Lender must return an article, taken for security, when the borrower needs it. However, if the borrower dies, you need not provide it to his heirs.
- d. After 30 days, the security maybe sold to cover the debt.

שנאמר,, בחוץ תעמוד"

As it says, "You shall stand outside" (Deut 24:10).

- You shall not enter his house to take his property as security.
- An agent of the court cannot enter his house either.
- You must stand outside.

מִנְתָּח נִתְּוֵי אֵין

May certainly seize.

- He may certainly take security from him in the street.
 - He may not enter his house to take security.
 - Even an agent of the court may not enter a lender's house to take security.
However, he may do so, to collect an overdue debt itself, with a court order.
 - He may not keep an item that is needed. For example, he must return a pillow at night and a plow during the day.
 - He may not take an upper or lower millstone (Deut 24:6).
(That implies which other items one may take).
 - He must not take the garment of a widow (Deut 24:17).
(That implies that garments of others may be taken).
- These limitations, on methods of collecting, that which is owed, does not refer to the lender, himself. Rather, it refers to an agent of the court.

לֹא תִחַבֵּל בְּגָד אִלְמָנָה׃

Don't take away the cloak of a widow (as collateral for a loan not paid).

We are commanded to observe a special consideration to widows and orphans.

They tell a story of the widow of a great Rabbi, whose home was always filled with guests seeking the company, advice and fellowship of her renowned husband.

When he died, the house was usually empty. Rabbis, who were his colleagues, would make a special effort on holy days, to visit his widow, so that she would not feel the extra pain of loneliness on those days.

“Don't take away the cloak of the widow”. Don't deny her what she needs.

וְלֹא יִמְשְׁכְּנוּ דְּבָרִים שֶׁעוֹשִׂין בָּהֶן אוֹכֵל נֶפֶשׁ

Don't take as security, any items used to prepare food.

Which assets may be taken as security?

One cannot take:

- Items the borrower needs (but you have no restrictions about taking items needed by his wife or children).
- His table for eating food.
- His bed for sleeping.

Items that the person needs must be returned, but only of a quality related to his station in life. For example, if a poor man has a fancy bed, we can sell that bed and provide him with a bed fitting his station in life.

Since we treat all Jews as though they were children of the King ('princes'), there is no item that is so expensive that it should not be returned to the "prince for his use."



“And for you, it shall be deemed an act of charity” (Deut 24:13).

From this, we learn that the welfare of the borrower is the responsibility of the lender.

Discussion regarding: How to deal with a poor borrower. This is learned from the rules of ‘Arechin’, ‘a loan from the Temple’.

אֲשֶׁכְּחִיָּה רָבָה בַּר אָבוּהָ לְאֵלֶיהָ

Rabbah bar Avuha found Elijah

standing in a cemetery of non-Jews.

Elijah is Phineas the Kohen. What is he doing in a cemetery?

Tosphos says, “He went there to resuscitate the son, of the widow, **Zarephath.**”

To save a life, one may violate any, but three of the laws.

Besides, he knew he would be successful, since he had relied on his prophetic powers in the past and they worked. “We are permitted to rely on miracles, if they worked three times in the past”, says Rambam (This is in regard to amulets for healing purposes).

Notwithstanding the above explanations, does the corpse of non-Jews, i.e., in a cemetery, or by a Kohen touching a dead body, transfer as Tumah, to a Jew or a Kohen?

קבריהן של עובדי כוכבים

The graves of gentiles

do not transmit Tumah (but R Shimon ben Gamliel (Mishnah Oholos 18.7, disagrees and the halacha is according to RSB Gamliel).

Even though there are authorities who maintain that the graves of gentiles do not transmit Tumah, a Kohen should not walk among them, nor touch or carry the corpse of a gentile.

אָבֿל מִשְׁכָּנוֹ בְּשַׁעַת הַלְוָתוֹ

The lender took security from the borrower at the time of the loan.

A man put up an item as security of his loan. He did not pay the loan back on time, even after an extension.

The lender sold the security item, got his money back and returned the small surplus to the borrower.

The borrower was very upset. The security item was worth double what the lender sold it for. The purchaser did not want to return it, or pay more for it.

They went to Bais Din.

-Was the lender in the right to sell it for his repayment at the price he received?

-Was it a mistaken sale, since the value was worth double of what was paid?

Yes, the sale is void.

אַל־מָנָה

A widow.

We may not take any security from a widow as it is written, “You shall not take as security, the garment of a widow” (Deut 24:17).

This is an unqualified prohibition, whether she is poor or rich and applies to any of her possessions.

Not only can you or an agent, not enter her house to obtain a security, but neither you or an agent, can take security from her on the street.

Questions not answered:

What is the rule regarding a divorcee, or an unmarried woman, or if she owes a debt other than a loan?

It may be permitted to take security if she served as a guarantor of a loan for another person.

Note: This protection of a widow seems compassionate, but it has a negative side; people may be reluctant to lend to her because they can’t take any security!

