



Restoring the Primacy of Choshen Mishpat

BUSINESS HALACHA *in the* CLASSROOM

❧ *Bava Metzia* ❧

PEREK VAV

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Fence Value

Bava Metzia 76a - Going Rate

Mr. Sam Braun stood at the back door of his house with another man, surveying the back yard. The man, who had a tape measure in his hands, took measurements along the length and width of the yard. Sam's neighbor, Hillel Farber, sat in the adjacent yard.

"What's going on, Sam?" Hillel called out. "Who is that?"

"We're doing some renovations," answered Sam. "This is the contractor, Tom Green."

"What are you building?" asked Hillel.

"I'm adding a deck in the back of the house and a wooden structure for the kids to play in," Sam answered. "I'm also considering building a wooden fence to separate our two properties. What do you think of that?"

"That's a good idea," said Hillel. "It would also give us more privacy."

"Are you willing to split the cost of the fence?" Sam asked.

"Could be," replied Hillel. "How much will it cost?"

Sam turned to Tom. "What do you expect the fence to cost?"

"In the range of \$2,000 to \$3,000," said Tom. "It depends on the exact measurements and the type of wood we'll use."

"Fair enough," said Hillel. "I'm willing to chip in and pay half."

Sam decided, in the end, to run the wooden fence around most of his property.

When Tom finished the work a month later, Sam said to him: "You remember that my neighbor said he'd split the cost of the fence between the properties? How much was that part of the job?"

"It's worth \$3,000," Tom answered. "Let him pay \$1,500."

Sam told Hillel that the fence cost him \$3,000.

"Can I see the invoice?" asked Hillel.

"The invoice is for the entire job," said Sam. "The part of the fence that we share is not listed separately, but \$3,000 is what Tom told me it's worth."

"If you don't mind," said Hillel, "I'd like to double-check with another contractor about that valuation."

"I don't mind your checking," replied Sam, "but I think we should follow Tom's appraisal anyway, since he did the work."

Fence Value, cont.

Hillel spoke with another contractor who said, “That kind of fence generally runs about \$40 per foot.”

Hillel calculated that the shared part of the fence, which ran 60 feet, came to a total of \$2,400. “Based on what the other contractor told me,” he said, “the fence is worth only \$2,400.”

“Who’s to say that his appraisal is more accurate than Tom’s?” Sam replied. “Anyway, as I said before, Tom did the work.”

“But he didn’t give a clear price beforehand for the shared part of the fence,” argued Hillel. “At this point, his appraisal is no different from anyone else’s. Why should I pay more than it may be worth?”

Sam scratched his head. “Maybe that’s what the other contractor charges, but Tom charges more,” he responded. “I suggest we take this up with Rabbi Dayan.”

“Great idea!” exclaimed Hillel. “I’ve been waiting for a chance to ask him a business halacha question!”

Sam and Hillel met with Rabbi Dayan, who said, “In general, when a person agrees to have a job done and no price is stipulated, if there is a fixed going rate, he must pay that amount (C.M. 331:2).”

“What if there is a price range?” asked Hillel.

“Then he only has to pay the lower end of the range,” answered Rabbi Dayan, “in accordance with the principle ‘hamotzi mei’chavero alav hare’aya’ - the burden of proof is on the plaintiff. This is true even if most people charge a higher price (Ketzos 331:3).”

“But I stipulated a price with the contractor,” objected Sam. “Hillel agreed to reimburse half the price that Tom charged for the fence.”

“That is correct,” said Rabbi Dayan. “Had Tom stated a specific price for the shared fence, Hillel would have to pay whatever it was, even if there might be a cheaper contractor. However, no explicit price for the shared fence was given.”

“Then how do we evaluate it?” asked Sam.

“Since Mr. Farber agreed to the work of this contractor,” said Rabbi Dayan, “Mr. Green should give a clear calculation of his appraisal — according to his billing standard, or as a proportion of the entire fence — and Mr. Farber must pay that (Pischei Choshen, Sechirus 8:[11]).”



Not Publishable

Bava Metzia 76a - Shel Chaveiro

Yanky Schwartz was a regular writer for a noted Jewish magazine. One day, the feature editor, Sam, contacted him.

“We’re running a series on Jewish communal issues,” Sam said. “I’d like you to write an article about violence in Jewish day schools.”

“You’re kidding,” said Yanky. “Is this really an issue?”

“Unfortunately, the phenomenon is more common than you think,” said Sam. “Sometimes the best way to raise communal awareness is through an article on the subject.”

Yanky worked for a month on the article: researching the topic, interviewing principles and students, collating the material, drafting the article, editing and proofing it. He emailed the finished article to Sam, who made some minor revisions and forwarded the article to the senior editor for approval.

The senior editor, however, returned the article with the following comment: “The article is well-written well and 100% correct. However, due to the broad-ranging readership of our magazine and the reputation of the relevant schools, the issue is too sensitive to be addressed in our magazine. Therefore, the article is not publishable.”

Sam forwarded the response to Yanky, apologizing for the inconvenience he caused.

When Yanky received the response, he became irate. “What do you mean?” he wrote back to the senior editor. “I spent a month working on this article, which Sam asked me to write, and now you decide that the topic can’t be published?!”

“Sam can only suggest topics for articles,” the senior editor replied. “However, he is not authorized to make final decisions about what is included for publication.”

“All the same, he is my direct contact,” said Yanky. “I invested lots of time in that article. Whether you choose to publish it or not is your business, but you owe me for the article.”

“I’m sorry for the mistake,” replied the editor, “but you know that our policy is to pay only for articles that are published.”

“But your feature editor was the one who told me to write about this topic,” argued Yanky. “Could we speak with Rabbi Dayan?”

“Sure, great idea,” answered the editor.

Not Publishable, cont.

The two met with Rabbi Dayan, who said, “There are two general models for work. One is the employee model (po’el or kablan), in which the worker is paid for doing the work, whether by the hour or by the job. The other is the customer model, such as one who orders from a baker or carpenter, whereby the customer buys the final product from the worker.”

“What would a journalist who gets paid for his articles be considered?” asked the editor.

“A regular columnist would presumably be similar to an employee, even if he is not paid a regular salary with a W-4, but by the article or word with a 1099-Misc,” answered Rabbi Dayan. “A freelance journalist who submits an occasional article might follow the second model.”

“What is the halacha in these cases?” asked Yanky.

“Halacha addresses both examples,” continued Rabbi Dayan. “If an employer instructs a worker to do something, and the worker does the work, the employer owes him pay even if he gained no benefit from it. For example, if he told the worker to plow a certain field, which turned out to be someone else’s or unowned (hefker) property, the employer is still responsible to ensure the wages (C.M. 335:3; 336:1-3).

“Similarly, if a customer instructs a professional to make something and then refuses to buy it, if the professional is unable to sell it to others, the customer must pay for having caused him damage. Some indicate that this is the full value of work (333:8; SM”A 333:29).

“Therefore, if the feature editor is authorized to request articles from the writers,” concluded Rabbi Dayan, “the magazine would seem responsible to pay for the article, even if the magazine could not benefit from it.”

“But what about the policy of paying for articles only when they are published?” asked the senior editor.

“That would be relevant if the journalist wrote the article of his own accord or did not do a satisfactory job,” responded Rabbi Dayan. “However, if he was instructed to write a certain article and did a satisfactory job, the magazine cannot avoid payment by choosing not to print the article. In the particular instance of journalism, though, there is a fairly accepted minhag hamedina (common commercial practice) to pay a ‘kill fee’ of approximately 50% for solicited articles that remain unpublished.”



Revalued Rental

Bava Metzia 76a - Going Rate

With spring around the corner, the Coopers decided to do extensive gardening and landscaping work on their property. They contracted Hymie Ganz, a professional landscaper, to do the work, which was scheduled to take a full week.

At the end of the second day, satisfied with the work that had been done already, Mr. Cooper paid Hymie a partial payment of \$1,500.

On the third day, Hymie called.

“I won’t be able to come today,” he said to Mr. Cooper. “I hope I can make it tomorrow.”

The following day, however, Hymie called to say that he would not be able to make it again.

“When will you be able to come?” Mr. Cooper asked, somewhat irritated.

“Unfortunately, I can’t say for sure,” Hymie said. “It may not be for another week or two. I have a problem with my assistants, and it’s very difficult to work without them.”

“You’re kidding me,” said Mr. Cooper. “I can’t leave my property like this for another two weeks! My neighbor does gardening; maybe he can finish the job.”

Mr. Cooper called back a few hours later to say, “I arranged with my neighbor to finish the job. Send me a revised bill for the work that you did. My neighbor also asked if he can use the gardening tools that you left here; I’ll pay you their fair rental value.”

“If that’s what you decided, okay,” said Mr. Ganz. “I’ll add the rental value to the bill.”

Hymie made a summary of the work and mailed the bill to Mr. Cooper: \$2,500 for two days’ work, plus \$150 per day for the tools.

When Mr. Cooper received the bill he threw a fit.

“Hymie messed me up, and is asking for so much!?” he exclaimed. “\$1,500 is more than enough for the work he did!”

He responded to Hymie that he felt he had already compensated him fairly, and refused to pay any more.

Hymie summoned Mr. Cooper to a din Torah before Rabbi Tzedek for the remainder of the money. Mr. Cooper, in return, accused Hymie of damaging his sun deck, for which he demanded reimbursement.

Revalued Rental, cont.

At the beis din, Hymie raised the value of the tool rental from \$150 a day to \$200. He submitted a price quote from a rental store, showing that the rental value of the tools was \$250.

Mr. Cooper objected to this increase.

“Hymie already set the price at \$150 per day,” he said. “He can’t raise the price now!”

“Why not?” argued Hymie. “I can even ask for \$250 if I want!”

Rabbi Tzedek ruled, “If the discrepancy is significant, Mr. Ganz still has basis to raise the price to its fair value.”

Rabbi Tzedek then explained. “It is advisable to set a clear price before renting or buying something. If a price was not fixed, but rather set at the ‘fair rental value,’ the renter pays the average going rate. This amount is at least \$200 per day, as Hymie now demands (C.M. 331:3).”


“This would be fine had Hymie billed me for \$200 at the outset,” responded Mr. Cooper. “After he billed me for \$150, though, he established that as the price!”

“If Hymie was not aware of the average going rate,” replied Rabbi Tzedek, “just as there is ona’ah (price fraud) for sales, there is also ona’ah for rentals of tools. If the rent varied significantly from the fair value, the aggrieved party can demand the differential (227:35; SM”A 227:65).”

“But Hymie’s a professional; he probably knew the true rental value,” said Mr. Cooper. “He was willing to forego the amount beyond \$150.”

“First of all, we allow even a professional an ona’ah claim,” said Rabbi Tzedek, “especially one who does not deal with tool rentals on a regular basis (227:14).”

“Furthermore, even if Mr. Ganz did know the true price and knowingly billed you a lower price, there is an additional factor here,” Rabbi Tzedek continued. “Although he charged only \$150 for the tools, he was expecting that you would pay the full bill that he submitted for his labor. However, once you refused to pay the bill, and even submitted a counterclaim, Mr. Ganz can claim that he never intended to forego the full value of the rental under such conditions (see Shach 17:15; Minchas Pitim 17:12).”

“Therefore,” concluded Rabbi Tzedek, “since the rental amount that Mr. Ganz initially billed is significantly less than the average going rate and you refused to pay the remainder of his bill, he can still ask for the full value of the rental.” 

Snow Job, Part I

Bava Metzia 76a - Lo Katzav Sachar

Mr. and Mrs. Winter were spending a lovely Shabbos with their children. “It’s starting to snow again!” exclaimed their granddaughter, Shoshana, during lunch.

The rest of the family looked out the window. “I heard that there might be another storm coming,” said Mr. Winter.

By the time Shabbos was over, there were five inches of snow on the ground. “Snow will continue through the night and will taper off at dawn,” the weatherman reported.

“I guess we’ll stay,” Mrs. Winter announced. “By mid-morning they should have the roads cleaned.”

In the morning, the Winters built snowmen and sledged with the grandchildren. Afterwards, they packed up and headed home.

When the Winters arrived home, they were met with a pleasant surprise. The sidewalk, walkway to the house, and entire length of the driveway had been shoveled!

