



Restoring the Primacy of Choshen Mishpat

BUSINESS HALACHA *in the* CLASSROOM

∞ *Bava Metzia* ∞

PEREK HEY

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Pocket Payback

Bava Metzia 64b - Ribbis

Four young men sat chatting in a small restaurant in Los Angeles. Their table was littered with white china plates. A middle-aged man walking by stopped in his tracks to stare in disbelief at the massive heap of dirty dishes. Moshe Yosef, noticing the man's incredulous expression, smiled to himself.

"That's one guy who doesn't have a teenage son," he thought in amusement.

Eighteen-year-old Moshe Yosef and his three close friends went out to eat together each rosh chodesh. This arrangement gave them a welcome break from the yeshiva suppers. Between the four of them and their hearty appetites, they always ordered and ate a large amount of food. After all, they only had the opportunity to eat perfectly grilled steaks once a month.

"Anybody want ice cream?" Pinchas asked, running a finger down the dessert menu.

"Nah," said Shaul.

"Me neither," Levi concurred. "Let's just get the bill and head back. I think we've all had more than enough to eat."

When the waiter cleared the table, he left the check behind. Moshe Yosef took a peek. The total, including the tip, came to \$279.80.

Levi immediately slapped eighty dollars in cash on the table. While Pinchas and Moshe Yosef reached for their wallets, Shaul fished around in his pocket and came up with two hundred-dollar bills. He added them to the other bills and stood up.

"Hey!" said Moshe Yosef. "Let me chip in."

"It's okay, Mo," Shaul replied, already walking to the door. "You can pay next time."

Moshe Yosef sighed. Shaul did this too often, and he never let any of them pay him back. This time, he resolved not to let his friend get away with it. He pulled two fifties out of his wallet, caught up to Shaul, and slipped the money into his back pocket in one smooth move.

During their walk back to yeshiva, Pinchas took Moshe Yosef aside.

"I saw what you did in the restaurant," he whispered. "I don't think Shaul noticed. My question is, was it halachically permitted? Maybe his paying for the meal is considered a loan, and in that case, you paid more than your fair share. Is that ribbis?"

Pocket Payback, cont.

Moshe Yosef grew thoughtful. “Good point,” he told Pinchas. “I’ll ask the rosh yeshiva.”

He posed his question to Rabbi Itzkowitz after night seder.

“When repaying a loan, it is indeed prohibited to return more money than you originally borrowed,” the rosh yeshiva agreed. “This is true even if the borrower does not have the exact denomination of money that is owed. Say Reuven borrowed forty dollars from Shimon. When Reuven was due to repay him, the smallest bill in his possession was a fifty. Reuven may not give the fifty-dollar bill to Shimon and tell him to keep the change. One exception to this rule, as noted by *Minchas Yitzchok* (9:88), is if the extra amount is so insignificant that one would not search for it if he dropped it on the floor. A similar situation arises if Reuven were to make a purchase with his own money on behalf of Shimon, and when Shimon wants to pay him back, he does not have the exact denomination of bills. Shimon may not pay that higher amount and tell Reuven to keep the difference if the extra amount is significant.

“It would seem that the same guidelines would apply in your case, Moshe Yosef. If the extra amount you want to slip into Shaul’s pocket is significant, it would be prohibited for you to give it to him.”

Rabbi Itzkowitz smiled. “There is, however, one major factor here that changes the entire case. The whole discussion only applies when money was actually loaned. In this case, there was no loan! Although you had every intention to repay your friend for the meal you shared, Shaul did not plan to accept payment from you. The transaction is definitely not considered a loan. As such, there is no issue whatsoever for you to put extra money into his pocket. Any money that is more than the actual cost of the meal is not problematic, since it is considered a gift, rather than repayment of a loan.”

“I understand, rebbi,” Moshe Yosef said. “Thank you for the explanation.”



