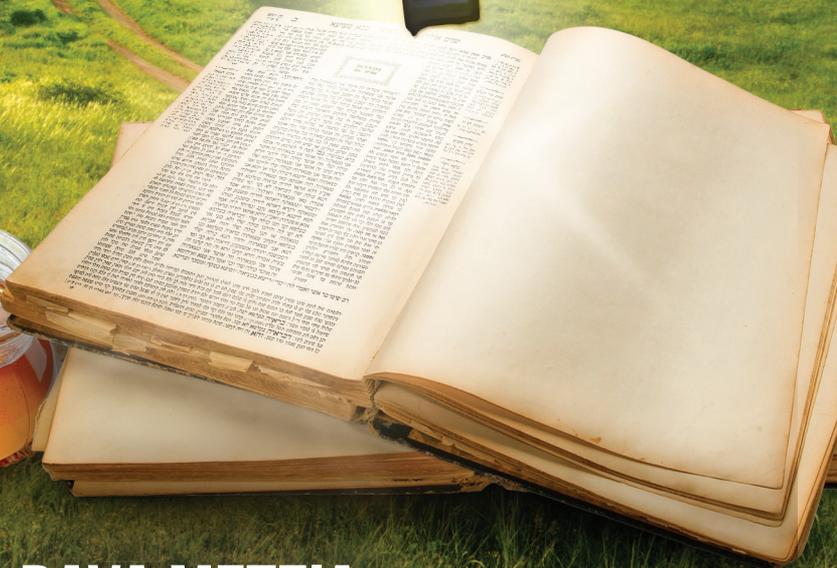


Daf Delights

שעשועי הדף

Interesting Halachos, Fascinating Discussions,
and Delightful Insights



- BAVA METZIA -

BY RABBI ZEV REICHMAN

שעשועי הדף

בבא מציעא

Daf Delights

Bava Metzia

Rabbi Zev Reichman

2018/5778

Dedicated to the memory of
my chavrusa, friend, mentor, and inspiration

מנתחם מנדל בן הרב יואל דוד באלק ע"ה

Mr. Mendel Balk, o.b.m.

May the Torah learning from this book add to
his many merits and bring blessings to his entire
family.

With deep appreciation and gratitude to

Raphael and Linda Benaroya

for their leadership, friendship, and support.

May the Torah from this work
add to the eternal merits of

דוד ז"ל בן רפאל ולינדה (יפה) הי"ו

David Benaroya

יעקב בן רפאל וז'ולי ז"ל

Jacob Benaroya

רחל בת יום טוב ורוזה ז"ל

Rachel Benaroya

תנצב"ה

ספר זה מוקדש
לעילוי נשמות זקנינו

ר' חיים אליהו בן ר' זאב רייכמן ז"ל
ר' יחזקאל בן ר' יצחק רפאל הלוי עציון ז"ל
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ר' משה יצחק בן ר' ישעיהו חיים פייערשטיין ז"ל

Dedicated
in loving memory of
Mr. Jack Diamond o.b.m.

by his children
Lloyd and Ellen Sokoloff

Le'iluy Nishmat

Moshe ben Makhlof ve'Leah

and

Dov ben Zalman

by the

Bousbib family

Dedicated
to the eternal memory of

Joseph and Gwendolyn Straus

and

Jack Gabel

by

Joyce and Daniel Straus

In loving memory
of our dear husband, father, and grandfather

שאול גרשון בן חיים שמואל ז"ל

Dr. Saul G. Agus o.b.m.

and in honor
of our mother and grandmother,

Mrs. Marcelle Agus

by the
Agus family

לזכרון בהיכל ה'
לעילוי נשמת הורינו וזקנינו היקרים
יצחק בן דוד לעמל הכהן
וזוגתו שיינדל בת יעקב כהנא
ולעילוי נשמת
יצחק בן דוד
וזוגתו מעטיל בת בן-ציון הלוי גולדפליס
ולעילוי נשמת
יצחק בן בן-ציון הלוי קרנקל
ת.נ.צ.ב.ה.
על ידי ר' דוד יעקב הכהן
וזוגתו חי'ה שרה כהנא ומשפחתם שיחי'

Dedicated to

Moshe and Ida Baruch

By their children, grandchildren, and great-
grandchildren,

Howie, Razy, Julia, David, Ari, Shaina,
Shimmy, Evan, and Zach

מוקדש לעילוי נשמת
מרגלית בת מרדכי לוי
ובנה
רונן בן יהושע לוי
מאת בני משפחתם
יצחק ושולמית אשכנזי

Dedicated in loving memory of our grandson,

Calev Schwartz, z”l

You will always have a place in our hearts

Deborah and Michael Gottlieb

Dedicated in loving memory of

**Daniel Ben Yosef Ve’Ohra Gohar
Bolour**

by the Bolour family

אגשר זעליג ווייס

כגן 8
פעיה"ק ירושלם ת"ו

בס"ד

י"ג סיון תשע"ז

הן שמעתי על פועלו הגדול של הרה"ג ר' זאב רייכמן שליט"א רב בק"ק ענגלוואד ניו גירזי שמאהב את התורה על עם ישראל ובמסגרת שיעוריו בדף היומי נותן בכשרון רב למשתתפי שיעוריו לטעום משעשוע ודבשה של תורה בשאלות אקטואליות, ועתה העלה על הכתב בשפה ברורה ובנעימה את ההגיגים והרעיונות שהעלה בפני חברים מקשיבים משתתפי שיעוריו.