לְעוֹלָם ר' יְהוּדָה לֹא דְרִישׁ טַעְמָא דְקָרָא

Actually R Yehuda does not expound the rationale of the scripture.

So why does he do so here? Because the verse itself gives **in** the rationale, “In order that his heart not turn away from God”.

Are we encouraged to try to understand the reasons that the Torah dictates the laws? No, we are obligated to follow those dictates, even if we see no rationale for them. They are to be considered the orders of the king and we must obey. The ways of the Torah are beyond man’s ability to understand.

Rambam says, “It is worthwhile for each person to contemplate the laws of the Torah and to understand them as best he can, but he must follow them even if he does not understand them.”

Others say, it is only permitted to analyze the reasons for a law for purposes of practical halachic decisions; otherwise, attempting to analyze the reasoning has no purpose and should not be done.

וְלֹא יִרְבֶּה-לוֹ נָשִׁים וְלֹא יִסּוּר׃

He shall not multiply wives for himself, so that he not have his heart turned away from God (Deut 17:17).

We learn from this that too many wives (>18) may turn a (King's) person's heart away from serving God.

R Shimon considers the limit (regarding wives), to pertain even to virtuous women. Even though one wife might have the tendency to turn a person from serving the Lord.

החובל את הריחים

One who takes a mill as a security.

Certain items may not be taken as security under any circumstances:

1. A mill- Neither an upper millstone, or a lower millstone. He is guilty of two transgressions if he takes both. (Deut 24:6) (Note 6).
2. Anything used for food preparation., “For he takes a life as security”....
3. A pair of scissors used for cutting vegetables.
Each side is separate. Therefore, he incurs two sins if he takes it, like a millstone.
The scissors are considered two utensils, even though they perform only one function.

אֵין לִוְקִיין עַל לֹא שְׁבִכָּלוֹת

We don't give lashes on an all exclusive prohibition.

There are three types:

1. Where one verse contains a phrase which encompasses several negative commands, i.e., Vayikra 19:26, “Do not eat together with blood.” This teaches us many laws:
 - a. Don’t eat the meat until the animal is fully dead.
 - b. A court may not eat on a day that they judge a capital case.
 - c. A person is not permitted to be an incorrigible son.
2. Dev 23:19 - Two distinct prohibitions are listed in one verse, “Don’t bring an offering of an animal, which was a gift for a prostitute, or used to buy a dog”. If one or both are violated, he gets only one set of lashes.
3. Shemos 12:9 - A rule that can be violated in several ways, i.e., Korban Pesach. Only one set of lashes, eat it roasted, not raw or boiled, and not roasted.

הֵתֵם לֹא מִיָּדִי דְּעֵבֶדָא לְאוֹשׁוּלִי וְלֹאֲגוּרֵי הוּא

There, it is not something that is likely to be lent out or rented.

Usually possession determines ownership. An exception is sacred books, or books that are customarily lent.

Obviously, a lent book does not belong to the person who holds it, unless he is able to show strong evidence that he bought, or it was given to him as a gift. Sacred books, if lent, provides you with a Mitzvah.

A person, who possesses these categories of books, cannot be presumed, by his mere possession, as proof of his ownership.

22 Bava Metzia 116b1 line 1 A1
Daf Digest

הַבַּיִת וְהָעֲלִיָּה שֶׁל שְׁנַיִם שֶׁנִּפְלוּ

A two story house that belongs to two people, collapsed.

Each gets the material from his apartment, as well as can be ascertained.
They divide the remainder by proportion of the height of each apartment.

He takes his stores and they count toward his claim.

שׁוֹתֵפִין בְּכִי הָאֵי שׁוֹתֵפִין בְּכִי הָאֵי

Partners are not particular with each other, in this regard.

A two story building owned by partners, one lived on top, the other, below, collapsed. How do we divide the materials of the demolished building?

Do we:

#1 Divide all the material?

#2 Identify what we can as belonging to either one and divide the remainder?

#3 Since all the bricks and material now rest in the lower level, is that in his possession?

#4 If the other partner wants it, must he bring proof, in order to take it from the possession of the current holder?

No, the partners should divide everything equally.

הבית והעלייה

A house with a lower and upper apartment.

Two owners live on the ground floor and the renter lives above, in the upper apartment.

The house collapsed onto itself.

The owner does not want to repair it.

The renter may go and live in the owner's apartment, until the owner fixes the floor of the apartment.

Alternatively, the owner needs to only provide the ceiling of his lower apartment, the renter must provide the layer of plaster that covers it.

The Gemara advises that they look to their contract for guidance, as to who is responsible for which part of the repairs.

דַּפְסֵיקִי מֵיָא וְהֵדֵר נָפְלִי

The water stopped and then fell.

This initiated a discussion regarding the responsibility of an upstairs neighbor to prevent water falling into the downstairs apartment.

If the amount is small, he is not liable = An amount to wash one's hands.

If the amount is large, he is liable=The amount would be absorbed by the plaster.

If it is direct, he is liable.