Chametz Delivery

Bava Metzia 66b - Davar Shelo Ba LeOlam

Mrs. Levine was cooking up a storm for Pesach. After a couple of hours in the kitchen, the meat was on the fire, the chicken in the oven, and some kugels already out on the table. Mrs. Levine took a break to tend to some household errands. In the mail was a colorful flyer from "Baker's Best." She had often seen their products in the supermarket, but they were not certified kosher.

"Baker's Best just became kosher," the flyer announced. "Try our new line of delicious cookies. For free samples of our products, please fill out the attached postcard."

"How nice," thought Mrs. Levine. She detached the postcard, filled it out, and dropped it in the mailbox. Then she returned to her Pesach cooking.

On Chol Hamoed, the Levine family went out for the day to the park. When they came home, there was a notice from the mailman that a parcel had arrived for Mrs. Levine, but no one was home to accept delivery.

Mr. Levine looked at the notice and saw that the parcel was from "Baker's Best." "What is Baker's Best sending us on Pesach? Did you order matzos from them?" he joked.

"I can't believe it!" his wife exclaimed. "They were just certified kosher, and offered free samples. I ordered them before Pesach, but never expected them to arrive so fast."

"What are we going to do with the samples on Pesach?" asked Mr. Levine.

"I guess we tell the mailman to dump them in the garbage," said his wife.

"I wonder if we can put them in the pantry," said Mr. Levine. "We sell all the chametz in the pantry anyway. If we put it there, it will be included in the sale."

"Can we include new chametz in the sale?" asked Mrs. Levine.

"Perhaps," said her husband. "We don't give the Rav an exact inventory of the chametz anyway. The chametz samples will never be ours; they will go straight from Baker's Best to the non-Jew who bought the chametz."

"It still seems funny to me," said Mrs. Levine. "You should consult Rabbi Dayan on this. We don't want to risk having chametz in our possession over Pesach."

"Of course," agreed her husband.

Mr. Levine called Rabbi Dayan. "Gut Mo'ed, Rabbi Dayan. Can I ask you a funny Pesach question?"

Chametz Delivery, cont.

"Certainly," answered Rabbi Dayan.

Mr. Levine explained what had happened with the chametz samples. "The mailman will bring the parcel again tomorrow, so we need to know what to do. I thought that perhaps we could just put it away with the chametz that we sold, but my wife wasn't sure about it."

"Your wife is correct that a chametz delivery cannot be included in the sale of chametz," said Rabbi Dayan, "because usually a person is not able to sell something that does not yet exist. Similarly, he is not able to sell something that is not yet his. (C.M. 209:4-5) Since the chametz was not yet yours at the time of sale on Erev Pesach, it cannot be included in the sale."

"I guess that means telling the mailman to throw the parcel away," said Mr. Levine. "We clearly don't want to violate the prohibition of owning chametz!"

"Not necessarily," explained Rabbi Dayan. "Although the delivery was not included in the sale of chametz, a person cannot be forced to acquire something against his will. Don't sign for the package. Leave it in the post office until after Pesach." (O.C. 448:1)

"What if the mailman does not want to take the package back?" asked Mr. Levine.

"If need be, you can ask him to deliver the parcel to a non-Jewish neighbor and collect it after Pesach," said Rabbi Dayan. (Sha'ar Hatziyun 448:7)

"And what if the mailman simply leaves it at the house without asking?" asked Mr. Levine.

"You can still declare that you intend not to take possession of it until after Pesach," answered Rabbi Dayan. "Although it is not included in the sale, it does not become yours either; it remains the sender's meanwhile. Nonetheless, it should be covered securely so that you will not accidentally eat it." (Mishna Berura 448:5-6)

Mr. Levine thanked Rabbi Dayan. "I'll let you know what happens. And, after Pesach, how would you like a sample?" 

Nonexistent Sale

Bava Metzia 66b - Davar Shelo Ba LeOlam

Mr. Frei was an accountant. He also ran a separate small business, selling esrogim for Succos.

“Why do esrogim cost so much?” he asked his supplier from Esrogim Orchard one winter day.