ברכתי להרה"ג שליט"א שיוכה תמיד להגדיל תורה ולהאדירה כשאפתו הטהורה, ורק שמחה ונחת יהיה מנת חלקו כל הימים.

בברכת התורה באהבה

אשר ווייס



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Introduction

The Steipler Gaon pointed out that one of the blessings recited prior to the study of Torah is unusual.

The first blessing on Torah study is standard. It thanks the Almighty who has sanctified us with His commandments and ordered us to be involved in the Torah. However, the language of the second blessing is surprising. V'ha'arev na is a plea that Hashem make Torah sweet in our mouths. It is a request that we enjoy learning. Why do we pray to enjoy Torah study? Why do we not pray to feel the sweetness of Shabbos or the delights of Yom Tov? Why have a blessing about the sweetness of the words of Torah?

The Steipler answered that the blessings on Torah study differ from the blessings before other mitzvos. We usually consider two types of blessings, birchos ha-mitzvos and birchos ha-nehenin. We recite a blessing prior to performing a commandment and we recite a blessing before experiencing a pleasure, such as eating delicious food or smelling a sweet aroma. For most commandments, the blessing merely thanks Hashem for the mitzvah. Torah study is unique. The blessings on the mitzvah are also birchos hanehenin. The blessings are an expression of thanksgiving for the pleasure of Torah. To remind us that we are thanking God for the pleasure of Torah, as one of the blessings, we appeal to experience the sweetness of Torah (Introduction to Chashukei Chemed, Kiddushin). The sweetness of

Torah helps root Torah thought in our souls. Pleasurable Torah study interests our minds, engages our hearts, and connects our souls to our Maker.

We have been blessed in our Shul with a vibrant culture of Torah study. Our Torat Moshe Daf Yomi group is one of the pillars of our communal experience. The study of a daily page of Talmud each day has added to many both a mitzvah and pleasure. This publication is an attempt to spread the joy of the daily Daf to an audience wider than those who come each morning. I have attempted to cull insights related to each Daf from a variety of sources, and to translate them into English, and spread them for others to enjoy. I am sure that this work happened due to the merit of our holy community, East Hill Synagogue. May it bring blessings to all who learn the Daf with us and to the entire community who are partners in the spread of Torah.

These essays deal with Halakhic topics. They are not intended to be the final word. Please ask a competent Halakhic authority to determine your actual practice about any of the issues the articles cover. The essays are a merely an attempt to trigger interest and study.

I dedicate this book to the members of our Daf group, my friends and teachers, who join me each morning before Shacharis to learn the daily Daf. Your passion and excitement made this work and many other Torah initiatives come to fruition. May we merit to learn Torah, love Torah, and spread Torah together for many years to come.

There were many who helped this project come to completion.

These essays first appeared as weekly emails to the East Hill Synagogue community and as articles in The Jewish Link of New Jersey newspaper. Mr. Raz Haramati toils faithfully each week to edit the essays, typeset them, and email them. I owe him a great debt. I am also thankful to Rabbi Moshe Kinderlehrer and his staff at The Jewish

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These articles would not have come to print if not for the generous support of dear friends. Years ago, Raphael and Linda Benaroya, Daniel and Joyce Straus, the Schwalbe family, Daniel and Claire Kahane, Mendel a"h and Ariela Balk, the Herschmann family, Howard and Razy Baruch, and Nader and Mandana Bolour kindly set up a fund to sponsor Torah books like these. I am humbled and grateful for their support, trust, and friendship.

* * *

I am extremely thankful to the dear friends who sponsored the publication of this work, Daniel and Joyce Straus, Lloyd and Ellen Sokoloff, Gavriel and Polly Bousbib, Raanan and Nicole Agus, Howard and Razy Baruch, Izzy and Shula Ashkenazy, Nader and Mandana Bolour, Michael and Debbie Gottlieb, and Daniel and Claire Kahane. The Torah learned from this book was made possible by them.

Yeshivas Rebbeinu Yitzchok Elchanan has been my home for more than twenty years. Much of this Torah is due to my teachers who have taught me there. Yeshiva has also trained me professionally. Mrs. Bella Wexner a"h and Ms. Susan Wexner שתיה first exposed me to the joy of spreading Torah through the written word when I was a member of Yeshiva's Wexner Kollel Elyon. May this book add to their many merits. I have a great amount of gratitude to the Yeshiva and its leaders, Rav Dr. Ari Berman, Rav Menachem Penner, and Rav Yosef Kalinsky for all they do for me and our nation. May Hashem bless their efforts with success.

My family and I are indebted to the East Hill Synagogue

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community which is not only our home but truly our family. Our shul president, Mr. Rodger Cohen and all the volunteers of the shul have our eternal gratitude. The lay leadership of our shul has always been very understanding and supportive of all efforts to spread Torah. For that and so much more, I and my family are extremely grateful.

Finally, my wife Chana and I feel overwhelming gratitude to Hakadosh Boruch Hu for all the ברכות He has bestowed on us. May Hashem bless all of us with the sweetness of Torah. May He place the delights of Torah in our hearts and in the hearts of our children - and keep them there forever.