“Wow!” exclaimed Mr. Winter. “I wonder who did that!”

He pulled into the driveway and unloaded the car. As he opened the door to the house, he saw a note, left by two boys from around the corner: “Since you were away, we shoveled your snow. We charge \$40 for the job. Zvi & David.”

“It was nice of them to shovel,” said Mr. Winter with a huff, “but I never agreed to pay them! Who asked them to shovel?!”

“They did help us,” his wife replied calmly. “Lots of people pay boys to shovel snow.”

“But those people hire them,” Mr. Winter responded. “If the boys do work they weren’t hired to do, how can they ask for payment?”

“You might check with Rabbi Dayan before you decide by yourself,” his wife suggested.

Mr. Winter called Rabbi Dayan and asked whether he had to pay. “There are numerous factors to consider,” said Rabbi Dayan, “but if it is common to hire boys to shovel, they are entitled to charge you in many situations.”

“On what basis?” asked Mr. Winter.

“The Gemara (B.M. 101a) addresses the case of yored l’sdei chaveiro, a person who planted trees in another person’s field,” explained Rabbi Dayan. “If the land owner decides to keep the trees, he has to pay the person who planted them for his efforts. If the field was a’suya lita (suitable for planting trees) the owner has to pay the planter

Snow Job I, cont.

the going rate for such work; if the field was not suitable for trees, the owner has to pay only a minimal amount (C.M. 375:1-2).”

“But why should the owner pay if he didn’t hire the person to plant?” asked Mr. Winter.

“Since the owner received a benefit and financial gain that he would normally pay for, he must pay the planter for providing that benefit,” said Rabbi Dayan. “Furthermore, in a field suitable for planting trees, the planter is considered like an employee (po’el), since the owner is interested in having this work done (Ketzos Hachoshen 246:1; Chazon Ish B.B. 2:6).”

“I can understand this halacha when planting a tree, since the field is now worth more and the owner received a capital gain,” argued Mr. Winter. “But I had no financial gain from having the snow shoveled!”

“Some make this distinction,” said Rabbi Dayan. “Nonetheless, the Rama (C.M. 264:4) extends this law to any person who performs a service that benefits another, even if there is no actual capital gain (see Talmudic Encyclopedia 23:442). He also rejects the possible claim that the job was done as a favor since the person wasn’t instructed to do it.”

“You distinguished between a field that is suitable for planting and one that is not,” said Mr. Winter. “How does this apply to shoveling snow?”

“The sidewalk and the walkway to the house, which everyone needs cleared, are comparable to a field suitable for planting,” replied Rabbi Dayan. “The front part of the driveway and access to the street are also important for most people. The back of the driveway or a path around the side of the house, though, seem comparable to a field not suitable for planting.”

“So I have to pay the going rate for the sidewalk, walkway, and front part of the driveway,” said Mr. Winter. “But prices range from \$30-50!”

“Since there was no price agreement,” responded Rabbi Dayan, “you have to pay only the lower end of the range, \$30 (Tumim 89:8; Rama C.M. 332:4).”

“I still have a question,” said Mr. Winter. “I often shovel myself and would have shoveled when I came home, so why should I pay?”

“If you often shovel yourself, that’s a different story,” said Rabbi Dayan.



Summer Plans

Bava Metzia 76a - Chozer Bo

Mr. Blank worked through the summer, so his family stayed in the city.

“It would be nice to get away to the country at least for a weekend,” his wife suggested.

“Great idea!” Mr. Blank replied. “See if you can find a place.”

Mrs. Blank searched the ad section of the Jewish newspaper.

“Here’s one,” she said. “Summer home available for weekends. Call Mr. Zimmer for details.”

Mr. Blank called Mr. Zimmer. “Is your summer home available for the last weekend in August?”

“It’s available, and it costs \$500 for the weekend,” replied Mr. Zimmer.

“Then we are interested in reserving the house for that weekend,” Mr. Blank said.

“Excellent,” said Mr. Zimmer. “Payment is due when you arrive.”

A week later, Mrs. Blank received a call from her sister. “We’re invited to a bar mitzvah at the end of August,” the sister said. “Our summer home is available that weekend if you’d like to use it.”

“That’s so nice of you!” exclaimed Mrs. Blank. “We actually reserved a summer home for that Shabbos, but if yours is available, that would save us the expense!”

Mrs. Blank turned to her husband. “My sister just offered us her summer home for the last weekend of August,” she said. “Can you call Mr. Zimmer and cancel the reservation?”

Mr. Blank called Mr. Zimmer. “We reserved your summer home for the end of August,” he said, “but we do not need it now and would like to cancel the reservation.”

“But you already confirmed the reservation,” said Mr. Zimmer. “You can’t just back out now — that’s dishonest.”

Mr. Blank was troubled. He saw Rabbi Dayan in shul that evening and asked if it was permissible to cancel the reservation.

“Just as a sale requires an act of acquisition (kinyan) to make it legally binding, so too, a rental agreement requires a kinyan to make it legally binding,” said Rabbi Dayan. “Therefore, although you reserved the bungalow over the phone, since no kinyan or payment was made, you have the legal ability to cancel the reservation.”

Summer Plans, cont.

To prevent this, it is wise for landlords to demand a deposit payment (195:9; 315:1).”

“Words alone mean nothing?!” Mr. Blank asked, astounded.

“Words are meaningful, and a person has a moral obligation to honor his verbal commitments,” replied Rabbi Dayan. “One who does not uphold his word is called mechusar amana, lacking in trustworthiness, and possibly even wicked (204:7).”

“So it is wrong to cancel the reservation?” asked Mr. Blank.


“It would be if you hadn’t received the offer from your sister-in-law,” replied Rabbi Dayan. “There is a dispute whether a verbal commitment is morally binding when there was a change in market conditions. The Rema (204:11) cites both opinions, and favors the opinion that one should not retract even in this case. However, later authorities lean toward the lenient opinion (Pischei Choshen, Kinyanim 1:[5]).

“The Chasam Sofer (C.M. 102) writes,” continued Rabbi Dayan, “that a change of circumstances, when another unit was already received for free, is certainly like a change in market conditions and is not considered a breach of integrity.”

“What if I wasn’t offered the other bungalow for free, but found a better deal?” asked Mr. Blank. “Would that also be considered a change in market conditions?”

“The Sm”a (333:1) indicates that is so,” answered Rabbi Dayan, “but this is questionable unless there was some new development in the market, so one who is scrupulous should be careful (Emek Hamishpat, Sechirus Batim 9).”

“What if Mr. Zimmer had turned away other potential renters meanwhile?” asked Mr. Blank.

“That’s a different story,” replied Rabbi Dayan. “If he turned away other potential renters on your account and cannot find others, this might be considered sufficiently direct damage (garmi) to require compensation, as we find regarding workers (333:2; Sm”a 333:8). On the other hand, it is not actual damage, only lost profit (grama), so it is proper to compromise (see Pischei Choshen, Sechirus 10[10]; Pischei Teshuvah 312:4).” 

Cleaners Confusion

Bava Metzia 76a - Hiring for Another

Yaakov had spent Shabbos at his yeshivah for a few weeks in a row. On Wednesday, he went to the closet and quickly took out his Shabbos suit, which he brought to the cleaners.

The worker entered Yaakov's name and telephone number in the computer.

"It will be ready by 4:00 p.m. tomorrow and will cost \$13," he said, handing Yaakov the receipt.

In the evening, Yaakov's roommate, Elisha, asked him, "Did you see my Shabbos suit? It's missing from the closet!"

"I took my suit to the cleaners," replied Yaakov, "but yours should be there."

"Maybe you took mine by mistake?" suggested Elisha.

Yaakov looked at the suit in the closet.

"You're right!" he exclaimed. "I was rushing, and our suits look similar." He took out the cleaners' ticket and handed it to Elisha.

"You should pay the bill," Elisha said.

"But they cleaned your suit," replied Yaakov. "Why should I pay? You got the benefit from this work, not me."

"I didn't ask them to do the work, though," said Elisha.

"Your suit was dirty, though," said Yaakov. "You've worn it for the past month."

"Still, I wasn't planning on having it cleaned yet," said Elisha. "Anyway, I'm short on cash and don't even have the \$13. I must have the suit back for Shabbos."

"No problem, I can lend you the money," said Yaakov. "You'll pay me back when you can."

"I'm not interested in borrowing," said Elisha. "You brought the suit in; you have the responsibility to pay!"

"But it was a mistake, a mekach ta'us," argued Yaakov. "I didn't realize it was your suit."

"There's no point in arguing," said Elisha. "Rabbi Dayan is still downstairs in the beis medrash; we can ask him."

The two went downstairs.

"If I mistakenly brought Elisha's suit, which was somewhat dirty, to the cleaners instead of my own, who has to pay?" Yaakov asked Rabbi Dayan.

Cleaners Confusion, cont.

“The Gemara (B.M. 76a) addresses the case of a person who hired a laborer for himself, but instructed him to work in his friend’s property instead,” replied Rabbi Dayan. “The one who hired the laborer has to pay him the full salary, since he accepted responsibility for the employment. However, he can then claim reimbursement from his friend for the benefit that he provided him by hiring the laborer (C.M. 336:1).”


“What does ‘the benefit’ mean?” asked Elisha.

“If the work needed to be done anyway, it means the cost of the job. However, if there is a range of costs among laborers, he would only have to pay the lower end of the range, unless the job was clearly of superior quality. Thus, Elisha, if there are other local cleaners who charge only \$10 for comparable work, you would only have to reimburse Yaakov \$10 (see C.M. 332:1).”

“What if I wasn’t planning on cleaning the suit now?” asked Elisha.

“A suit needs a cleaning every so often,” replied Rabbi Dayan. “We would have to estimate the relative benefit of having the suit cleaned already, before you planned to have it done. Even if the suit had no stains, there is still a benefit in having a freshly cleaned and pressed suit, but that would be worth a much smaller sum (see C.M. 375:1-3).”

“Why isn’t this considered a mekach ta’us, though?” asked Yaakov. “The employment agreement was a mistake.”

“Mekach ta’us is when there was some mistake in the nature of the work — e.g. the customer asked for pressing and the store did cleaning — or in the price agreement,” replied Rabbi Dayan. “Here, though, the nature of the work and price were clear, so the customer is responsible to pay the cleaners even if he gained nothing from the work (see C.M. 335:3).” 

Shoveled

Bava Metzia 76a - Hiring for Another

The snow had piled up during the night, covering everything with a beautiful blanket of white.

While Mr. Farber was eating breakfast, Yaakov and Elisha knocked on his door.

“Do you want your snow shoveled?” asked Yaakov.

“No, thank you,” replied Mr. Farber. “I’ll shovel it as soon as I finish eating.”

The two boys turned to go away. “My next-door neighbor, Mr. Schreiber, always wants his snow shoveled,” Mr. Farber called out after them. “He won’t be home until evening, so you should shovel his house and driveway.”

“Thanks,” said Elisha. “We’ll do it now.”

After shoveling for an hour, the boys had cleared the sidewalk and the driveway. When they finished, they knocked again on Mr. Farber’s door.

“We finished shoveling your neighbor’s house,” they said. “That will be \$35.”

“I’ll tell him this evening,” said Mr. Farber. “Leave me your phone numbers.”

“We expected that you would pay us,” Yaakov said. “You told us to shovel his house. We would like our pay today and might not even be around in the evening.”

“I never said that I would pay you,” Mr. Farber protested. “I just told you that Mr. Schreiber always wants his house shoveled.”

“No, you told us to shovel his house and driveway,” argued Elisha. “You gave us the job, so it’s your responsibility to pay! You can work it out with your neighbor when he comes home. There is a mitzvah to pay a worker on the day that he completes the job, and it’s prohibited to delay payment against his will to the following night.”

“That’s only if I’m responsible to pay, though,” countered Mr. Farber. “I’m not convinced that I owe you anything.”

“We just had a similar case in yeshiva,” said Yaakov. “I mistakenly took Elisha’s suit to the cleaners instead of my own. Rabbi Dayan said that since I brought it in, I have to pay the cleaners and can then ask reimbursement from Elisha for the benefit I provided him. It’s the same here.”