“First, esrogim require tremendous care throughout the year to protect them from scratches and spots that might render them unusable,” the supplier answered. “Second, only a select few esrogim from each tree can be sold. Most fruit never see the market!”

“I’d like to try something,” Mr. Frei suggested. “Instead of buying just the good esrogim next year and paying per esrog, I would like to buy all of the esrogim that will grow in an acre of your orchard – good or bad – for a flat fee.”

“That’s fine with me,” said the supplier, “but I will request a 10% down payment of \$2,000.”

“Deal,” replied Mr. Frei.

The supplier received the money and declared: “All of the esrogim that will grow during the course of the coming year in a designated acre are hereby sold to Mr. Frei for the sum total of \$20,000.”

The following May, however, Mr. Frei was relocated by his accounting firm. He realized that he would be unable to sell esrogim in his new location.

“I will be unable to sell esrogim next Succos,” he wrote to Esrogim Orchard. “I request to cancel our arrangement.”

Esrogim Orchard responded: “We do not accept this and insist upon upholding the sale.”

Mr. Frei called the supplier and explained his circumstances. “I made the agreement expecting that I would be able to sell next year, but due to my relocation I will be unable to.”

The supplier wouldn’t hear of it.

“A sale is a sale! You already bought the crop,” he said. “It’s no different from any other sale, and we expect full payment of the remaining \$18,000.”

“I’m not convinced that it’s the same as any other sale,” responded Mr. Frei, “since you did not have the esrogim when we agreed in the winter.”

Nonexistent Sale, cont.

“So what?” retorted the supplier. “We both knew that the esrogim would grow during the year.”

Mr. Frei picked up the phone and called Rabbi Tzedek.

The rav listened to his question and said, “In principle, sale of fruit that has not yet started growing with the formulation, ‘are hereby sold,’ is not halachically binding on either party even when the fruits grow, unless the buyer already took them.”

Rabbi Tzedek then explained: “There is a major dispute in the Gemara (B.M. 66b; Yevamos 93a) whether a person can sell something that does not yet exist, such as fruit that has not yet grown or calves that have not yet been born. This is referred to in halacha as ‘davar shelo ba l’olam’ – something that has not yet come into the world.


“The halacha is that the sale of such an item is not valid. Therefore, although often not morally proper, either party has the legal ability to retract, even after the fruits grew or the calves were born. However, if the buyer already took the fruit, the sale is legally upheld. Although the initial sale was legally invalid, the seller presumably wanted to honor his word and allowed the buyer to acquire ownership immediately by taking actual possession of the fruit (C.M. 209:4 and Shach 209:5).”

“Why can’t you sell a davar shelo ba l’olam?” asked Mr. Frei.

“A transaction simply cannot take effect on something not in existence,” explained Rabbi Tzedek. “Another reason is that a person usually does not have sufficient intent (gemirus da’as) regarding something that does not exist (Kovetz Shiurim B.B. #276).”

“What if the cow was already pregnant or the fruit already began growing when the sale was made?” asked Mr. Frei.

“There is a difference between the two,” replied Rabbi Tzedek. “Even if the cow is pregnant, the calf is considered a davar shelo ba l’olam. However, with fruit, if it already began growing, it is considered to be something that is already in existence and simply gets bigger, so the sale is legally binding (Rama 209:4 and SM”A 209:9).

“Nowadays, however, when much commerce deals with items that do not yet exist and with the formulation, ‘I agree to sell,’ many poskim validate such transactions based on situmta, hischayvus and/or dina d’malchusa.” 

To Lend or to Give

Bava Metziah 71a - Mitzvah to Loan

Heshy Rubin finished reviewing his financial summary.

“The economic downturn took its toll on us,” he said, “but not nearly as much as it has affected others.”

“We need to help those in need,” his wife agreed.

Heshy always tried to honor most of the charity requests he received, but recently he had begun getting many requests for loans from people affected by the recession.

The requests came from all sides. His brother approached him and asked, “Can you lend me \$5,000 towards Yoni’s bar-mitzvah?”