Zev Reichman

Teves, 5778

Bava Metzia 2**When Two Yahrzeits Clash, for a Father
Versus for a Grandfather, How Should We
Split Up Leading the Davening?**

Bava Metzia begins with a lesson about conflicting claims. Two people come to court, with each holding on to the edge of a cloak. If one claims, “I found the cloak,” while the other claims, “I found the cloak,” they must each swear that they own at least half the garment, and the cloak is divided between the two of them. If one claims, “The cloak is all mine,” and the other one claims, “Half the cloak is mine, but half is yours,” then there is a different division. Since both agreed that half belonged to the first claimant, he receives that entire half. Each then claimed the second half. The disputed half is divided equally. Thus, one will receive three quarters and the other will receive a quarter of the cloak. Each claimant must swear that he does not own less than the amount of the garment he is receiving. *Lehoros Nasan* (*cheilek 8 siman 1*) utilized this law to determine the resolution of a dispute in *shul*.

Reuvein had *yahrtzeit* for his father. He came to the *shul* wishing to lead the community in prayer. Boruch also wanted to lead the prayers. It was his grandfather’s *yahrtzeit*. His father was a member of

the *shul* and would lead the prayers on that day every year. This year his father was sick. His father had had sent him to be *chazzan*. Who was to get the privilege of leading the community? Should Reuvein get the privilege as he sought to honor his father? Or perhaps Boruch should get the podium as he wished to honor his grandfather? Perhaps they should split the services between them? If so, how should the prayers be divided?

Presumably, Reuvein should get the *amud*. *Shu"t Rama (siman 118)* teaches that a grandson has an obligation to recite *Kaddish* on his grandfather's *yahrtzeit*, because a grandson has a *mitzvah* to honor his grandfather. However, a son who wishes to say *Kaddish* for his father is fulfilling a greater obligation. It is a greater *mitzvah* for a son to honor his father than for a grandchild to honor his grandfather.

In the days of the *Rama* only one person would recite the *Kaddish* in *shul* during services. The *Rama* ruled that if a grandson wishes to honor his deceased grandfather by leading the community in *Kaddish*, he is entitled to a third of the *Kaddishim*, unlike a son who would be entitled to all of them. If so, in our scenario, we should say that Reuvein has a claim on the entire service whereas Boruch, as a grandson, only has a claim to a third of the service.

However, perhaps the grandson has a stronger claim than what we have posited.

What is the status of an emissary in regards to *Kaddish* and serving as *chazzan*? If Ya'akov had a *yahrtzeit* for his father and he asked Shimon, who was not related to him, to be his *shaliach* to serve as *chazzan*, would Shimon have the same rights as Ya'akov?

Shu"t Binyamin Ze'ev (siman 201) writes that *sheluchos shel adam kemoso*—the emissary is like the one who sent him. If Ya'akov's father had died on this day and Ya'akov asked Shimon to serve as *chazzan* in his place, Shimon is entitled to the podium exactly as much as Ya'akov

was entitled. *Machaneh Efrayim* (*Kaddish Yasom* 9) disagreed. He held that an emissary was only entitled to a third of the *Kaddishim*.

If *Machaneh Efrayim* is correct, in our case the grandson has a claim to two thirds of the *Kaddishim* and prayer-leading. He gets one third because it is the *yahrtzeit* of his grandfather, and another third because he is the emissary of his father. Reuvein, though, who has *yahrtzeit* for his father, has a claim on all the *Kaddishim* and prayers. When one person has a claim on all, and the other a claim on two thirds, both are agreeing that one third belongs to the former. He receives that third. Thus, Reuvein would certainly be entitled to one third of the *Kaddishim*. On the remaining two thirds there are equal claims. Therefore, this portion should be divided equally. Reuvein should lead two thirds of the services and recite two thirds of the *Kaddishim*. Boruch should be *chazzan* for a third of the prayers.

However, according to *Binyamin Ze'ev*, in our case both have a claim to all of the *Kaddishim*. Reuvein claims them for he is a son seeking to honor his father on the day of his father's passing. Boruch has a claim on all of them for he is the *shaliach* of his father, and since *shelucho shel adam kemoso*, he therefore has a claim on all the services just as his father had a claim on all the services.

Ultimately, Rav Gestetner (the author of *Lehoros Nasan*) rules that Boruch and Reuvein should compromise. Reuvein should lead the services for more than half of the prayers and Boruch, in light of the opinion of *Binyamin Ze'ev*, should lead for a little more than a third of the prayers (*Mesivta, Daf Digest*).

Glancing and Staring

Our *Gemara* suggests that the *Mishnah* used many seemingly extraneous words to describe the case of two men fighting over a cloak they are holding together in order to teach that to acquire a lost object a finder must lift it. Seeing the object is not enough to attain ownership. *Tosfos* (s.v. *debere'iyah be'alma lo kani*) ask a question from the words of the *Gemara* later in the tractate. The *Gemara* in chapter *Habayis Veba'alayah* (118a) teaches that one can acquire an item of *hefkeir* through *habatah*, gazing. If looking at an ownerless item can make it mine, how can our *Gemara* say that one does not acquire a lost object by seeing it? *Tosfos* answer that *habatah* means a more intense experience of looking than *re'iyah*. *Re'iyah* means glancing at. Glancing at an ownerless object does not give it to me. The *Gemara* in 118a refers to a person who stared at the object; his looking was so intense that he actually performed an action as well—he built a small fence around the ownerless field. Such an intense gaze (as evidenced by the fact that it led him to build a bit) can acquire an ownerless field. Our *Gemara* is teaching that a mere glance, or a simple look, at a lost object is not enough to acquire the item.