“I’m not sure it’s the same,” said Mr. Farber. “I told you outright that it was Mr. Schreiber’s house. Come in; we can call Rabbi Dayan.”

Mr. Farber put the phone on speaker. The boys called Rabbi Dayan and asked, “If Mr. Farber instructed us to shovel his neighbor’s property, must he pay?”

Shoveled, cont.

“A person who instructs someone to work in another’s property is liable only if he assumes responsibility, which can be in one of three ways,” answered Rabbi Dayan. “He would then violate bal talin (the prohibition of withholding salary) if he didn’t pay promptly (C.M. 339:7).”

“What are the three ways?” asked Elisha.

“The classic case,” answered Rabbi Dayan, “is when the person initially employed the worker for himself, and then instructed him — whether intentionally or by mistake — to do work for his neighbor instead (C.M. 336:1).”


“This was the case with the cleaners,” noted Yaakov. “I gave them the suit with the understanding that they were working for me.”

“The second case,” continued Rabbi Dayan, “is when you accept direct responsibility for the salary by saying, ‘I will pay your salary,’ even though the work was being done for someone else.”

“What is the third case?” asked Elisha.

“When the worker was unaware that it was someone else’s property,” answered Rabbi Dayan. “For example, had Mr. Farber simply instructed you to shovel the driveway adjacent to his house — which you assumed to be his but turned out to be his neighbor’s — he would be liable to pay you (Rema 339:7; Sma 336:4).”

“Where does this leave us?” asked Mr. Farber.

“Since you did not assume responsibility for the employment or salary, and the boys knew that this was Mr. Schreiber’s property, you are not required to pay them,” concluded Rabbi Dayan. “When your neighbor comes home, he should pay them the going rate for such work, since he is generally interested in having his property shoveled (C.M. 375:1). You may have a responsibility to help them collect payment, though, if necessary (Pischei Choshen, Sechirus 8:[84]).” 

Canceled Cab

Bava Metzia 76b - Chazaras Ba'al Habayis

Tuvia answered his cellphone, "Hello! Tuvia's Taxi Service."

"Good morning Tuvia," said Mr. Gluck. "Can you pick up my brother from the airport tomorrow at 7 AM?"

Tuvia checked his schedule. "I have something at 9, but am available at 7," he said, "It costs \$40. Should I put you down?"

"Yes, please," said Mr. Gluck.

No sooner had Mr. Gluck hung up, when another person called. "Are you available to take me to the city tomorrow morning at 7?"

"Sorry," said Tuvia, "but I just booked someone else then."

At 8:30 PM, Mr. Gluck called again. "Good evening, Tuvia," he said. "I'm sorry for disturbing you."

"That's OK," said Tuvia. "We're set for tomorrow at 7. Right?"

"Actually," said Mr. Gluck, "My neighbor has to pick up his son anyway from the same flight as my brother. Is it OK if I cancel?"

"It's actually a problem," said Tuvia. "After you booked, another person asked me to drive him at 7, and I had to turn him down."

"Maybe he still needs a ride?" suggested Mr. Gluck hopefully.

"I'll check," said Tuvia, "but at this point it's not likely."

Tuvia tried the other person, but he had made alternate arrangements. He called Mr. Gluck back: "He made other arrangements, and at 8:30 in the evening, it's not likely that anyone else will call."

"Well, there's no point in your going to the airport," said Mr. Gluck. "It's just a waste of time and gas."

"That's true," said Tuvia. "But what do you expect me to do? I gave up a potential job for this. You're causing me to lose \$40!"

"I'm not sure what to do about the money," said Mr. Gluck. "But don't waste your time going." He hung up.

Tuvia turned to his wife. "People think they can just book and cancel at whim! I'd like to hear what Rabbi Dayan has to say about this."

Tuvia asked Mr. Gluck to meet with Rabbi Dayan and discuss the issue.

"Does Mr. Gluck have to pay me the \$40?" Tuvia asked.

Canceled Cab, cont.

“In general, if a person hires a worker with a verbal agreement and retracts before the worker begins the job, the worker does not have a monetary claim,” replied Rabbi Dayan. “However, he can have tar’umos (gripes) against the person for having caused him extra effort to find alternate work. Therefore, it is not ethical to retract without good cause. If alternate work is readily available, though, the worker does not even have gripes (Choshen Mishpat, SM”A, Shach, and Aruch Hashulchan 333:1).

“But it’s not fair here,” protested Tuvia. “I was not able to find an alternate job for that time.”

“I was getting to that,” said Rabbi Dayan. “The person is only exempt if the worker can find an alternate job, albeit with some effort, or if the worker had no other potential job. However, if the worker could have taken another job earlier and now he cannot find one, it is considered a davar ha’aved (loss) for the worker, and the person has to pay him for having caused that loss (C.M. 333:2).”


“It’s not fair that I should have to pay \$40, though,” argued Mr. Gluck. “Although Tuvia lost the job and the \$40, he did not have to pay for gas; he did not have to get up early, spend time driving there and back, or sit in traffic. He had the morning off.”

“That’s true,” acknowledged Tuvia, “but still, I lost out.”

“Mr. Gluck obviously does not have to pay for gas,” Rabbi Dayan said. “Furthermore, a worker will often be willing to accept partial salary and have free time. Therefore, he does not have to pay Tuvia the full price for his labor, but rather as a poel batel (idle worker), which means the amount a worker would be willing to accept to have the time free. This is typically evaluated at half the wages, although it depends on the difficulty and pay scale of the work (Taz C.M. 333:1; Pischei Choshen, Sechirus 10(10)).

“Therefore,” Rabbi Dayan concluded, “if Tuvia’s usual fare to the airport is \$40, which includes \$10 for gas, Mr. Gluck has to pay \$15.”

“What would be in a different case?” asked Mr. Gluck, “Let’s say that that the plane was significantly delayed or diverted.”

“If you had to cancel for reasons beyond your control and were responsible about notifying the worker promptly,” replied Rabbi Dayan, “you do not have to pay, even if the worker lost out on alternate work or went already (C.M. 333:2).” 

Just Leave!

Bava Metzia 76b - Chazaras Ba'al Habayis

Mr. Hauser had hired Mr. Cooper to redo the siding of his house before the winter. When the completion of the work got delayed time after time, Mr. Hauser became upset. To make matters worse, Mr. Cooper insisted on certain advance payments. Mr. Hauser was not happy about this, but agreed in order to get the job finished.

Toward the very end of the job, Mr. Cooper announced that he needed a three-day break.

Mr. Hauser threw a fit. "You're doing it again!" he yelled.

"I need time to take care of certain pressing family matters," Mr. Cooper explained, but to no avail.

"Forget the rest of the job!" screamed Mr. Hauser angrily. "Just leave, and I'll finish the job myself!"

Mr. Cooper gathered his equipment and left.

Three days later, Mr. Hauser called. "I apologize for blowing up," he said to Mr. Cooper. "Please come finish the job."

"You already told me to leave," replied Mr. Cooper. "I'm not interested in finishing."

"But you're still bound by contract to finish the job," said Mr. Hauser.

"No, I'm not," said Mr. Cooper. "When you told me to leave and said that you'd finish the job yourself, you released me from my obligation."

"I never formally dissolved the contract," said Mr. Hauser. "I was just venting my anger."

"Doesn't make a difference," Mr. Cooper said. "You told me to leave. I'm out!"

"I'll sue you for breach of contract," threatened Mr. Hauser. "Anyway, I gave you advance payment. If you're not finishing the job, return the money."

"I will not," replied Mr. Cooper. "I was willing to finish the job, and you kicked me out. If you decided to forgo the rest of the work, that's your problem!"

"You know that I never meant to forgo my legal rights!" said Mr. Hauser. "You're bound by signed contract, and now you expect not to finish the job and to keep the money!"

"All I know is that you told me to leave," said Mr. Cooper. "We can take it up with Rabbi Tzedek if you want."

Just Leave, cont.

The two went to Rabbi Tzedek.

“A worker whose employer told him, ‘Leave!’ may do so, even if he has a binding commitment,” said Rabbi Tzedek. “According to the Shach, he does not even have to return advance payments, while others question this point (Pischei Teshuvah 333:16). However, if the employer said to leave as an expression of anger, some say that the worker is not released from his commitment, since a statement made in a rage is usually not meant sincerely (Rama, C.M. 333:8).


“Some question this ruling from the institution of get mekushar, though,” continued Rabbi Tzedek. “Our Sages instituted a specially-made get (divorce document) for priests, who are not allowed to remarry their divorcees. A kohen might want to divorce his wife in a fit of rage; the special get required extra time to write, affording him time to calm down (B.B. 160b). This indicates that even an action done in a state of anger would be legally valid.”

“How would the Rema answer this?” asked Mr. Hauser.

“If the person took action in the presence of beis din or witnesses, we cannot disregard his action on account of his anger,” answered Rabbi Tzedek. “If he merely made a remark in his anger, though, his statement to forgo does not carry legal meaning (Pischei Teshuvah 333:17).”

“So Mr. Cooper has to finish, since I simply said ‘Leave’ in a fit of anger?” asked Mr. Hauser.

“Many authorities concur with the Rema, but this law is always cited as ‘some say,’ implying that it is not universally agreed upon,” replied Rabbi Tzedek. “As such, following the rule of hamotzi meichavero alav hare’ayah, it is not possible to obligate Mr. Cooper. It is proper, though, to reach a compromise in this case.”

“Some also limit the Rema’s ruling to statements such as, ‘Leave,’” added Rabbi Tzedek, “but not to an explicit statement of forgoing, even if expressed in anger (Rabbi Akiva Eiger, New Responsa, C.M. #5).” 

Lost Lessons

Bava Metzia 76b - Chazaras Ba'al HaBayis

Mr. Hirsch taught Hebrew at the local Jewish day school. In addition, he gave bar mitzvah lessons and tutored neighborhood boys in Jewish studies in the evenings.

Tonight he was booked solid from 6:30 to 9:45 PM, with two lessons at his house and a third in a nearby neighborhood. Thus, when Mrs. Blum asked if he could tutor her son in the evening, Mr. Hirsch had to decline.

At 6:30, Mr. Hirsch settled down for the first lesson. Yaakov was usually prompt, so when he hadn't arrived ten minutes later, Mr. Hirsch called to find out what was happening.

"Oh, I'm sorry," said Yaakov. "I have a bad case of strep. I've been in bed all week and completely forgot about the lesson."

Mr. Hirsch wished him well. He usually looked forward to tutoring, but tonight he had papers to grade and didn't mind some extra time.

Shortly afterwards, Shlomo called. "Hi, Mr. Hirsch. I'm supposed to have a lesson at 7:30, but my friends are getting together tonight. I'll see you next week." He hung up before Mr. Hirsch had a chance to respond.

"He could use a little lesson in responsibility and derech eretz," Mr. Hirsch mused. He immediately notified Mrs. Blum that he now had time available, but she had already arranged with another tutor.

At 8:30, Mr. Hirsch got into his car for the final lesson at Yechiel's house. While driving, his cell phone rang. "Hello, this is Yechiel's mother. I apologize, but Yechiel would prefer not to meet tonight. My brother came over with his kids and Yechiel hasn't seen them in a while. I hope you haven't left yet."

"As a matter of fact, I'm almost at your house," said Mr. Hirsch. "Is there a chance Yechiel would be willing to learn?"

"I don't think so," said his mother. "He's quite close with his cousins."

Mr. Hirsch turned around and drove home. He was glad to finish grading the papers, but the loss of all three lessons amounted to a considerable sum. It was particularly annoying because he could have tutored Mrs. Blum's son had he known ahead of time. Furthermore, he had driven ten minutes to Yechiel before the call came in. Couldn't people notify him earlier?! He began to wonder whether he was owed pay for any of the missed lessons.

Lost Lessons, cont.

The following night, Mr. Hirsch met Rabbi Dayan at a bar mitzvah. He described the frustrating evening and inquired whether he was entitled to any pay for the lost lessons.

Rabbi Dayan thought for a moment. “It’s fascinating!” he replied. “Your three scenarios parallel three different halachos. The first boy, Yaakov, was sick and unable to come for the lesson. Since he was forced to cancel the appointment he owes you nothing (C.M. 333:1).”

“What about the second boy, Shlomo?” asked Mr. Hirsch. “He could have come for his lesson, but decided to go out with his friends instead.”