The neighbor down the block, who had been laid off almost two years ago and remained unemployed, also approached him confidentially: “We’ve depleted our savings. Can you lend us \$10,000 to cover our bills for the coming months?”

In addition, a business associate approached him. “Heshy, I’m at a crisis point with my cash-flow,” he pleaded. “The bank is being extremely tight with my credit line, and without \$25,000 cash I won’t be able to restock for the coming season.”

Heshy had lent money to people in the past. Most paid him back, but some never made good on the money. His head was swirling with the many new requests. Is it better to give more charity or loans? How much should he lend? Who should he lend to? What risks should he take? What about the potential interest he could earn in the bank?

“I’d better talk with Rabbi Tzedek,” he said to his wife after much discussion. “Hopefully, he can help me sort out this issue.”

At their arranged appointment, Rabbi Tzedek opened the Shulchan Aruch and invited Heshy to read: “It is a positive commandment to lend to the Jewish poor; it is a mitzvah greater than charity. One’s poor relative takes precedence to other poor people, and the poor people of his city take precedence over the poor of other cities. It is even a mitzvah to lend a rich person who needs to borrow for the moment, to benefit him with words and to give him proper advice (C.M. 97:1).”

Rabbi Tzedek then explained, “Granting a loan is greater than charity because it protects the person’s dignity while helping him. Furthermore, someone who accepts charity is already used to turning to many people for help, whereas a person requesting a loan is often not accustomed to this (Prisha C.M. 97:1).”

To Lend or to Give, cont.

“The Chofetz Chaim dedicated his work, *Ahavas Chesed*, to the mitzvah of gemilus chasadim,” continued Rabbi Tzedek. “Most of it deals with the mitzvah of granting interest-free loans. He addresses the question: How much is a person obligated to lend, and for how long a time period? He concludes that this is an individual matter. Each person should lend according to his ability and do whatever he can to benefit his friend. This depends on your available assets, the time frame of your projected expenditures, and the financial needs of the borrower (*Ahavas Chesed* 1:4-7).

“If you do not have confidence in the borrower, you are entitled to request means to guarantee repayment of the loan, through collateral, post-dated checks, or co-signers. If the borrower does not provide sufficient guarantees, you are not obligated to lend, although you should not be overly cautious.

“If you expect that the borrower will not repay you, it is better not to lend than to lend and constantly pressure him to pay when he is unable. In this situation, it is best to give the money as charity or to stipulate that if borrower does not pay it will count it towards your charity requirement (A.C. 1:9; Rama Y.D. 247:5).

“Priority is given to your relatives and neighbors. However, a poor person who provides guarantees takes priority over a wealthy relative momentarily in need of a loan.

“On the other hand, there is an extra mitzvah to lend someone who needs a loan to keep his business from faltering (A.C. 6:1; II, ch. 21).

“Must I liquidate my assets in order to grant a loan?” asked Heshy.

“No, you do not,” replied Rabbi Tzedek. “However, if money is readily available in a checking, savings or money market account, there is a mitzvah to lend even if it is earning a small percentage (A.C. 1:12; 5:5). If you are concerned about the lost percentage or the erosion of your money through inflation, it is better to lend at a percentage with a heter iska than not to lend at all (Bris Yehuda 40[1]).”



Buy!

Bava Metzia 73b - Parvata

Mr. Scher tracked a number of stocks. One was TorahTech, a start-up that specialized in harnessing new technology to disseminate Torah.

The company showed promise, but its marketing efforts hadn't succeeded yet. Mr. Scher considered the stock overpriced at \$6 a share, but worth grabbing if its price dropped significantly. He instructed his portfolio manager, Mr. Gelber, to buy 10,000 shares if the price dropped to \$4.

Rumors of a significant second-quarter loss — but a fresh product line aimed at the new Daf Yomi cycle — set the stock on a volatile course. For two weeks it oscillated between \$4.50 and \$7 a share. When the quarterly report was finally issued, the stock descended to \$4 for a few days.

A month later, though, TorahTech's new Daf Yomi products began selling big. The stock began a steady climb, eventually hitting \$8 a share six months later!