Magein Avraham (*Orach Chayim* 225:20) dealt with the law that one may not look at the face of a wicked man. He reasoned that only intently staring is prohibited. One may not perform *habatah* toward the face of a *rasha*. However, *re'iyah*, a mere glance, is permitted. One may catch a glimpse of the wicked person. One does not need to cover one's eyes when he walks by.

Similarly, he examined the issue of looking at *Kohanim* while they recite their blessings. The *Gemara* in *Chagigah* teaches that one who stares at the *Kohanim* while they recite *Birkas Kohanim* will find that his eyesight will dim. That *Gemara* refers to the priests in the

Beis Hamikdash. In the Temple, Hashem's *Shechinah* would rest on the hands of the priests when they blessed the nation. However, in our synagogues, the *Shechinah* does not rest on the *Kohanim* when they bless the congregation. Technically, in our congregations one would be allowed to glance at the *Kohanim* as they bless the crowd. It is only *habatah*, an intense staring, that is prohibited. One who stares at the *Kohein* might cause the priest to have *heseich hada'as*, distraction. However, one would be allowed to catch a furtive look at the *Kohein* as he blesses the community. It is our practice not to look at all at the priests as they bless the community in order to remember how in the *Mikdash* we were not allowed to look at the priests at all as they blessed the *kahal*; when the *Shechinah* is present it is respectful to not look at all, and one who stares at the Divine Presence will find that his eyes will dim (*Daf al Hadaf*).

Bava Metzia 3**Self-Incrimination**

Our *Gemara* mentions the dispute between Rabbi Meir and the Sages about the power of witnesses. The Sages were of the opinion that if witnesses said to Reuvein, “We saw you eat *cheilev* (forbidden fats). You have to bring a sacrifice to garner atonement,” and Reuvein responded, “I never ate the forbidden fats,” Reuvein would not have to bring a sacrifice. Rabbi Meir felt that since witnesses can obligate a financial payment or corporal punishment, they can also obligate a person to bring an offering. Rabbi Meir challenged the Sages. “Witnesses can put a person to death with their words. Certainly, they should be able to obligate a sacrifice.” The Sages responded that the person could always exempt himself from having to bring a sacrifice by claiming that he ate the forbidden fats on purpose. Only someone who eats by mistake has to bring a sacrifice, and the witnesses can never truly prove what his intention was when he ate the *cheilev*.

Tosfos ask about this conversation: What about the rule that “*ein adam meisim atzmo rasha*”—“a person cannot render himself an evildoer”? A person who speaks ill of himself is not believed. If a person said that he ate forbidden fats deliberately, he would be making himself an evildoer. He does not have the credibility to render

himself an evildoer. *Tosfos* answer that when a person admits guilt as part of *teshuvah*, he would be believed. A person who says, “I ate forbidden fats willingly,” would be confessing as part of *teshuvah*. He would be expressing the wish to avoid bringing non-sacred animals to the Temple. He would therefore be believed.

From this *Tosfos*, a new halachic standard emerges. A man is usually not believed when his words incriminate himself. However, if his words of self-incrimination were part of a process of *teshuvah*, he would have credibility and the words would be accepted.

Some halachic authorities accept this innovative view of *Tosfos*. Others do not accept it.

There was a ritual slaughterer in a town who became very sick. The doctors did not think he would recover. He began to cry and sought to repent for his sins. He called the rabbi and made a confession: “I was not careful with the laws of *shechitah*. There were five times when I checked the knife after slitting the neck of the animal and I found that the blade was nicked. I did not report my findings. The meat was sold as kosher. What can I do to repent?” The rabbi tried to determine if the sick man was coherent and understood what he was saying. It seemed to him that the *shocheit* was lucid. He gave the *shocheit* guidance how to repent. He also accepted his admission. He announced that all in the town had to *kasher* their utensils. Perhaps their plates had become tainted with *treif*. The slaughterer recovered. When he felt better he denied everything. He claimed that he had never admitted guilt, nothing he had sold had been *treif*, and he was a reliable slaughterer. The rabbi did not know what to do. He did not know what he should believe. He brought his question to the *Shivas Tziyon*.

Shivas Tziyon (*siman* 24) accepted the rule of *Tosfos*. When engaged in *teshuvah* a person is believed even when his words incriminate himself. The man had been credible the first time. He was

to be believed that he had sold *treif*. The man should not be allowed to slaughter and check the animals. He had lost his presumption of righteousness and credibility.

Other authorities disputed the lesson of *Tosfos*. A slaughterer once came to the author of *Teshuvos Giv'as Shaul*. He wanted to know what he should do to gain atonement. He claimed that he would often slaughter while he was drunk and, as a result, much of the meat he had sold had been *treif*. *Teshuvos Giv'as Shaul* ruled that he was not to be believed. *Ein adam meisim atzmo rasha*, one cannot render himself a wicked individual. Even though his confession was expressed while he was repenting, he was not to be believed to incriminate himself.