“In this situation, it depends whether you were caused a loss by the cancellation,” responded Rabbi Dayan. “Here you turned away Mrs. Blum’s son on account of the expected lesson, so Shlomo owes you for the cancellation. However, since you did not have to spend the time tutoring and had free time to mark your papers, he does not owe you the full amount of the lesson. We call this k’poel batel, like an idle worker, which is approximately half the amount (C.M. 333:2 and Taz).”

“Then I suppose the last boy, Yechiel, doesn’t owe me,” said Mr. Hirsch, “since he didn’t cause me a loss.”

“Actually, he does owe you, since you had already set out to his house,” replied Rabbi Dayan. “This is considered by many poskim as having started the job (SM”A 333:6; Shach 333:7). Once a worker begins, the employer owes him compensation for cancelling willingly, even if it did not cause a loss. Once again, though, since you had the remainder of the evening free to finish grading the papers, he does not owe the full amount. He owes for whatever part of the job was done, and for the remainder k’poel batel.”

“I guess that means I can ask Shlomo for half payment and Yechiel for slightly more,” concluded Mr. Hirsch.

“Correct,” said Rabbi Dayan. “Nonetheless, if there is a clear local practice or stated agreement otherwise, that would supersede these default halachos. For example, many health practitioners have defined rules about notification and cancellation of appointments. Whoever makes an appointment with them does so with that understanding.”



Refurbish or Retract?

Bava Metzia 76b - Chazaras Ba'al HaBayis

Mr. Bloom was still using the tefillin from his bar mitzvah, even though he had already turned fifty. His father had invested in good-quality, mehudar tefillin. When Mr. Bloom looked at them recently, though, he noticed that the paint was beginning to chip and wear off, the corners were no longer pointy, the four sections of the shel rosh were separating slightly, and the base of the tefillin was starting to warp.

Mr. Bloom took them to his Rabbi to ask if they were still kosher.

“They are still usable,” said his Rabbi, “but you should consider refurbishing them or getting new ones.”

“Can they really be refurbished?” asked Mr. Bloom.

“Yes,” replied his Rabbi. “A sofer (scribe) who deals with batim can do a full overhaul of the tefillin: sharpening the corners, tightening and straightening the squares, and redoing the paint job.”

Mr. Bloom brought the tefillin to his local sofer, Rabbi Stam.

“I can do a full refurbishing for \$200,” Rabbi Stam said. “Or, if you prefer, you can buy new batim for about \$350. Think about it.”

Mr. Bloom considered the issue. He decided that he would keep his original pair of tefillin and have them refurbished.

“I’d like you to refurbish the tefillin,” Mr. Bloom said to Rabbi Stam.

The following day, Mr. Bloom was talking to another sofer. “I can get you high-quality batim for about \$275,” the other sofer said. “I think they will last longer than refurbished old ones.”

“But I already gave my tefillin to Rabbi Stam to be refurbished,” said Mr. Bloom. “Can I change my mind now, after giving them to him?”

“That I don’t know,” said the sofer. “You can ask Rabbi Dayan, though. He should be able to answer that question. I’ll give you his number.”

Mr. Bloom called Rabbi Dayan and asked: “If I gave my tefillin to Rabbi Stam to be refurbished, may I retract my decision and cancel the job? Does it make a difference whether he started working or not?”

“There are many rules about an employer and worker, when one of them wants to pull out of the agreement,” said Rabbi Dayan. “There is also a difference between a salaried employee, called a po’el, and one who gets paid for the job, called a kablán

Refurbish or Retract, cont.

or uman (C.M.333:1 ff.)”

“What would our case be considered?” asked Mr. Bloom.

“Since you agreed to pay Rabbi Stam a flat fee of \$200 for the job,” answered Rabbi Dayan, “he is considered a kablan.”


“So what is the rule of a kablan?” asked Mr. Bloom.

“There is a dispute whether a kinyan with a kablan obligates him to do the job, even if he is willing to bear the monetary consequences of a change of mind,” explained Rabbi Dayan. “The Shach (333:2,4) rules that it does, although the SM”A (333:16) maintains otherwise (see Rabi Akiva Eiger 333:1).”

“Where is there a kinyan here, though?” asked Mr. Bloom.

“The Ritva (B.M. 76b) writes that if the worker took the item that he is to work on, that constitutes a kinyan, like any other kinyan meshichah, so that the owner cannot cancel the job,” replied Rabbi Dayan. “The Mordechai, however, indicates that the owner can still change his mind, with subsequent monetary consequences if the worker has already begun, or if he gave up other opportunities on account of this job (see Machaneh Ephraim, Hil. Sechirus Po’alim #6; Pischei Choshen, Sechirus 7:2, 13:2).”

“How do we rule?” asked Mr. Bloom.

“The Ritva’s position is generally not accepted,” said Rabbi Dayan. “So long as Rabbi Stam hasn’t started working yet, the owner has the legal option to retract, although it would often be morally improper (mechusar amanah). (See Chazon Ish, B.K. 23:26; P.C., Sechirus 7:[8].) However, if you pre-paid Rabbi Stam, this creates a greater commitment (Nesivos 333:1). Rabbi Stam would be entitled to withhold the entire amount that you paid him and insist that he be allowed to complete the job, also on account of the Ritva’s position.” 

Deli Dilemma

Bava Metzia 76b - Halchu Chamaram

"Mazal Tov!" Ezra Green announced to his brother, Moshe, before Shabbos. "We had a baby boy this afternoon at 2:36."

"How wonderful! That means..." Moshe responded with a pause, "IY"H the bris will be on Rosh Hashana?"

"That's right," said Ezra. "It's a three-day Yom Tov, but we'd love to have the immediate family."

As it turned out, even "immediate family" was a small crowd and came to a total of thirty.

"How are we going to handle this?" Mrs. Green asked her husband when she returned from the hospital. "Thirty people for seven meals means 210 servings!"

"I ordered eight deli platters from the local deli," said her husband. "I also spoke with the family and everyone will bring something. Your sister agreed to coordinate the food."

The night before Rosh Hashana, Mrs. Green was talking with her sister. "The food's all arranged," said her sister. "Mommy is making three roasts and rice, Ezra's mother is making chicken and kugels, Moshe already bought deli platters..."

"Wait," said Mrs. Green. "I think Ezra ordered deli platters from the local deli."

"Tell him to cancel, then," said her sister. "Moshe can't return his anymore."

Ezra called the deli store in the morning. "Someone else already bought deli platters for us," he explained. "I'd like to cancel our order."

"I already prepared your platters," said the deli owner. "What am I going to do with them now? If you don't take them, they will not be fresh after Yom Tov. "

"Can you sell them?" suggested Mr. Green.

"I doubt it," said the deli owner. "I prepared extra for Rosh Hashana, in addition to your order."

"I'm really sorry, but I can't deal with this now," said Mr. Green. "We're having loads of guests and the house is nowhere in order."

"All right, mazal tov," said the deli owner graciously. "I'll hold the platters and sell what I can. I suggest we meet with Rabbi Tzedek after Rosh Hashana regarding the order."

"Fine," said Mr. Green. "Shana tova!"

Deli Dilemma, cont.

The following week, Mr. Green and the deli owner sat down with Rabbi Tzedek and asked whether he had to pay for the order.

Rabbi Tzedek ruled: "If the deli owner was not able to sell the platters and suffered a loss, you must pay him for them (C.M. 333:8)."

Rabbi Tzedek then elaborated, "This ruling might seem obvious, but its rationale is fascinating. Although a worker who completed his job faithfully must be paid fully, whether the employer benefited from the work or not (335:3; 336:1), the deli owner was not hired or contracted to do labor. There was only an agreement to buy his finished product, the deli platters (Nesivos 333:15).

"Moreover, this agreement was only verbal; no act of acquisition was made on the platters, and money hadn't been given yet. The platters still belong to the deli. While generally a person should honor even his verbal commitments, this is not sufficient basis to obligate you to pay if there is truly no longer a need (204:7,11; Chasam Sofer C.M. #102). Why, then, must you pay?

"The Rosh (Respona #104:6) bases this ruling on *dina d'garmi*, the requirement to pay for directly caused damage. Since you instructed the deli owner to prepare the platters, and he invested his time, effort and materials based on your words, you are considered as having caused him damage if he cannot sell them.

"Thus, the obligation to pay is not based on salary or sale, but on damage. What emerges, therefore, is that if the deli owner can sell the platters to someone else without a loss, he has no claim against you. Similarly, if he can sell the platters for a reduced price, he can claim only the difference. According to SM"A (333:29), this is true even if it would entail some effort on his part.

"Furthermore, if you cancelled the order for reasons beyond your control, such as if the baby unexpectedly became yellow or got sick and the bris was delayed, you would not be obligated to pay for the deli platters.

"However, if the store has a defined cancellation policy for orders, or if there is a clear *minhag hamedina* (common commercial practice) otherwise, it would be binding, as with any other monetary agreement."

Mr. Green pulled out his checkbook and began to write. 

The Pizza Predicament

Bava Metzia 76b - Halchu Chamarim

The Pfeifer family had finally finished putting away their Pesach dishes. “Thanks for all the help,” Mrs. Pfeifer said to her family.

“How about ordering pizza as a treat?” suggested the children.

“I think you deserve it,” said Mrs. Pfeifer. She turned to her husband. “Pinchas, could you please call the pizza store and ask them to deliver two pizzas?”

Mr. Pfeifer dialed the pizza store. “I’d like to order two pies with olive topping,” he said.

“When would you like it?” asked the man in the pizza store.

“In fifteen minutes,” said Mr. Pfeifer.

“You’ll come pick it up?” asked the man.

“No, I’d like it delivered,” said Mr. Pfeifer. “I don’t have a car available.”

“Give me your address and phone number,” said the man.

Mr. Pfeifer gave his information.

“We are extremely busy now,” said the man, “so I can’t promise delivery. I’ll send it if a delivery boy becomes available.”

“How will I know--” Mr. Pfeifer began to say, but the man had already hung up.

“Abba, will they bring the pizza?” asked the children.

“I’m not sure,” replied Mr. Pfeifer. “They couldn’t promise delivery; they’ll send it if someone becomes available.”

Fifteen minutes later, Mrs. Pfeifer turned to her husband. “Pinchas, the kids need to eat. We can’t wait half an hour to find out that they can’t deliver, and then order from elsewhere,” she said.

Mr. Pfeifer tried calling the store, but the line was busy. After a few more unsuccessful tries, he exclaimed, “It’s a wonder I got through the first time. All I get now is busy, busy, busy...”

After half an hour, Mrs. Pfeifer said, “This is ridiculous. We still don’t know if they will be able to deliver the pizza. Try one more time, and if they don’t answer, we’ll have to order from the other store.”

Mr. Pfeifer tried again, but the phone was still busy. “That’s it,” Mrs. Pfeifer declared. “We can’t wait any longer. Please call the other store.”

Mr. Pfeifer called the other pizza shop. “I’d like pizza delivered,” he said. “Can you

The Pizza Predicament, cont.

bring it in ten minutes?”

“Sure,” said the man. “What would you like to order?”

“Two pizzas with olive topping,” Mr. Pfeifer said. He gave his address.

Ten minutes later, one of the kids called out excitedly, “The pizza scooter’s here!”

The doorbell rang. Mr. Pfeifer went to the door and saw the delivery boy from the first pizza store! “Sorry for the delay,” said the delivery boy. “We’ve been extremely busy.”

Mr. Pfeifer stood there dumbfounded, deliberating what to do. Meanwhile a second scooter arrived. “Here’s your pizza order,” said the second delivery boy, eyeing the first scooter with suspicion.

“Hold on a second,” said Mr. Pfeifer. “I’m going to get money.” He entered the house, whipped out his cell phone, and called Rabbi Tzedek. He quickly explained what had happened and asked, “Do I buy the first pizzas, the second pizzas, or do I have to take all?”

Rabbi Tzedek ruled: “You are not required to accept the pizza from the first store, even if it was a special order.”

After Mr. Pfeifer dealt with the delivery boys, Rabbi Tzedek explained, “If a person places an order to make pizza and then buys from elsewhere, he is obligated to cover the store’s loss if they cannot sell the pizza to another customer. If they can sell it to another customer, he is not legally obligated (Choshen Mishpat 333:8). Nonetheless, there is a moral obligation not to cancel an order unnecessarily (C. M. 204:7).