Mr. Scher gave instructions to sell the 10,000 shares of TorahTech, anticipating earning 100-percent profit on the sale.

Mr. Gelber checked the account. "You don't have any shares of TorahTech," he said. "What do you mean?" Mr. Scher asked. "I instructed you to buy 10,000 shares when the price dropped to \$4!"

"Let me check," said Mr. Gelber. He reviewed the account and acknowledged, "Somehow, I missed that order."

"That's \$40,000 lost!" exclaimed Mr. Scher. "I've been following that company for months."

"I'm sorry," said Mr. Gelber. "I usually enter orders immediately so that the purchase is made automatically."

"You should compensate me for the loss," said Mr. Scher. "The failure to execute was sheer negligence on your part."

"That seems extreme," replied Mr. Gelber. "It's not even a loss, just a missed opportunity for profit. I'm willing to take it up with Rabbi Dayan, though. Let's talk with him."

They related the details to Rabbi Dayan.

"Mr. Scher does not have to pay for the lost \$40,000 in this case," ruled Rabbi Dayan. "The Tosefta teaches that an investor who gave money to an agent to buy

Buy, cont.

merchandise and sell it for a shared profit, but the agent didn't buy — has only a complaint against him (C.M. 183:1).

“Similarly, the Yerushalmi writes that mevatel kiso shel chavero — a person who restrained his friend's money and prevented him from earning profit — has only a complaint. This is, at most, a form of potential grama (see Shach 61:10; 292:15; Pischei Choshen 12:[36]).”

“Are there cases in which a person has to cover lost profits?” asked Mr. Scher.

“The Mishnah (B.M. 104a) teaches that a farmer who undertook to work another's field and share the crop, but left the field fallow, must pay whatever the field was expected to produce,” answered Rabbi Dayan. “This was a generally stipulated condition that became standard (328:2).


“Furthermore, the Gemara (B.M. 73b) discusses the case of a person who gave money to an agent to buy wine for him during the market season. Some authorities derive from this that if the loss is clear, the agent has to pay (Nesivos 183:1; Chasam Sofer, C.M. #178).”

“How is it different from the original case in the Tosefta?” asked Mr. Gelber.

“Nesivos (306:6) explains that the Gemara deals with a contracted worker (kablan) or partner, who pays even for a lost profit opportunity (306:3),” answered Rabbi Dayan. “The Tosefta refers to an agent who was not paid, or a salaried worker (po'el) who was entitled to back out from the job.”

“Why shouldn't Mr. Gelber have to pay, then?” asked Mr. Scher. “He's a contracted broker.”

“A number of authorities disagree with the Nesivos and Taz,” replied Rabbi Dayan. “They maintain that the agent is required to cover lost profit only if he stipulated so beforehand (see Pischei Choshen, Pikadon, 12:[38]; Nachalas Zvi 292:7).

“However, as with many issues of workers, we must consider minhag hamedinah, the current practice of brokers (331:2). FINRA* rules and most broker contracts require that cases of stockbroker misconduct, such as failure to execute, be settled through arbitration. The broker would likely be required to pay part of the loss.” 

*FINRA is the largest securities regulating firm in the USA.

The Business of Bread

Bava Metzia 74a - Situmta

Mr. Becker came to sell his chametz. “What do you do with all the chametz that you buy?” he asked Rabbi Tzedek.

“I don’t buy any chametz,” Rabbi Tzedek responded with a smile.

“What do you mean?” asked Mr. Becker, perplexed. “There was a whole line of people selling their chametz to you!”

“No one sold their chametz to me,” said Rabbi Tzedek. “They just appointed me as their agent to sell the chametz on Erev Pesach. If you want to see the actual sale of the chametz, come back on Erev Pesach at 11:00 AM when I meet with Mr. John Doe. There will also be two other people, not included in the sale, to serve as witnesses.”