Shu"t Yehudah Ya'aleh (*cheilek* 1, *Yoreh Dei'ah siman* 230) accepted the view of *Tosfos* in a different situation. A woman experienced a crisis of faith. She stopped going to the *mikvah*. She did not tell her husband. He was under the impression that she was still using the *mikvah* each month. She felt bad and confessed her sin to her husband. He refused to believe it. They went to their *rav*. Their *rav* was not sure if he should believe her, because *ein adam meisim atzmo rasha*. He sent the question to the author of *Yehudah Ya'aleh*.

Yehudah Ya'aleh ruled that whereas a person is not believed when he incriminates himself, *Tosfos* on our *Gemara* teach that he is believed if he incriminates himself while repenting. She was seeking to repent. She is believed. She should confess her sin by reciting *viduy*. She should try and pray each day. The gates of tearful prayer never close. Hashem will certainly forgive her if she is sincere. Her husband was completely unaware of the sin. As a result, he did not do anything wrong and did not need to do anything to gain atonement (*Mesivta, Daf Digest*).

Bava Metzia 4**We Try Never to Disqualify a Get**

Shu”t Maseis Binyamin (siman 51) was asked about a *get*. Rumors abounded that one of the witnesses on the *get* had misappropriated funds. The story that was told about him was that a person had once deposited a pouch in the witness’s hand to watch. There were no witnesses at the time of the deposit. Some time later, the depositor came and reclaimed his pouch. When he came home and opened the bag, he discovered that his money-filled wallet, which had been in the pouch, was missing. He started screaming, “That man is a thief! He stole my wallet that was filled with money!” The watchman denied everything, saying, “I do not know what you are talking about. You are lying. Nothing is missing from what you gave me.” The dispute came before the community leader. He commanded that the watchman be jailed and his house searched. They searched the house and found the wallet stuck into a crack in a wall. The watchman continued to insist on his innocence: “I never took anything from the pouch. Maybe my children or spouse went through it and stole the wallet. I never knew there was a wallet in the bag. I never opened the bag. I never moved the bag. I am no thief.” They released the watchman. This whole story was told to the rabbi who was looking into the *get*.

He sent emissaries to interview the watchman, who had later

signed the *get*. The man gave many evasive answers. He first claimed that his wife took it. When pressed further, he claimed that the depositor had owed him money from before the deposit. He had taken the wallet as repayment for the loan he had extended. When pressed further, he ultimately admitted that he had stolen the wallet. However, he insisted that after his failing he had repented fully. By the time he signed the *get*, he had been righteous and was a kosher witness. He claimed that he had fasted for many days. He also claimed that he had returned gold coins belonging to other people that had been in his hand, and that should prove the sincerity of his return. The question was presented to the author of *Maseis Binyamin*: Was the *get* acceptable? Was the witness a kosher witness?

Maseis Binyamin ruled that the *get* was kosher and the woman could remarry. None of the facts that had emerged was enough to disqualify a witness already signed on a *get*.

Our *Gemara* has the lesson of Rav Idi bar Avin in the name of Rav Chisda. He taught that a watchman caught lying about a deposited item becomes unfit to serve as a witness. However, that was in the case of an open lie. A man had deposited a cow with his friend. When he came to reclaim it, the friend insisted that nothing had ever been deposited in his domain, and witnesses testified that the watchman had the cow while he lied about it. However, in our case, perhaps the watchman had never opened the pouch. It is normal for a watchman to not know that a pouch contains a wallet. His claim that his wife or children stole the wallet would not make him an unfit witness. The claim was reasonable. Even if he did take the wallet, his claim that he repented is also reasonable. We are not sure that he is a thief. We should be very hesitant before disqualifying a *get*; *Maseis Binyamin* allowed her to remarry (*Mesivta*).

Bava Metzia 5

Do Children Have to Make Up Missed Prayers?

Biblically, children are exempt from *mitzvos*. The Sages legislated the law of *chinuch* obligating children to perform *mitzvos* so that they will be familiar with the commandments once they become adults. When an adult misses the evening prayer (*Ma'ariv*), he is obligated to recite the silent devotions twice in the morning—once for the morning obligation and once as a make-up for the evening. If a child misses *Ma'ariv*, is he obligated to recite two *Shemoneh Esrei* prayers in the morning, one for *Shacharis* and one as a make-up for *Ma'ariv*?

Shu"t Betzeil Hachochmah (cheilek 5 siman 169) ruled that the child would not be obligated to recite two prayers in the morning. His source is our *Gemara*.

Generally, oath obligations exempt a defendant. If I claimed that you owed me one hundred dollars and you admitted to owing me twenty, there would be a Biblical oath obligation due to the partial admission. You would swear that you do not owe me the other eighty and you would be exempt. However, if you could not swear because you had no credibility, then the Sages legislated that the oath obligation would flip. Then I would swear and collect.

Our *sugya* teaches that the Sages only legislated the option of swearing and collecting for Biblical oaths. A Rabbinic oath cannot flip. The Sages do not add an enactment to their enactment. *Shevu'as heiset* is a Rabbinic enactment. If Reuvein brought Shimon to court claiming that Shimon owed him money, and Shimon denied owing anything, the Rabbis created an obligation on Shimon to swear, and the oath is called a *shevu'as heiset*. However, if Shimon was not credible, for example if he was a known thief, the oath would not be flipped to the one making the claim. The Sages only created the law of swearing and collecting in the case of a Biblical oath when the *nitva* (the defendant) cannot swear. Since *shevu'as heiset* is a Rabbinic enactment, the Sages never created an enactment of *nishba venoteil* to be added to the Rabbinic enactment of *shevu'as heiset*.