“However, all this applies when the order is concluded. A person is under no moral obligation to honor an agreement to purchase if the price hasn’t been settled yet (C.M. 204:6). Presumably, this applies also if other terms of the sale haven’t been finalized (Pischei Choshen, Kinyanim 1:2).

“In this case, you explicitly stated that you could not pick up the pizza; you placed the order on condition that it would be delivered. Since the pizza store could not commit to delivering it, the order is not considered to be concluded. The store should have called to notify you that they could deliver the pizza and to confirm the order.

“Furthermore, even had the store committed to deliver the pizza from the beginning, if the delivery was delayed significantly, you are entitled to order from elsewhere and cancel the first order [see Pischei Choshen, Sechirus 10(5)].” 

Rained Out

Bava Metzia 76b - Unnecessary Rental

Springville Yeshiva Elementary (S.Y.E.) was finishing the school year. Their principal, Rabbi Rubin, had rented the premises of nearby Sunshine Day Camp for a day of sports activities. There would be a basketball tournament, volleyball matches and the annual softball game. To secure the grounds, S.Y.E. arranged with the camp a month ahead, and paid an advance payment of \$500.

The morning before the event, Rabbi Rubin listened to the weather report: "Showers expected tomorrow afternoon..." He consulted with the school's activities coordinator.

"I hate to cancel the event," she said. "The kids look forward to it for weeks! Anyway, it's not supposed to rain until the afternoon. I suggest we leave it meanwhile, but please make arrangements with the JCC to use their indoor facilities if needed."

By late afternoon, however, the weatherman reported: "Rain expected throughout the day tomorrow..."

Rabbi Rubin sighed, "Another rained-out event." He confirmed with the JCC, and called Sunshine to cancel. He then sent them an official letter requesting a refund of the advance payment, since the event had been cancelled for reasons beyond their control.

A week later, though, S.Y.E. received a bill from Sunshine for the remaining \$1,000. Rabbi Rubin immediately called Mr. Meyers, Sunshine's director, to verify that the bill was issued by mistake. Mr. Meyers, however, insisted that there was no mistake. They had signed a rental contract of \$1,500 for the grounds, and the rain was not his fault either. Furthermore, after renting to S.Y.E., the camp had to turn away several requests for the grounds by other parties.

Rabbi Rubin had expected the advance payment to be returned, but instead he was being asked to pay the remainder! He called Rabbi Dayan.

Rabbi Dayan heard the story and said, "The Gemara in Bava Metzia (76b-77a) discusses two cases that can serve as paradigms. In one, someone hired workers to dig ditches in his field the next day, but it rained heavily overnight, making the field too muddy to dig. In the other, someone hired workers to divert water from the river to his field but it rained overnight, rendering the job superfluous. When the workers arrived in the morning, they claimed their wages anyway, since it was now too late

Rained Out, cont.

to employ themselves elsewhere."

"What is the halacha in these two cases?" Rabbi Rubin asked.


"Rava ruled that the employer doesn't have to pay them, since the job had to be cancelled because of circumstances beyond his control, and both parties were equally aware of the possibility of rain. The workers should have realized that there was no point in coming, If they expected payment even in the case of rain, it was their responsibility to stipulate that in advance."

Rabbi Dayan concluded: "Most poskim compare renting a property to hiring workers (C.M. 312:17, 334:1). They discuss a case in which uncontrollable circumstances render a rental impossible, e.g., the house collapsed or the renter died. The renter or his heirs do not have to pay for the unused part of the rental, unless there is a prevalent local practice otherwise. Thus, in the absence of a clear practice, you do not have to pay the \$1,000, since you were unable to use the camp grounds for reasons beyond your control. In the future, though, it would be best to specify this in the contract."

"What about refunding the \$500 advance payment?" asked Rabbi Rubin.

"That is a complicated issue," replied Rabbi Dayan. "It involves an intricate case in the Gemara (79a-b) about a shipping boat that sank en route. There are also many specific considerations: the amount and nature of the advance payment, the prevalent local practice, the likelihood that other renters would have sufficed with indoor facilities, and the degree to which the grounds became muddy and unusable. The question cannot be answered properly without hearing both sides of the story and investigating the issue thoroughly."

"So what should I do now?" asked Rabbi Rubin.

"Try to work things out with Mr. Meyers," answered Rabbi Dayan. "I recommend that you forego the advance payment or that they give you vouchers for it. If you and Mr. Meyers cannot reach a mutually satisfying arrangement, you should go together for a professional rabbinic consultation or turn to a beis din to adjudicate the matter." 

Backup at the Bridge

Bava Metzia 77a - Unneeded Work

Harry called Sholom's Car Service. "I've got a flight tonight at 11:30 PM," he said to Sholom. "Can you take me to the airport?"

"Yes," said Sholom. "When should I pick you up?"

"8:00 should be fine," Harry said. "The drive is under an hour, leaving me two and a half hours before the flight."

At 8:00, Sholom arrived. Harry loaded his suitcases and got in the car.

As they headed towards the airport, Sholom listened to the traffic report.

"No particular problems," he said to Harry.

On the entrance ramp for the bridge, however, traffic suddenly came to a total standstill.

"You spoke too soon," said Harry. "What happened?"

Sholom turned the radio on. "The bridge has been closed due to a fatal accident involving four cars," the reporter announced.

It took a full hour for traffic to start moving. Even then, cars crawled slowly through the one open lane.

Harry looked at his watch nervously. "I hope I can still make the flight," he said.

It was another hour before traffic began flowing smoothly. Sholom raced to the airport and got there at 10:45.

"There's still a chance I can catch the flight!" Harry said.

Sholom helped Harry unload his luggage. "I'll wait here half an hour," he said. "If you missed the flight, call me and I'll drive you home."

Harry went made his way to the departures area. He located his flight, but the check-in desk was already closed.

Harry found one of the airline personnel. "I'm scheduled for the 11:30 PM flight," he said. "Is there a way to get inside?"

"I'm sorry," he said. "The flight was already filled and boarding is underway. You'll have to reschedule."

Harry called Sholom. "I missed the flight," he said. "I'll have to head home with you."

Sholom pulled up two minutes later. He loaded the bags back into the car and drove back.

Backup at the Bridge, cont.

When they arrived, Sholom said, “That will be another \$50 for the return drive.” Harry looked up, surprised. “You didn’t tell me that this would also cost me.”

“You paid me just for the drive there, which took much longer than expected,” Sholom said. “Wouldn’t you have to pay for a taxi home?”

“But you had to return anyway,” seethed Harry. “If anything, you should refund the money for the ride to the airport; you didn’t get me there in time for the flight!”

“It’s not my fault that the bridge got closed,” said Sholom. “I picked you up on time and drove as best I could.”

“Well, it’s not my fault either,” said Harry. “I’m not paying another penny without consulting Rabbi Dayan about both rides tomorrow.”

The following day, Harry and Sholom went to Rabbi Dayan and asked about payment for the rides.


“When someone completes his job faithfully, you must pay him in full, even if no benefit comes from the work,” Rabbi Dayan said. “For example, if a person ordered a delivery of medicine for a critically ill patient, and the person died or recovered meanwhile, the driver must be paid. Therefore, Harry must pay for the ride to the airport even though he missed the flight (C.M. 335:3).”

“What about payment for the return ride?” asked Harry. “Sholom offered to drive me back. He never said that he would charge me. I assumed that he meant it as a courtesy.”

“When a person, especially a professional, offers his services to another, we do not assume that he meant to do it for free, unless circumstances clearly indicate so (Rama 264:4),” said Rabbi Dayan. “Therefore, if Sholom did not indicate that he intended to drive you as a courtesy, he can charge you for the return trip.”

“But Sholom had to return anyway; it cost him nothing,” argued Harry. “Isn’t this a case of zeh neheneh v’zeh lo cha’ser (this one gained and the other didn’t lose), for which one is exempt?”

“The exemption of zeh neheneh v’zeh lo cha’ser doesn’t apply here for a few reasons,” explained Rabbi Dayan. “First of all, Sholom drove you with the intention of getting paid. Second, he could have picked up another passenger on the way home, were you not with him. Third, he had to wait for half an hour and also drove you to your door; if there is even a small additional loss or cost, you have to pay the full amount for the benefit you received (363:6-7).”

Harry took out \$50 and gave it to Sholom. 

Postdated

Bava Metzia 77a - Man Deogir

“I saw an advertisement for group swimming lessons during the summer,” Mr. Leiner said to his wife. “I think it would be good for our Pinchas.”

Mrs. Leiner called the swim instructor, Boruch, and asked how much the lessons were.

“It’s \$600 for a series of twelve lessons,” he said.

“Can I break it into two payments?” asked Mrs. Leiner.

“You can give me two checks,” replied Boruch, “one for this month and one for next.”

Pinchas returned from the first two lessons in good spirits. On the morning of the third lesson, Pinchas fell off his bicycle and twisted his ankle. An X-ray confirmed that the leg was fractured; the doctor put a cast on the leg.

Mr. Leiner called Boruch and notified him that Pinchas would not attend the swimming lessons anymore.

“He had a bicycle accident and broke his leg,” said Mr. Leiner. “He’ll be wearing a cast for the remainder of the lessons.”

“Obviously, if he has a cast he can’t come,” said Boruch. “Refuah sheleima!”

“About the payment...” asked Mr. Leiner. “We paid for the whole series, but he participated in only a few lessons.”

“I don’t charge by the lesson,” said the instructor. “Payment is for the entire series, and I’m continuing to teach.”

“But if Pinchas is not attending, I shouldn’t have to pay,” said Mr. Leiner. “If I have to, I’ll stop the second check.”

“I don’t think that’s right of you,” replied Boruch.

“I don’t think it’s right of you not to refund payment for all the remaining lessons,” retorted Mr. Leiner.

“I suggest we pose the issue to Rabbi Dayan,” Boruch said. “Whatever he says – I’ll do.”

Mr. Leiner arranged to meet with Rabbi Dayan and asked: “Does Boruch have to refund the money for the remaining lessons? What about the second check?”

“If an employer is forced to retract for medical reasons, he has to pay only for the work done,” explained Rabbi Dayan. “Thus, Mr. Leiner does not have to pay for the

Postdated, cont.


remaining lessons, unless stipulated otherwise or there is a common practice in this regard (C.M. 334:4).”

“So does Boruch have to refund the money for all the remaining lessons?” asked Mr. Leiner.

“No, because the rule is different where the money was prepaid,” continued Rabbi Dayan. “In this case, so long as the worker is able to continue providing the service, he does not have to refund the money, even if the employer was forced to cancel the service for medical reasons.

“Tosafos (B.M. 79b, s.v. “e atoh”) explains that by paying up front, the employer undertook the risk that something might happen and gave the worker the money even if he will cancel his service. Thus, Boruch does not have to refund the money from the first check (see Pischei Teshuvah 334:2). It would be meritorious — lifnim mishuras hadin, though, to refund the money if he didn’t have to turn away others because of limited space.”

“What about the second check?” asked Mr. Leiner.

“Technically, a check is not payment, but rather instructions to the bank to pay to the bearer,” replied Rabbi Dayan. “Even if we consider a check like payment – since this is a common form of payment nowadays – Tosafos’ logic does not apply to a postdated check. The fact that it was postdated indicates that the employer is not willing to risk giving all the money up front. Thus, Mr. Leiner can stop the postdated check or demand it back for the unused lessons (Rabbi Zvi Spitz, *Minchas Zvi*, vol. II, p. 61-62, 76).” 

Dishonest Discount

Bava Metzia 78a - Da'as Ba'al HaBayis

As Avrumi perused the signs on the bulletin board of his yeshiva (school), he saw a new sign posted by the office: “We have arranged a 10-percent discount for our talmidim (students) at the local sefarim (Jewish book) store, Olam HaSefarim. Please register at the store to get your discount card.”

A few weeks later, Avrumi showed some sefarim that he had bought to his cousin Ruby, who was visiting from another town.

“They look like wonderful sefarim,” Ruby said. “How much do they cost?”