“That sounds interesting,” said Mr. Becker. “I remember when you instructed me to sell part of my pregnant ewe to a gentile to avoid the sanctity of the first-born lamb (bechor). You told me to receive cash payment from the gentile and also have him lead the animal (Y.D. 220:6).”

“The laws are very similar,” said Rabbi Tzedek, “but there’s a difference.”

“What’s different about chametz?” asked Mr. Becker.

“Nothing in principle, but consider the logistics,” said Rabbi Tzedek, “The gentile can’t go around picking up the chametz from hundreds of families! Nor can he make immediate cash payment for the full value of the chametz, which can be worth over \$100,000.”

“Then how can you sell him the chametz?” asked Mr. Becker.

“You’ll see when you come,” replied Rabbi Tzedek.

On Erev Pesach, Mr. Becker came at 11:00. Rabbi Tzedek introduced him to Mr. John Doe. “Mr. Becker wants to watch the sale,” he said.

Rabbi Tzedek took out all the sale forms. “These are the people who are selling their chametz and a rough listing of the chametz items they are selling,” he said to Mr. Doe. “The chametz will be sold at its fair value, as determined by a panel of appraisers.

“In addition,” continued Rabbi Tzedek, “the sellers are renting to you all the places where the chametz is, and thereby selling – along with that – the chametz placed there. The fair rental value will also be ascertained by a panel of appraisers. Meanwhile, give me a down payment of \$100 for the rental, and the remainder will be

Business of Bread, cont.

extended as a loan, due after Pesach.”

Mr. Doe gave Rabbi Tzedek \$100.

“Why do you rent the places?” asked Mr. Becker.

“There are a few reasons,” replied Rabbi Tzedek. “First of all, this way the chametz is not in the Jew’s property (O.C. 448:3). Second, this allows two other possible forms of kinyan (acts of acquisition). When someone buys or rents a property, he can simultaneously acquire moveable property (kinyan agav) along with it. In addition, property that a person owns or that he rented can acquire for him items that are placed there (kinyan chatzer) (Ketzos 194:3; Mishna Berura 448:17).

“Please give me another \$100 as a down payment for the chametz,” Rabbi Tzedek said to Mr. Doe. “The remainder will be extended as a loan, due an hour after Pesach is over. I want to emphasize, though, that the sale is absolute, even if you default on the payment.”


Mr. Doe gave Rabbi Tzedek another \$100. Rabbi Tzedek then asked Mr. Doe to provide his pen, which Rabbi Tzedek picked up. They shook hands on the deal.

Afterwards, Rabbi Tzedek and Mr. Doe signed a detailed contract confirming the sale of the chametz and rental of the locations. Rabbi Tzedek handed Mr. Doe all the documents before the witnesses, acknowledging that everything was rented and sold to him (odisa) (Ketzos 194:4).

“I recognize the pen as a kinyan sudar,” said Mr. Becker. “But since when does a contract serve as a means of transaction for moveable property like chametz?”

“Halacha recognizes any means of transaction that the common commercial practice uses to consummate binding transactions, in addition to the acts of kinyan delineated in Shulchan Aruch,” replied Rabbi Tzedek. “This is called situmta, and may include a handshake and legal contracts nowadays (C.M. 201:1-2; Mishna Berura 448:19).”

“Why is it necessary to make so many forms of acquisition?” asked Mr. Becker.

“There are questions about each form of kinyan,” said Rabbi Tzedek. “Since it is not logistically possible for the gentile to actually take the chametz, by doing many alternate forms of kinyan, we strengthen the sale (Aruch Hashulchan 448:28).” 

Widgets Contract

Bava Metzia 74a - Situmta

Weiss' Widgets were capturing the market as the most highly acclaimed widgets. When they announced a sealed bidding for retail rights of their newest widget, the offers were highly competitive.

Reiss Retail was ultimately awarded the rights. A contract was drawn up: "Weiss' Widgets agrees to sell Reiss Retail Distributors 100,000 widgets @ \$23 with a 20% down payment."

The 100,000 widgets were unpacked from the warehouse and sent on rail.