If it is indirect, he is not liable.

If it is rain water that passes through his apartment, he is not liable.

If it is water from an apartment above his, he is not liable.

22 Bava Metzia 117a5 line 38 A8
Daf Digest

הַבַּיִת וְהָעֲלִיָּה שֶׁל שְׁנַיִם שָׁנְפוּ

A two story apartment, owned by two individuals, collapses.

The upper story person says to the lower one, “Please rebuild your apartment so I can build mine”.

However, he does not wish to do so.

The owner of the second floor may rebuild the first floor and use it until the other party pays him his expenses for rebuilding the first floor apartment.

אָסוּר לְאַדָּם שִׁיחָנָה מִמָּמוֹן חֲבִירוֹ

One should not derive benefit from someone else's money.

A bus pass was purchased, which allowed unlimited rides on public transportation. Is it permissible to borrow your friend's pass when he is not using it? - No.

You also bought a pass, but lost it. Since you paid for the right to ride unlimitedly for that month, can you borrow your friends pass for your travels? - No.

Two cousins with the same name, earned flight points. Their combined points would earn one of them a free flight. Is it permissible for them to do so?

וְכֵן בֵּית הַבַּד שֶׁהוּא בְּנוי בַּסֵּלַע

A garden, above a hewn out chamber in the rock,

collapsed and the olive press within the subterranean chamber is damaged. Who must repair the roof? The owner of the olive press, he needs a roof, otherwise, rain will ruin his olive press. Therefore, this is proof that if a second story falls into the first story, the owner of the first floor must repair his ceiling.

This is not a good proof. The olive press owner must repair, but in the case of an apartment, the first story owner does not need the plaster between the second and first floor, he has the roof of the second story to protect his apartment from rain. Therefore, this scenario is not a good proof.

טול מה שעשית בשכרך

“Take what you did as your wage”.

We do not listen to him.

(Deut 24:15) “On that day you shall pay his wages”.

Objects that have cash value are considered the same as cash, except when it comes to wages. If payment for work done was to be in cash, then objects of value, that the worker would have to sell to obtain cash, is not acceptable. We assume the worker needs money to pay for food for his family that same evening.

However, in other instances, for example, paying back a loan must be paid in cash. But if he has insufficient cash, he may pay with objects.

Damages – May be paid with land or movable objects, even if the damager has cash.

Wages must be paid in cash. If the employer has insufficient cash, he must go out and sell his objects, in order to have cash to pay his employee before nightfall.

הבונה ברשות הרבים

One who builds in a public domain.

This discusses private materials placed in a public place.

Manure – Can be placed in a public space, but must be promptly removed by those who use it for fertilizer (39 days to be crushed are allowed since Joshua's time).

Clay - Can't make bricks, but can knead the clay for mortar.

Building materials (i.e., stones) -May be dropped off, but must be promptly used.

Damage caused in this time period must be paid for.

R Shimon ben Gamliel - Building materials can stay for 30 days.

If he places a Chanukah lamp in a public domain and it causes damage – he is not liable. The lamp is there with permission.

שְׁתֵּי גִנּוֹת זֶה עַל גִּבּוֹ זֶה

Two gardens are higher than the other and vegetables grow in the vertical soil between them. To whom do they belong?

R Meir - They belong to the owner of the upper garden, because if he took his land away, that would take the vegetables away.

R Yehudah - They belong to the owner of the lower garden, because if he filled in his land, the vegetables would be his.

R Shimon - Whatever the owner of the upper field can reach, it is his. The rest belongs to the owner of the lower garden.

אָמְרוּהָ קָמִיָּה דְּשָׁבוּר מֶלֶכָא

They repeated R Shimon's ruling to King Shapur.

Consider this question allegorically: Yaakov possesses the upper spiritual world. Eisev, the earth itself. The world cannot exist without the dew, rain, sun and winds that come from above and nothing would result without the earth to grow them. They both are necessary.

Rabbi Meir is of the opinion that the owner of the upper garden, owns the growth. Rabbi Yehudah contends that the owner of the lower garden, owns the growth. Rabbi Shimon teaches that whatever the owner of the upper field can reach is his, the rest belongs to the owner of the lower garden,.

אָמְרוּהָ קָמִיָּה דְּשָׁבוּר מֶלֶכָא

They repeated (R Shimon's) opinion before King Shapur.

Are we allowed to teach Torah to non-Jews? Gemara (Sanhedrin 59a) prohibits this and the person who does so, is subject to the death penalty at the hands of Heaven. However, he is allowed and in fact, encouraged to study the 7 Noachide laws with non-Jews, but only those 7 Noachide laws.

Our Gemara seems to suggest that non-Jewish, King Shapur was being taught Torah regarding monetary laws. This implies that perhaps it is permissible to teach Torah to gentiles.

It is true that observing monetary laws is everyone's obligation and is one of the 7 Noachide laws. Since Torah laws are not binding upon them, King Shapur was not being taught Torah and this reference does not suggest that it is permissible to do so.