Chinuch is a Rabbinic enactment. Making up missed prayers is a Rabbinic enactment. Our Sages did not add an enactment atop another piece of legislation. Therefore, the child would not have to pray two times in the morning.

Shu"t Kinyan Torah Behalachah (cheilek 5 siman 21) rules that if a child fell asleep before *Havdalah* on *Motzai Shabbos*, he would not need to make *Havdalah* on Sunday morning. *Chinuch* creates an obligation for the principal *mitzvah*. It does not create make-up obligations.

Just as the Sages did not legislate the enactment of *nishba venoteil* atop the enactment of *shevu'as heiset*, they did not enact an obligation of making actions up atop the obligation of *mitzvah* training (*Mesivta*).

Bava Metzia 6**Seizing Funds from a Person Who Owes Money to You and Refuses to Pay**

Shu”t Betzeil Hachochmah (cheilek 3 siman 124) related a story about bankruptcy. A paper merchant had a customer who stopped paying his bills. The customer declared bankruptcy. He owed money to many individuals. He owed very large sums. He only owed the paper merchant a small sum. The creditors put pressure on the bankrupt man. They were all demanding their money. He reached a settlement with them. He would pay them thirty percent of what he owed. The paper merchant was forced by law to accept this meager sum. However, the bankrupt man kept his business open. He continued to order paper from the paper merchant. The merchant approached the author of *Betzeil Hachochmah* with a question: Whenever he received a new order from the man who had gone bankrupt, was he now allowed to deliver less paper to the man than what he ordered and paid for, and keep the excess funds as payment for the debt that had been owed to him? He insisted that he had never forgiven the debt. He had not despaired of collecting it. He knew, though, that the buyer would never pay willingly. May he seize money from the buyer to get back what was due to him?

Betzeil Hachochmah ruled that he was allowed to under-deliver,

and to keep funds given to him by the buyer. The buyer owed him money. The money which the buyer would give now for paper may be seized as repayment of the money owed. The source for this ruling is our *Gemara*.

In our *Gemara*, Abaye taught that if Shimon owes money to Reuvein, Reuvein may take Shimon's *tallis* and claim that it was his. Reuvein may even swear that the *tallis* belongs to him. It would be a true oath. Since Shimon owed money and was not paying, Reuvein may seize a possession of Shimon's (e.g., his *tallis*) as his repayment. *Mahari Katz* (quoted in *Shitah Mekubetzes* here) ruled that if Shimon were to swear falsely to Reuvein and claim that he does not owe Reuvein money, Reuvein may seize money of Shimon's in the amount that Shimon owes him. Reuvein may even swear in the *Beis Din* that the money was his, because Reuvein is entitled to the money.

Shu"t Rav Pe'alim (*cheilek 3 Choshen Mishpat 5*) was asked about this law as well. Ya'akov had business dealings with Yehudah. Yehudah stole a sum of money from Ya'akov. Yehudah was a very tough man. Ya'akov knew he would not be able to get his money back. Another business deal came up. Some money of Yehudah's fell into Ya'akov's hands; Ya'akov knew he could skim the amount that Yehudah had stolen from him from the funds and Yehudah would not know about it. He asked the *Rav Pe'alim*, "May I seize the money? If I do not take the funds now there is no way Yehudah will ever pay me. No court will ever convict him because he is such a tough person."

Rav Pe'alim allowed Ya'akov to seize the funds to recover the debt owed to him.

Chavos Da'as in his will (entry 19) pointed out that vigilante justice has dangers. People acting on their own for themselves usually allow themselves to take more money than they are entitled to take. He therefore wrote, "If your friend's money comes into your hand

without him knowing, and you have a financial claim against your friend, do not say, 'Since the money has come to me, I will keep it and not inform my friend.' The *Gemara* in *Berachos* (5b) teaches that one who steals from a thief will find himself stinking with the stench of theft. Better to inform the individual that he owes you a certain amount, and that you are therefore keeping that amount of money from him, since in situations of loss one is allowed to take the law into his own hands" (*Mesivta*).

Bava Metzia 7**Must We Rise to Honor Someone Who Might Be Elderly?**

There is a Torah *mitzvah* to stand and honor the wise and the elderly—*mipnei seivah takum, vehadarta pnei zakein* (*Vayikra* 19:32). Is this *mitzvah* limited to aged sages? Perhaps one must also rise for an elderly man who is not scholarly? What is the definition of elderly? How old must a person be for one to be obligated to rise in his honor when he walks by?

Rambam (*Hilchos Talmud Torah* 6:9) writes, “One who is *muflag beziknah* (exceedingly old) even though he is not wise, we should stand before him when he walks by.” According to *Rambam* we must rise even for one who is not a scholar. However, what is the definition of exceedingly old? *Shulchan Aruch* provides the answer. He writes, “It is a *mitzvah* to get up in the presence of old age, which is seventy. Some disagree. They feel one should rise to honor an individual who is sixty or older” (*Yoreh Dei’ah* 244:1).