While in transit, the eccentric Mr. Weiss suddenly decided that he wanted to retail the widgets directly. "Weiss' Widgets belong with Weisses, not Reisses!" he insisted.

Weiss' lawyer immediately sent a notice to Reiss Retail that they were retracting the sale and would return the down payment.

Reuven Reiss was dumbfounded when he received the message. "I've already begun a whole ad campaign," he exclaimed: "Ride the Widget Wave! Reiss retails Weiss!"

Reiss immediately responded to Weiss: "You already signed a binding contract to sell us the widgets. You can't back out."

"Check out the halacha," Weiss wrote back.

"I'm not a halacha expert," answered Reiss. "But I know without question that it is morally reprehensible to retract from such an agreement, even if legally possible. Such an action indicates a lack of trustworthiness and is unethical, wicked, and deserving of a curse (C.M. 204:1, 7)."

However, Weiss remained adamant. "We are not interested in ethics and moral considerations. Unless the agreement is legally binding in halacha, we intend to retract the sale and retail the widgets ourselves!"

Reiss's lawyer sent a formal legal notification: "Widgets were sold under contract and a cash deposit was paid by my client. If the legally binding arrangement is not honored, we intend to take legal action."

Weiss' lawyer responded: "For a transaction to be binding in halacha, it must be accompanied by an appropriate kinyan, a formal act of acquisition. Neither a contract nor a cash payment serves as a kinyan to finalize a sale for moveable items such as widgets. As such, we are able to retract the sale according to halacha."

Reiss was infuriated, but intrigued, by this response. He had learned in Maseches

Widgets Contract, cont.

Kiddushin about the need for an appropriate kinyan for each item.

“I know that a contract and cash serve as kinyan for real estate, not for moveable items,” he mused. “Could it be that the sale is not halachically binding?”

Reiss asked Rabbi Tzedek to summon Weiss to a din Torah. The two appeared before the Beis Din.

“What do you claim?” asked Rabbi Tzedek of Reuven Reiss.

“We demand that Weiss’ Widgets honor its contract and sell us the widgets!” Reuven stated.

“And what do you say?” Rabbi Tzedek turned to Mr. Weiss.

“We explained to Reiss,” responded Mr. Weiss, “that neither a document nor a cash payment serves as a binding kinyan for moveable items.”


Rabbi Tzedek and his Beis Din conferred and ruled: “The contract is binding on the basis of situmta and hischayvus.”

“What’s that?!” asked Weiss.

Rabbi Tzedek explained, “Each transaction must indeed be accompanied by a kinyan. However, the Gemara in Maseches Bava Metzia (74a) introduces a form of kinyan called situmta.

“Situmta was a practice of wine merchants to mark the barrels in their warehouse that were already ordered. If the practice of the merchants is to consider this mark as finalizing the sale, it is validated by halacha, as well. The Shulchan Aruch expands this concept to any common commercial practice. Thus, any act that merchants do to express completion of the transaction, even if not enumerated in halacha, is binding (C.M. 201:1-2). A common example of situmta is a contract, since merchants consider this agreement binding. Other possible examples are handshakes, down payments, and ‘mazal u’bracha’ in the diamond trade. If the local law considers the contracts legally binding, it could also be granted halachic validity on the basis of dina d’malchusa (Pischei Teshuva 201:2).

“Furthermore, the Nesivos (203:7) writes that a person can obligate himself to sell something, the same way he can obligate and accept upon himself a debt (hischayvus). The language, ‘agree to sell,’ can be understood nowadays as accepting an obligation to do so.

“Therefore, the widgets contract is absolutely binding also in halacha, and you have no legal ability to retract.” 

It Might be All Right

Bava Metzia 75b - Borrowing Lifnei Iver

The annual rabbinic convention drew Rabbonim from all across the country. Rabbi Dayan was happy to meet his former Rosh Yeshiva there. At the conclusion of the convention, Rabbi Dayan asked him, “How is the Rosh Yeshiva getting to the airport?”

“I’ll take a taxi,” replied the Rosh Yeshiva.