“The set regularly costs \$50,” said Avrumi. “Our yeshivah is entitled to a 10-percent discount at Olam HaSefarim, though, so it cost me only \$45.”

“That’s great,” said Ruby. “Can you pick up a set for me? I’ll give you \$45.”

“I’m not sure that I can do that,” said Avrumi.

“Why not?” asked Ruby. “Isn’t the store near your yeshiva?”

“I’d be happy to get the sefarim,” Avrumi replied. “I meant that I wasn’t sure I can get the discount for you.”

“What’s the problem?” said Ruby. “Don’t say that you’re buying it for me!”

“But that’s not honest,” said Avrumi. “You’re not entitled to the discount.”

“As long as you buy the sefarim, you can get the discount,” said Ruby. “What’s the difference what you do with the sefer afterward?”

“If I’m buying it for you and utilize my discount, then I’m cheating the storeowner,” said Avrumi. “He only offered the discount to talmidim of our yeshiva, not to other people.”

“I think you’re being unnecessarily scrupulous,” said Ruby. “The store is still earning a nice profit!”

“That’s irrelevant,” said Avrumi. “I’d like to introduce you to Rabbi Dayan, though. We can ask him!”

The two went to Rabbi Dayan’s beis medrash. Avrumi explained the situation and asked: “Can I utilize my discount at Olam HaSefarim to purchase the sefer for Ruby?”

“You are not allowed to,” answered Rabbi Dayan. “If a seller provides special discounts to certain customers, they are intended for those customers alone. It may be on account of some subsidy, a consideration of the institution, a desire to benefit a particular customer group, or a targeted advertising means.

Dishonest Discount, cont.

“Someone who abuses this privilege to buy for others who are not entitled to the discount is guilty of theft, unless allowed by an authorized person, such as a sales manager (Pischei Choshen, Geneivah 1:[1]).”


“But I know a lot of people who do that,” said Ruby. “Doesn’t that say something?”

“Sometimes, what people do is indicative of a common commercial practice, *min-hag hamedina*,” said Rabbi Dayan. “Unfortunately, many people rationalize forbidden behavior when it comes to money. The Gemara (B.B. 165a) notes that the majority of people are tainted with theft. Rashi explains that most people do not act completely honest in business and rationalize in order to withhold due profit from another.”

“What if I wanted to buy a *sefer* as a gift for someone else?” asked Avrumi. “Could I use my discount for that?”

“That would be perfectly permissible, since you are buying it for your purpose — to use as a gift — even though you will give it to someone else,” said Rabbi Dayan. “That is different from your case, though, where you are simply buying the *sefer* on behalf of another person who is not entitled to the discount.”

“What about club cards and the like that afford discounts or sales prices?” asked Ruby. “I assume those would be the same?”

“If the store is restrictive in offering the club card and is insistent that the cards are for individual use only, it would be the same,” said Rabbi Dayan. “However, if the club card is freely available to everyone, and the sole purpose of the card is to promote regular patronage of that store, it is permissible to use for others. This is true even if the card states on it ‘nontransferable’ for various legal reasons, since the store is willing and interested here to encourage purchases through the discount by any customer (see *Mishpetei HaTorah*, B.K. #95).” 

In His Father's Memory

Bava Metzia 78b - Changing Tzedaka

The shul was packed for Yizkor service. For Reuven Black, this year was particularly poignant; it marked the tenth Yahrzeit of his father.

People began calling out their Yizkor pledges, which were being dedicated to the shul: “Twice chai! Five hundred dollars! Ten times chai!”

Mr. Black straightened his tie and cleared his throat: “Ten thousand dollars in memory of the tenth yahrzeit of my father z”l.” The astonished Gabbai beamed with delight and wished him a hearty “Yasher koach.”

Two weeks later, Mr. Black served as chazan on the occasion of his father’s Yahrzeit. Towards the end of leining, he expectantly prepared himself for Maftir. However, the Gabbai called out, “Ya’amod Shimon ben Moshe maftir,” and Mr. Shimon Katz, who also had yahrzeit that week, walked to the Torah...

Mr. Black was crestfallen. After such a donation to the shul, why had they not given him maftir? What a disgrace to his father’s memory! Immediately after davening, he confronted the Gabbai. “Don’t you remember my Yizkor pledge? Doesn’t my father’s memory deserve maftir for that?”

The Gabbai stammered, “I apologize. You had maftir last year, and I wrote down that this year Shimon should get maftir.”

“Who cares?” protested Reuven, “I made a special donation to the shul this year to mark the tenth yahrzeit!” He raised his voice. “If the shul doesn’t properly appreciate the donation, I’m going to give my money to a different charity!” He turned and left the shul.

The Gabbai waited a month. Gingerly, he approached Reuven. “I apologize if you feel slighted,” he said. “Nonetheless, you are required to honor your pledge to the shul.”

Mr. Black paused for a moment. “I intend to honor the pledge in my father’s memory - but not to this shul! It says in Gemara Arachin (6a) that if a person pledges money to charity, it is permissible to change it before it is handed over to the Gabbai.”

The Gabbai was baffled; he would have to leave this for the rabbi.

Later that evening, Rabbi Dayan invited Mr. Black to his office. “The Shulchan Aruch (C.M. 204:7) writes that it is proper for a person to honor his verbal commitments to another, even if not legally binding, and you pledged to our shul.”

Reuven, however, replied, “I feel no moral obligation to the shul after the disgrace to

In His Father's Memory, cont.

my father's memory by 'cheating' him of maftir."

Rabbi Dayan calmly explained that maftir is a merit to the deceased because the son leads the community in the blessings of maftir and Haftarah. "You served as chazan, and saying Kaddish additional times was also a tremendous merit."

Mr. Black remained unimpressed. "Since the money hasn't been given to the Gabbai yet, I am legally allowed to change it to another shul."

"It's not so simple," responded Rabbi Dayan. "Although Tosfos first explains that before money reaches the Gabbai's hand, it is permissible to 'change' the pledge to a completely different purpose, they conclude that it is only permissible to 'exchange' the coins and use them temporarily until the charity is needed. Shulchan Aruch (Y.D. 259:1) cites the second interpretation."

Mr. Black remained adamant. "What's the difference whether I give to this shul or another; either way I'm giving the same kind of charity?"


Rabbi Dayan smiled. "You're raising a fascinating issue. Machane Ephraim (Tzedakah #7) and Ketzos Hachoshen (212:4) suggest that it should be possible to give the charity to a comparable recipient. However, Radbaz (IV:1204) and Shach (C.M. 87:51) insist that you are required to give it to the person or shul to which you pledged, based on the principle of amiraso lagavoha kimsiraso l'hedyot - a pledge to the Almighty is tantamount to an act of transaction with a person, and is legally binding."

"Chasam Sofer (Y.D. #237) and Beis Yitzchak (Y.D. 82:13) write that most poskim require you to fulfill your pledge to the designated recipient," concluded Rabbi Dayan. "Therefore, I suggest that you give the money to the shul."

Mr. Black remained silent.

Rabbi Dayan escorted him to the door and added softly, "Reuven, consider also that one of the greatest merits you can give your father is to follow in the footsteps of Aharon and avoid dispute."

"I'll think about it," said Mr. Black.

A week later, Mr. Black handed the Gabbai a sealed envelope with a check for \$10,000 and a note: "In true merit for my father, I am enclosing my pledge and also ask forgiveness for having gotten angry with you." 

Closed for Repairs

Bava Metzia 79a - HaMaskir U'Meisa

Dr. Brand took a sabbatical to do research in another city. He rented his house for the year to the Reichs.

The relationship between Dr. Brand and Mr. Reich began to sour when damage occurred in the house and they disputed who was responsible. Dr. Brand indicated that would be happy if the Reichs found another dwelling for the remainder of the year. Mr. Reich, however, didn't want to move.

Mrs. Reich was in the kitchen one day when she smelled smoke coming from the direction of the electrical service panel. A minute later, the smoke detector began to beep.

"Everybody out of the house immediately!" Mrs. Reich shouted. The family evacuated quickly and called the fire department.

Fire trucks arrived within minutes as smoke spread through the house and flames erupted from the wall near the service panel.

The firemen raced into action with chemical extinguishers. Fortunately, they were able to extinguish the fire before it spread. However, there was significant damage to the service panel and the wall.

Mr. Reich notified Dr. Brand of the fire. "It wasn't our fault," said Mr. Reich. "Something went wrong in the electrical box."

"We'll hear what the fire inspector says," Dr. Brand fumed.

The fire inspector confirmed that the fire was caused by a failure in the service panel. Dr. Brand notified the insurance company, who sent an appraiser. An electrician determined that the entire electrical service panel would have to be replaced and completely rewired. The wall also needed to be repaired.

"How long will the repairs take?" Dr. Brand asked the electrician.

"It could a few weeks to complete the repairs, during which time there will be no electric power here," the electrician said.

Meanwhile, the Reichs went to live with relatives. "This is good opportunity to encourage the Reichs to find another house," Mr. Brand thought.

"I'd like to wait on the repairs until I come to visit next month," he told Mr. Reich. "You might want to look for another house."

Mr. Reich, however, demanded that repairs be made immediately. Dr. Brand insisted, in return, that Reichs continue paying rent during the weeks of the renovation.

Closed for Repairs, cont.

“If I can’t live there, I’m not going to pay!” Mr. Reich flatly refused.

When Dr. Brand returned, the two went to a din Torah before Rabbi Tzedek.

Rabbi Tzedek ruled: “Mr. Reich does not have to pay rent for the month of the renovations. Even if he prepaid the rent, Dr. Brand would likely have to refund the month’s rental. When a person rents a house and it collapses or burns down, most authorities maintain that the owner is not required to rebuild the dwelling, and the tenant does not have to pay rent for the remaining months and should be refunded any extra payments. However, some authorities maintain that the tenant remains obligated to pay rent for the duration of rental period (C.M. 312:17; SM”A 312:34).”


“Why does the tenant have to pay rent if he cannot live in the house?” exclaimed Mr. Reich.

“This opinion views a rental agreement as ‘purchasing’ the rights to use the house for that time,” explained Rabbi Tzedek. “Therefore, if the usage is compromised, the renter loses, just as if he had purchased something and it broke afterwards (see Chazon Ish B.K. 23:10). According to this opinion, the owner is also not responsible for maintenance. However, the common rental practice is to require the owner to make necessary repairs (Rama 314:1; GR”A 314:6; Emek Hamishpat, Sechirus #51).”

“How does this relate to rental payment during the month of renovation?” asked Dr. Brand.

“Rental payment for the month of renovation is similar to rental payment after a house collapsed,” answered Rabbi Tzedek, “Therefore, in accordance with most authorities, Mr. Reich is not obligated to pay rent for the month, since he couldn’t use the house during this time.”

“What happens if the rent was prepaid?” asked Mr. Reich.

“We mentioned that some authorities require the tenant to pay the remaining rent,” replied Rabbi Tzedek. “Furthermore, some suggest that if the contract calls for prepayment of the rental, both opinions agree that the usage rights are ‘sold’ and the tenant is not entitled to a refund (Nesivos 312:13; Pischei Choshen, Sechirus 6:7,15). However, the prevailing common rental practice in many places is that the landlord is fully responsible for maintenance, even to refund the month’s rent.” 

Postdated

Bava Metzia 79b - Hikdim Sachar

“I saw an advertisement for group swimming lessons during the summer,” Mr. Leiner said to his wife. “I think it would be good for our Pinchas.”

Mrs. Leiner called the swim instructor, Boruch, and asked how much the lessons were.

“It’s \$600 for a series of twelve lessons,” he said.

“Can I break it into two payments?” asked Mrs. Leiner.

“You can give me two checks,” replied Boruch, “one for this month and one for next.”

Pinchas returned from the first two lessons in good spirits. On the morning of the third lesson, Pinchas fell off his bicycle and twisted his ankle. An X-ray confirmed that the leg was fractured; the doctor put a cast on the leg.

Mr. Leiner called Boruch and notified him that Pinchas would not attend the swimming lessons anymore.

”He had a bicycle accident and broke his leg,” said Mr. Leiner. “He’ll be wearing a cast for the remainder of the lessons.”

“Obviously, if he has a cast he can’t come,” said Boruch. “Refuah sheleima!”