Poskim deal with the question of doubt. What is the law if a man walks by and you are not sure if he is aged or not? He looks seventy years old, but maybe he is significantly younger. Are you obligated to stand in his honor?

Emunah VeTorah argues that since *Rambam* writes that one must

stand for a person who is *muflag beziknah*, exceedingly old, he is teaching that we must stand before the exceedingly aged, and not those about whom we are unsure.

Toras Chayim (commentary to *Chayei Adam*, *kelal* 69:4) argues that you must stand if the person passing before you might be elderly. It is a Biblical *mitzvah* to stand before those who are aged. If you are unsure about his age, it is a case of doubt. When in doubt about a Biblical obligation we must be stringent—*safeik deOraisa lechumrah*. Therefore, one must stand before a person who might be aged.

Derech Sichah quoted the *Chazon Ish* as teaching that when in doubt you do not need to rise. In times of doubt we are to follow the majority, *rov*. Most people are not seventy and older. Therefore, you can assume that the person before you is probably from among the majority; i.e., he is assumed to be not over seventy, and you do not need to stand up for him.

Shu"t Shalmas Chayim (*Yoreh Dei'ah* 62) was asked about this question. The questioner proposed that just as our *Gemara* taught that the tithing of animals is carried out only when we are certain, *asiri vadai velo asiri safeik*—the animal that is certainly the tenth becomes *ma'aser beheimah* but there is no holy status for an animal that is only possibly the tenth—so too rising for the aged should only be mandated when we are certain that the man is elderly. *Seivah vadai amar Rachmana*—God said you are to stand before those who are certainly old, and not for those about whom you are unsure. *Shalmas Chayim* disagrees. He thinks that if the person looks old you should stand before him.

Shu"t Sheivet HaLeivi (*cheilek* 5 *Yoreh Dei'ah* 130) rules that if you are unsure whether the man walking before you is seventy or older, you must stand. Firstly, because we must be strict in cases of doubt about Biblical obligations. Secondly, even if the Torah only mandated standing

before those who are definitely seventy, the Sages, on a Rabbinic level, probably obligated you to stand before the man (*Mesivta*).

Chalifin with Part of a Pair of Glasses

Our *Gemara* taught that if two people come to court and each one is holding a fistful of a cloak and claiming complete ownership of the entire garment, the part that is in the hand of the person holding the garment is his, while the expanse of cloth not held by either is divided equally. Our *Mishnah* teaches that when two people come to court holding a *tallis*, it is divided equally between them. Our *Mishnah* deals with a case when each was holding onto the edge of the *tallis*. However, if each were holding onto several inches of cloth, the cloth in each fist belongs to the holder. Only the rest would be divided. Our *Gemara* then adds that this teaches a law about *chalifin*.

Chalifin is a means of acquisition. In *chalifin* the one who is buying, the *koneh*, gives a utensil to the one who is selling, the *makneh*. The *makneh* lifts up and acquires the utensil; in return, his object or obligation becomes the property of the buyer. Think of a traditional wedding; at the *chasan's tisch*, the act of *chalifin* is performed. The groom lifts up and acquires a handkerchief, and by doing so he becomes obligated in the terms of the *kesubah* to his wife. What would the law be if the groom did not lift the entire handkerchief? If there were a *tallis* at the groom's table and the groom merely lifted a part of the *tallis*, would he become obligated in the duties of the *kesubah*?

Our *Gemara* teaches that if he lifted three fingers by three fingers worth of material, the *chalifin* would be effective. *Halachah* views that

amount of material as distinct from the rest of the garment. Three by three fingers worth of material is the minimum amount of a small rag. A rag with three by three fingers worth of cloth is considered a utensil. Since the material in his hand is viewed as separate from the rest of the garment, *halachah* considers that he has lifted and acquired a vessel, and he would have successfully created a *chalifin* process.

Rav Yitzchok Zilberstein quotes the *Or Samei'ach* (*Hilchos To'ein Venit'an* 9:7). *Or Samei'ach* teaches that the rule that what is in the hand belongs to the one who seized it and the rest is divided is not absolute. The rule is true regarding a *tallis*, because a small *tallis* of three fingers by three fingers is also called a *tallis*. Since, if we imagine the amount of cloth that is in hand detached from the rest of the garment, it would still have the same legal “name” as the original item, *halachah* says that each one gets the small “*tallis*” he is holding, and the remaining large *tallis* is divided equally. However, if they were both holding onto another type of utensil, and if the part of the utensil that is in one person's hand would not be useful at all and would not be rightfully called by the same “name” as the whole utensil, we would not give to each the amount that he is holding. Then we would divide the value of the entire item between them.

Rav Elyashiv, therefore, rules that if a *makneh* merely lifted a part of an item that would be worthless were it to be separated from the rest of the item, then he would not have successfully performed the *chalifin* act of acquisition. Therefore, if the rabbi at the wedding handed his pen to the groom and the groom lifted half of it with the rabbi holding the other half, the *chalifin* did not take effect. Half a pen is worthless. It is not a utensil. Only a utensil can create *chalifin*, not half of a utensil. This led Rav Zilberstein to wonder about the following case:

At a wedding the rabbi decided to use a pair of glasses as the utensil for the *chalifin*. The groom lifted one lens. He did not raise the other lens. The other lens was held by the witness the entire time. Did this act create an obligation upon the groom? One can argue that it did not work. What was in his hand is viewed by *halachah* as separate from the rest of the object. He had a single lens in his hand. A single lens is not glasses. He did not lift a utensil. He did not create *chalifin*. On the other hand, perhaps glasses are different from a pen. A single lens is also useful. One can look through that lens and be able to see better in one eye through that lens. Perhaps a single lens would have the status of three fingers by three fingers of cloth from a *tallis*, and the *chalifin* was valid (*Chashukei Chemed*).