“My son, Zvi, is picking me up,” said Rabbi Dayan. “Can we give you a ride?”

“Thank you so much,” said the Rosh Yeshiva, “but you live in the opposite direction.”

“Oh, please,” said Rabbi Dayan. “It would be our privilege and pleasure to drive you.”

“No, no,” insisted the Rosh Yeshiva. “I very much appreciate your offer, but I refuse to take you out of your way!” He opened his wallet to take out money for a taxi.

“Oy, vey! I thought I had money,” he exclaimed. He turned to Rabbi Dayan and asked, “Do you happen to have money that I can borrow?”

“How much do you need?” asked Rabbi Dayan.

“Between the taxi here, the airport, and the taxi home, I’ll need about \$100,” said the Rosh Yeshiva.

“Sorry,” said Rabbi Dayan, “but I only have \$20. My son might have money, though.”

They walked over to the car, where Zvi was waiting. “Do you have \$100 to lend the Rosh Yeshiva?” Rabbi Dayan asked his son.

Zvi took out his wallet and gave the Rosh Yeshiva five \$20 bills. “With pleasure,” he said. “You can return the money to my father next time you see him or send us a check.” He started to get back into the car.

“Wait,” called the Rosh Yeshiva. “I have to give you something.” Zvi looked at the Rosh Yeshiva questioningly.

“I have to write an I.O.U. note that I borrowed \$100,” the Rosh Yeshiva explained.

“It’s quite all right,” exclaimed Zvi. “I trust you completely! There’s no need for that.”

“It might be all right, but it may not be,” said the Rosh Yeshiva with a twinkle in his eye. “It’s certainly preferable, though. Ask your father.”

“Okay,” said Zvi with a puzzled expression.

The Rosh Yeshiva wrote in his handwriting, “I.O.U. \$100,” and signed the note.

It Might be All Right, cont.

“Keep this until I return the money to your father,” he said.

Rabbi Dayan and Zvi got into the car. “That was embarrassing,” said Zvi. “As if I don’t trust him! ‘It might be all right, but it may not be.’ What did the Rosh Yeshiva mean?”

“The Rosh Yeshiva was referring to the halacha that one should not lend without some form of evidence,” explained Rabbi Dayan. “The Gemara (B.M. 75b) states that one who lends money without witnesses violates the prohibition of lifnei iver - causing another to stumble and sin. Rashi (ibid) explains that without witnesses, the borrower will consider denying the loan. The lender also causes damage to his reputation, because if the borrower later denies the loan, people will suspect the lender of claiming falsely.”

“It seems strange to think that the borrower will lie,” said Zvi.

“We do not normally suspect the average person of being a liar,” explained Rabbi Dayan, “but lending without evidence places an unnecessary temptation before the borrower.”

“Clearly, though,” said Zvi, “this applies only to someone who might lie, but not to someone like the Rosh Yeshiva!”

“Not so simple,” replied Rabbi Dayan. “The Gemara relates that Ravina refused to lend to Rav Ashi without a loan document. He explained that Rav Ashi might get so engrossed in his learning that he would forget the loan. The Shulchan Aruch writes that one should not lend without witnesses, a document, or collateral, even to a Torah scholar (C. M. 70:1).”

“Funny,” said Zvi. “I don’t notice people insisting on evidence nowadays.”

“A number of authorities seek to justify the practice of many people not to be careful about this,” his father said. “Aruch Hashulchan suggests that they know and trust one another, and the lender knows that the borrower won’t forget or deny (C.M. 70:1). Others suggest that the halacha is only for one who lends money regularly. Some are lenient for short-term loans or small sums. In the case of a Torah scholar, some explain that Ravina was just being extra cautious.

“Nonetheless, the straightforward ruling of the Gemara and Shulchan Aruch is that one should be careful,” concluded Rabbi Dayan. “That is what the Rosh Yeshiva meant. It is permissible, though, to lend small sums without evidence between relatives or neighbors who do not care if the loan goes unpaid.” 