“About the payment...” asked Mr. Leiner. “We paid for the whole series, but he participated in only a few lessons.”

“I don’t charge by the lesson,” said the instructor. “Payment is for the entire series, and I’m continuing to teach.”

“But if Pinchas is not attending, I shouldn’t have to pay,” said Mr. Leiner. “If I have to, I’ll stop the second check.”

“I don’t think that’s right of you,” replied Boruch.

“I don’t think it’s right of you not to refund payment for all the remaining lessons,” retorted Mr. Leiner.

“I suggest we pose the issue to Rabbi Dayan,” Boruch said. “Whatever he says – I’ll do.”

Mr. Leiner arranged to meet with Rabbi Dayan and asked: “Does Boruch have to refund the money for the remaining lessons? What about the second check?”

“If an employer is forced to retract for medical reasons, he has to pay only for the work done,” explained Rabbi Dayan. “Thus, Mr. Leiner does not have to pay for the remaining lessons, unless stipulated otherwise or there is a common practice in this

Postdated, cont.


regard (C.M. 334:4).”

“So does Boruch have to refund the money for all the remaining lessons?” asked Mr. Leiner.

“No, because the rule is different where the money was prepaid,” continued Rabbi Dayan. “In this case, so long as the worker is able to continue providing the service, he does not have to refund the money, even if the employer was forced to cancel the service for medical reasons.

“Tosafos (B.M. 79b, s.v. “e atoh”) explains that by paying up front, the employer undertook the risk that something might happen and gave the worker the money even if he will cancel his service. Thus, Boruch does not have to refund the money from the first check (see Pischei Teshuvah 334:2). It would be meritorious — lifnim mishuras hadin, though, to refund the money if he didn’t have to turn away others because of limited space.”

“What about the second check?” asked Mr. Leiner.

“Technically, a check is not payment, but rather instructions to the bank to pay to the bearer,” replied Rabbi Dayan. “Even if we consider a check like payment – since this is a common form of payment nowadays – Tosafos’ logic does not apply to a postdated check. The fact that it was postdated indicates that the employer is not willing to risk giving all the money up front. Thus, Mr. Leiner can stop the postdated check or demand it back for the unused lessons (Rabbi Zvi Spitz, *Minchas Zvi*, vol. II, p. 61-62, 76).” 

Megillah Mistake

Bava Metzia 80a - Mekach Ta'us

The shul was packed with people in costumes for megillah reading. Mordy proudly held his new megillah. For years he had wanted his own megillah; this year he'd finally bought one from the local sofer, Mr. Schreiber.

Mordy followed along quietly with the reader: "L'havi es sefer hazichronos divrei hayanim..." He jolted! The word hazichronos was not written in his megillah! The sofer had omitted the word.

After the megillah reading, Mordy went over to Rabbi Tzedek and asked, "I bought a new megillah, but a word is missing. Can I fulfill the mitzvah of megillah reading from it?"

"Yes," replied Rabbi Tzedek. "Even if some words are missing in the middle, or if some of the letters are cracked, the megillah is kosher b'dieved. However, l'chatchila one should read from a megillah that is complete, so it is preferable to have it fixed (O.C. 690:3)."

After Purim, Mordy returned to Mr. Schreiber. "The word 'hazichronos' was missing in the megillah," he said. "Rabbi Tzedek said I fulfilled the mitzvah, but it should be fixed."

"Let me see," said Mr. Schreiber.

Mordy showed him the megillah. "That's a long word and the line is already tightly written," said Mr. Schreiber, "To insert the missing word, I will have to erase two or three whole lines and rewrite them, which may leave a slight stain, or I can insert the missing word between the lines (Y.D. 276:1)."

Mordy thought for a minute. "I'm not happy with either suggestion," he said to Mr. Schreiber. "Neither way will look nice. I paid good money for the megillah and should get a perfect one."

"So what do you want?" said Mr. Schreiber.

"I'd like you to rewrite the entire page properly," said Mordy.

"That seems excessive," said Mr. Schreiber. "Erasing the lines is perfectly acceptable, and the erasure is barely noticeable. There's no reason to rewrite the whole page, unless you want to pay for it."

"Why should I have to pay, if you messed up?" said Mordy irately. "If you don't want to replace the page, I will return the defective megillah to you and ask for a refund."

Megillah Mistake, cont.

“I don’t think you can call it a defective megillah,” said Mr. Schreiber. “It’s kosher as is, as Rabbi Tzedek told you, and while the megillah should be fixed l’chatchila, it’s easy enough to rewrite the lines.”

“But I don’t want a patched-up megillah,” Mordy argued. “I want a perfect-looking one!”

“We can go back to Rabbi Tzedek,” said Mr. Schreiber. “Let’s ask him what I must do.”

Mordy and Mr. Schreiber came before Rabbi Tzedek, who ruled: “Nowadays, adding a missing word between the lines would still be considered defective merchandise. However, erasing and rewriting the lines suffices if the erasure is barely noticeable.”

Rabbi Tzedek then explained, “A person who buys something is entitled to intact merchandise, free of any defect. If the item is defective, the sale can be invalidated. The definition of ‘defect’ is variable and depends on what people in that locale are particular about and consider defective (C.M. 232:3,6-7).”

“A megillah certainly seems defective with a missing word,” said Mordy.

“Yes,” responded Rabbi Tzedek. “Although the megillah is kosher b’dieved even with words missing, the average person who buys a megillah expects it to be kosher l’chatchila. Therefore, it is considered defective as is (see Shevet Halevi 1:7[2]).”

“So then why can’t I just return the megillah?” asked Mordy.

“Even though a partial, irreparable defect suffices to invalidate the entire sale,” answered Rabbi Tzedek, “a transient blemish does not. Therefore, if the item is usable and can easily be repaired properly, the sale remains valid when the seller repairs the item or refunds the repair cost (232:4-5; Pischei Choshen, Ona’ah 13:4).”

“What’s the difference between adding the word and rewriting the lines?” asked Mr. Schreiber.

“While adding a word between the lines is acceptable halachically and many old megillahs have words added, it is not common in new megillahs. The average person would consider it defective and avoid buying the megillah nowadays. Therefore, it is considered a defect that could invalidate the sale.

“On the other hand,” concluded Rabbi Tzedek, “it is perfectly normal for a sofer to erase and rewrite a few lines. If done properly, the erasure is hardly noticeable. Therefore, if the lines can be rewritten with the missing word, the defect would be considered a transient one that does not invalidate the sale.”



Under the Hood

Bava Metzia 80a - Mumin

Noam had been driving his Toyota Camry for ten years; he now decided it was time to sell. The car was in fair condition overall, but its age was beginning to show. There was a slow leak in the water tank, the padding on one of the seats was wearing through, the car had been in two accidents and the trunk door had been replaced, a seat belt was missing, there were assorted dents and scratches on the outside, the tires were showing signs of wear and were going to have to be replaced soon, and the air conditioning was not as powerful as it used to be. Quite a list when you put it all on paper, but for a ten-year-old car, it was certainly in decent shape. To the best of his knowledge, the motor worked fine.

One issue that troubled Noam was the issue of disclosure. He wanted to be honest, emulating stories he had heard about the Chofetz Chaim, who would disclose any possible defect in his merchandise. He began to feel, though, that he was scaring away potential buyers by pointing out more than necessary. After all, the car couldn't be expected to be in the same pristine condition as a new one.

He spoke to a friend, a used-car dealer, who told him: "Don't disclose anything that you can get away with. Otherwise, you'll never sell!"

This sounded wrong to Noam; he knew there were issues with the car and couldn't ignore them in good faith.

"Where is the balance in this issue?" Noam asked himself.

"How about discussing the issue with Rabbi Dayan?" his wife suggested. "Perhaps he can guide you."

"That's a great idea," replied Noam.

Noam called Rabbi Dayan. "I'm selling my used car, which has certain problems," said Noam. "What issues am I required to disclose of my own initiative, and what issues can I be quiet about?"

"A seller is not allowed to cheat the buyer or mislead him," answered Rabbi Dayan. "If the merchandise is defective, the seller is required to disclose this to the buyer (C.M. 228:6). The definition of defective is dependent on time and place: whatever is considered by the local people as defective is treated as such (C.M. 232:6)."

"How do I know what's considered defective for a used car?" asked Noam. "I clearly would not have to point out every scratch and dent."

Under the Hood, cont.

“The seller is required to disclose things to the buyer of his own initiative in any one of four situations,” answered Rabbi Dayan. “First are deficiencies that render the item not fit for proper use, e.g. a serious problem with the engine, chassis, or other significant mechanical component.”

“That seems obvious,” said Noam.


“Second are items that a buyer would be particular about and has no reason to expect in such an item,” continued Rabbi Dayan. “For example, one would have to disclose a slow water leak in a relatively new car; in an old car, not so. A missing seat belt would have to be mentioned, regardless.

“The third situation is where the aggregate of the deficiencies reduce the value of the item 17% below the price asked,” added Rabbi Dayan. “That would be a violation of onaah, mispricing the item, according to many authorities - even if each individual deficiency is not of great consequence (C.M. 227:1-2, 24).”

“What is the fourth situation?” asked Noam.

“Whatever is required by law, which becomes a common commercial practice, the minhag hamedina (C.M. 201:1-2; 232:19; 331:2),” replied Rabbi Dayan. “Thus, if the law requires disclosing any accidents, one is required to do so.”

“What, then, do I not need to disclose?” asked Noam.

“Deficiencies that do not affect the use significantly; are reasonable for a car this age; that do not reduce its value substantially; and those not required by law to disclose - such as the tires and weakened a/c - you do not need to disclose of your own initiative. However, if you are asked about any of them, you may not lie or deny the problem. You may also stipulate that the car is being sold ‘as is,’ and tell the buyer to have it checked by his mechanic. Then you would have to reveal only deficiencies that a mechanic cannot identify (see Maharsham 3:128).” 

A Drill for a Saw

Bava Metzia 81a - Hashileini

Betzalel was a “fix-it” man who enjoyed carpentry as a hobby.

As he drilled into a thick piece of lumber one day, he hit a knot in the wood. The bit caught and stalled; the drill fell silent, and a burnt smell began to waft from the motor. “The motor went,” he said sadly. “I’ll have to get another drill.”

Betzalel called his neighbor, Dan, and asked, “Do you have a drill that I can borrow?”

“Sure,” said Dan. “I’ll tell you what. I’ve been planning to make a small cabinet, but don’t have a circular saw. I’ll lend you my drill if you’ll lend me your saw when you finish.”

“Deal!” laughed Betzalel. “When I finish, I’ll bring my saw together with your drill.”

Two days later, Betzalel returned Dan’s drill and brought his saw with it. Dan took the tools and put them in the shed in his yard.

During the night, there was a severe thunderstorm. A bolt of lightning hit a tree in Dan’s yard, splitting it. One heavy branch landed squarely on the tool shed, flattening it. When Dan checked in the morning, he saw that Betzalel’s saw had gotten crushed.

“I put the saw away securely in the shed,” Dan apologized to Betzalel. “There’s nothing I could do about the lightning and the tree.”

“When you borrow, you are fully liable, even for such circumstances,” said Betzalel. “That’s the rule of a sho’el (borrower) (C.M. 340:1).”

“But why am I a sho’el?” said Dan. “I lent you my drill as payment for using your saw!”

“That wasn’t payment; we both borrowed,” argued Betzalel. “I borrowed your drill and you borrowed my saw! Had something happened to your drill, I would be liable; the tree fell on my saw — you’re liable. It’s that simple!”

“It’s not simple to me!” cried Dan. “Let’s ask Rabbi Dayan.”

“Am I liable for the saw as a sho’el?” Dan asked Rabbi Dayan later.

“A person is considered a borrower (sho’el) only when the benefit is entirely his,” answered Rabbi Dayan. “However, if the lender also has a tangible benefit from lending the item, the borrower is considered a renter (socher).”

“Since Betzalel lent his saw in return for borrowing Dan’s drill, each benefitted from granting the loan,” continued Rabbi Dayan. “Betzalel gained use of the drill and

A Drill for a Saw, cont.

Dan gained use of the saw. Therefore, you do not have the rule of borrowers but that of renters (C.M. 305:6; Pischei Choshen, Pikadon 10:4-5).”

“What is the rule of a renter?” asked Dan.

“A renter is liable for negligence, and even theft or avoidable loss, but not for circumstances beyond his control (oness),” answered Rabbi Dayan. “Thus, since the saw was destroyed through oness, Dan is not liable for it as a sho’el but is exempt as a socher. Had the saw been stolen, though, he would be liable (C.M. 303:2-3).”

“I assume it makes no difference whether the drill and saw were borrowed on separate days or simultaneously?” inquired Betzalel.


“Actually, there is,” replied Rabbi Dayan, “in cases such as theft.”

“Really?” exclaimed Betzalel. “Why should that be?”

“It’s a bit complicated,” answered Rabbi Dayan. “When you borrow an item, you are responsible for looking after it, which may be a kind of service to the owner. The Rema cites two opinions whether we apply here the concept of shemirah b’baalim.”

“What is that?” asked Dan.

“When the owner of the borrowed item is serving or employed by the borrower at the time of the loan, the borrower is exempt unless grossly negligent,” explained Rabbi Dayan (C.M. 346:1-2). “Thus — according to the lenient opinion that considers borrowing from a borrower as shemirah b’baalim — had Dan borrowed the saw while Betzalel still had his drill, Dan would not have to pay if the saw were stolen, since Betzalel was ‘serving’ him by looking after his drill!”

[However, Betzalel could withhold the drill, in accordance with the stringent opinion that does not consider him as “serving” Dan, and does not view this as shemirah b’baalim.] 

Portrait Problem

Bava Metzia 81a - Min HaUman LeVakro

Outside the beis medrash of Yeshiva Gedolei Yisrael, Mr. Gross sold framed portraits of many Gedolim (great rabbis).

Dani loved to stand and admire the pictures when he walked in and out of the beis medrash. Looking at him were sages of the previous generation: HaRav Moshe Feinstein, HaRav Shlomo Zalman Auerbach, HaRv Yosef Shalom Elyashiv, zecher tzaddikim livrachah, and others.

“We have a lot of Gedolim pictures in our house,” Dani proudly told Mr. Gross. “Who’s that over there?”

“That’s a Sephardic Gadol, Harav Yosef Chaim of Baghdad, known as the Ben Ish Chai,” said Mr. Gross. “It’s a beautiful picture; you can almost feel the radiance of Torah shining from him.”

“I don’t think that we have a picture of him in our house,” said Dani. “Can I take it home for the weekend to check?”

“Sure; it costs \$35,” said Mr. Gross. “You can pay me next week if you decide to keep it.”

Mr. Gross wrapped up the picture and gave it to Dani. Dani took the picture back to his dorm room and placed it carefully on the bookcase.

During the night, a fire broke out in the dormitory! Dani fled from his room, grabbing only his tefillin. Firefighters arrived quickly and were able to extinguish the fire.

When Dani returned to his room, though, he saw that the portrait of the Ben Ish Chai was soaked with the water they had sprayed.

The following morning, Dani went to Mr. Gross with the soaked picture.

“The picture got ruined in the fire last night,” he said. “I’ll have to pay for it.”

“No, it’s not your fault,” Mr. Gross shook his head. “You don’t have to reimburse me.”

“But I had it,” said Dani, “so I’m responsible for it.”

“You hadn’t decided for sure that you were going to buy it,” insisted Mr. Gross. “Why don’t we take it up with Rabbi Dayan when he comes?”

When Rabbi Dayan arrived, Dani and Mr. Gross approached him.

“I took a picture from Mr. Gross to check whether we had it at home, but it got doused in my dorm room by the firefighters,” Dani said. “Must I pay for it?”

Portrait Problem, cont.

“The Gemara (B.B. 87b) teaches that if someone takes merchandise to examine and it is damaged in his hands, for any reason, he is liable,” answered Rabbi Dayan, “provided that a price was set beforehand.”

“Why is that?” asked Mr. Gross.

“There seem to be two reasons,” explained Rabbi Dayan. “Many explain that when you take merchandise from a seller with the intention of keeping the item if it proves acceptable, this is considered ‘buying it with the option to return,’ provided that the price was set beforehand. For this reason too, the seller would not be able to retract on the sale (C.M. 186:1, 200:11).”

“This seems similar to the current common practice to sell with the right to return the item within seven or 14 days,” noted Dani. “Obviously, if the merchandise were destroyed during the week, the customer could not ask for a refund.”

“That is correct,” said Rabbi Dayan. “The halacha is obvious in that case, though. The primary application of this halacha is in cases where the exact time of transaction was not clearly defined, e.g. selling secondhand items, arbaah minim, and informal sales - such as your case. Even if the customer has not paid yet, he must pay if the merchandise gets damaged.”

“What is the other reason?” asked Mr. Gross.

“Some explain that when you take merchandise to examine it, it is like borrowing the item,” said Rabbi Dayan. “A person who borrows is also fully liable for the item, even if it is ruined through oness, circumstances beyond his control. However, this would apply only to an item which is in demand, so that the customer has a clear benefit in being able to buy it. The customer would not be considered a borrower, though, for an undesirable item that the seller is interested in unloading” (see Nesivos 186:1).

“Either way, I have to pay,” said Dani, taking out \$35. 

Fainted!

Bava Metzia 82b - Oness Gamur

Alan Rosen had not been feeling well all week.

When he went to shul on Friday night, the heat in the room bothered him. In the middle of Kabbalas Shabbos, he headed out for a short break to get some fresh air.

As he reached the door, Mr. Rosen fainted, collapsing against the door and cracking the glass.

“Hatzolah!” people cried out, and called for an ambulance.

Two doctors, members of the shul, immediately raced over. They checked Mr. Rosen’s vital signs and were relieved to find his pulse and breathing steady, although slightly weak, and didn’t see any evident injury from his fall.

When Mr. Rosen was stable, they raised him onto a chair and gave him a cup of water to drink. He was still somewhat dazed by the fall.

Within a few minutes, a Hatzolah ambulance pulled up. After checking his blood pressure, the medics helped Mr. Rosen to his feet and escorted him to the ambulance. Baruch Hashem, the tests in the hospital showed no significant injury, and Mr. Rosen returned home after Shabbos.

Meanwhile, the glass of the door had to be replaced. The glass was a special kind, though, so the bill amounted to a substantial sum.

The treasurer of the shul was not keen on paying for the repair, as the shul was struggling financially. He decided to consult with Rabbi Dayan about it.

“Does the shul have to pay for the repair of the glass door,” he asked Rabbi Dayan, “or is it perhaps Mr. Rosen’s liability? Although he didn’t break the glass intentionally, still, he was the one who damaged it. Isn’t there a rule that adam mu’ad l’olam — a person is always accountable for damage he causes (B.K. 26a)?”

“This issue is the subject of a well-known dispute between Tosafos and the Ramban,” replied Rabbi Dayan. “The Gemara (B.K. 27a) obligates a person who is blown off the roof, even by a strong wind, who causes damage when he falls. Nonetheless, Tosafos (B.K. 27b) maintain that a person is not responsible for damage that is beyond his control (oness gamur).

“The Ramban (B.M. 82b), on the other hand, maintains that a person is liable even if blown off the roof by a ‘great wind of Eliyahu!’” said Rabbi Dayan. “He exempts a person who damages only if the damaged party was negligent or helped bring the

Fainted, cont.

damage upon himself.”

“What about other Rishonim, such as the Rambam?” asked the treasurer, who was quite learned.

“His opinion is not completely clear,” answered Rabbi Dayan. “The Rambam (Hilchos Chovel U’mazik 6:1) simply cites the Gemara that a person is always liable, even if he damages unintentionally and even if it is oness, without differentiating.


“The Kesef Mishneh notes, however, that later (6:4) the Rambam exempts what he terms makkah biyedei Shamayim (an act of G-d).”

“How do we rule?” asked the treasurer.

“The Mechaber (C.M. 378:1, 3) cites both statements of the Rambam almost verbatim; the Rema (377:1, 2) interjects that a person is not liable for oness gamur,” said Rabbi Dayan. “The Mechaber, who does not differentiate, seemingly disagrees with the Rema, but he may actually agree, as indicated in the Kesef Mishneh regarding makkah biyedei Shamayim (see Shach 378:1; Gra 378:3).”

“Where does this leave us?” asked the treasurer.

“Our case would be in the category of oness gamur,” answered Rabbi Dayan. “According to the Rema, Mr. Rosen is exempt, and possibly also according to Shulchan Aruch, since this was ‘an act of G-d.’

“Nonetheless,” concluded Rabbi Dayan, “it would be appropriate for Mr. Rosen to make a donation to the shul in appreciation for having helped him and as thanks to Hashem that he was not injured.” 

A Guardian's Oath

Bava Metzia 83a - Isi ben Yehuda

“Look inside this sefer,” Yoel said to his friend Menashe. “It’s written by Rabbi Moshe Feinstein, zt”l.”

Menashe opened the sefer. Inside, he saw a signed inscription by HaRav Moshe.

“Wow! How did you get an inscribed copy?” he asked.

“I have a cousin who was very close with the Rav,” answered Yoel. “My cousin gave me this sefer as a bar mitzvah gift and arranged to have it inscribed.”

“That’s really exciting,” said Menashe.

“If you don’t mind, I have a favor to ask,” requested Yoel. “I have a few errands to do on the way home and don’t want to carry the sefer around. Do you mind taking it home? I’ll pick it up this evening.”

“That would be my great pleasure,” answered Menashe. He took the sefer and put it in his knapsack.

Later that evening, Yoel came to pick up his sefer.

“You’ll never believe what happened,” Menashe told Yoel. “I stopped to daven Mincha and Maariv on my way home. I left my knapsack next to the coat rack of the shul, and when I finished davening, the knapsack was gone!” exclaimed Menashe. “Some dishonest person must have entered the shul and stolen it!”

Yoel stared at him in horror.

“How do I know what you’re saying is true?” snapped Yoel. “Maybe you’re making up a story.”

“I have no proof, but that’s the truth,” insisted Yoel. “I’m a shomer chinam (unpaid guardian) on the sefer, so I am not liable for theft (C.M. 291:1).”

“That’s it?” retorted Yoel. “You just say that it was stolen and you’re off the hook?”

“What more do you want me to do?” said Menashe. “You want me to pay for the sefer? I’m not liable for it.”

“I’m not sure what to do,” said Yoel. “But I don’t think it’s so simple. Let’s ask Rabbi Dayan!”

Yoel and Menashe went to Rabbi Dayan.

“I entrusted a sefer especially inscribed by HaRav Moshe Feinstein, zt”l, with Menashe, and he claims it was stolen,” said Yoel. “I don’t accept that simply. What do we do?”

A Guardian's Oath, cont.

“This brings us to the third and final type of Torah oath,” answered Rabbi Dayan. “If a guardian claims exemption — e.g. a shomer chinam who claims that the entrusted item was stolen — he is required to swear.

“The Sages required the guardian to include three elements in his oath (B.M. 6a; C.M. 295:2; Taz): 1) that he was not negligent, but guarded the item properly; 2) that the item was lost in the stated manner and is no longer in his possession; and 3) that he did not misappropriate the item for his personal use beforehand. If the guardian misappropriated the item, he remains liable until he returns it.”

“What if I choose to pay for the item?” asked Menashe. “Certainly if I pay, there is no need for any oath!”

“Even if the guardian will pay for the item, i.e. if he admits that it was lost through negligence,” replied Rabbi Dayan, “he is not required to swear the regular Torah oath of a guardian, but is still required to swear that the item is no longer in his possession, unless the item is a standard one readily available on the market.”

“What difference does that make?” asked Yoel.

“If the item is not readily available,” answered Rabbi Dayan, “we are concerned that the guardian desires the item and is scheming to ‘acquire’ it by admitting guilt and paying for it. Therefore, the Sages imposed an oath that he is not holding the item. If the owner disputes the stated value, the guardian must also include the item’s value in his oath (C.M. 295:1).”

“If a guardian were to swear, does he need to bring any other proof?” asked Menashe.

“No, but a guardian is believed with an oath only if the event is not a well-known one,” answered Rabbi Dayan. “If the guardian claims that the item was stolen in broad daylight in a public place, though, we do not suffice with an oath; he must bring witnesses (C.M. 294:2-3).” 