Bava Metzia 8**Does the Offender Need to Apologize in Person?**

Our *Gemara* mentioned a rule, *migo dezachi lenafsheih zachi nami lechavreih*—since one can acquire something for himself, he can also acquire it for his friend. If one picks up an object with the intent to acquire it, since his actions were effective for him, they also are effective for his friend. This concept was utilized by *Derech Hamelech* to explain the behavior of the children of Ya'akov.

Rambam (*Hilchos Teshuvah* 2:9) rules that *teshuvah* and Yom Kippur only effect atonement for sins between man and God. A sin between man and man will not be forgiven just by doing *teshuvah*. If a person damaged his friend he must visit his friend and pay him for the damage that was caused. He also must mollify and appease his friend. He must apologize and ask for forgiveness. If the friend refuses to forgive, the offender should send three other friends of the man to ask him to forgive. If the friend still refuses to forgive, the offender should send two more groups of three friends to the man. If, after all those attempts, he still refuses to forgive, the friend bears the guilt. The offender is exempt.

A careful reading of *Rambam* indicates that initially the offender

must approach his victim personally. Only if the victim refuses to forgive should the sinner send groups of friends of the victim to try to mollify him. *Mahari ibn Chaviv* (*Ein Ya'akov* end of Tractate *Yoma*) also writes that one must apologize personally: “Some have a bad practice. If he angered or hurt his friend, another person gets involved to try and mediate peace. After the peacemaker calms the aggrieved individual the offender goes and apologizes. This is wrong. If someone offended his friend he must go to the individual whom he hurt and apologize personally until the man forgives him.”

Mishnah Berurah (606:2), *Mateh Efrayim* (606:1), and *Pri Chadash* disagree. They were all of the opinion that if it is hard for the offender to approach his victim, or if there is another person who would likely more easily make peace, the offender does not need to apologize personally. A third party may try and mollify the hurt individual.

Derech Hamelech (*Hilchos Teshuvah* 2:9) is bothered by the behavior of the children of our father Ya'akov. They first sent emissaries to mollify Yosef (*Bereishis* 50:16). Only afterwards did they personally approach him and seek to appease him (*Bereishis* 50:18). According to *Rambam* and *Mahari ibn Chaviv*, the offender must first go personally and apologize. Why did the brothers of Yosef not observe that standard?

Derech Hamelech answers that the *Midrash* teaches that the emissaries the brothers sent were the children of Bilhah and Zilpah, who were friendly with Yosef, but who had also taken part in the kidnapping and sale of Yosef. When they went to apologize on behalf of the primary brothers, they were also apologizing for their own actions. *Migo dezachi lenafsheih zachi nami lechavreih*—since their actions were a benefit for themselves, they were also a benefit for their brothers (*Mesivta*).

Bava Metzia 9**Do the Passengers in Cars Make a Street a Public Domain?**

On Shabbos we may not carry an item from a private domain, a *reshus hayachid*, to a public domain, a *reshus harabim*. *Rishonim* argue about what makes an area a public domain. Some are of the opinion that any street that is 16 *amos* wide (according to most, that means 24-32 feet wide), and is straight from one gate to the next, is a Biblical public domain. However, there are others who require that the street have 600,000 people *bok'in bo*, traversing it, on a daily basis, in addition to the width and straightness.

Poskim debate the following question: According to the opinion that only a street with masses of people passing through it is a public domain, would people traveling in cars make the street a *reshus harabim*? Perhaps only pedestrians make the area a public domain?

The *Magein Avraham* (363:30) rules that an area in which 600,000 people traverse the waters while in boats would be considered a public domain. The fact that they travel in boats does not prevent them from turning the area into a public domain. Rav Ya'akov Emden (*Shu"t She'eilas Ya'avetz cheilek 1 siman 7*) disagrees. He is of the opinion that passengers in boats that pass through an area every day do turn

the area into a public domain. *Shu"t Beis Efrayim* agrees with Rav Ya'akov Emden. He rules that people who are sitting in wagons or on a boat would not count toward the 600,000 people who traverse a public domain daily. *Yeshu'os Malko* (*siman* 26) rules that if a train passes through a city, the passengers in the train cars would not turn the streets they pass through into public domains. He explains that the train car is a private domain. It is surrounded by four walls. Those sitting in a private domain are not traversing a public domain and making the street a *reshus harabim*.

Shu"t Mishneh Halachos (8:75) suggests that our *Gemara* is a source for this concept. Our *Gemara* teaches that a courtyard can only enable its owner to acquire items placed in it if it is stationary. A courtyard that is moving does not effect acquisitions. The *Gemara* asks about a boat. If a man were sailing his boat and a fish jumped in, would we say that he does not yet own the fish since his boat is a moving courtyard? The *Gemara* answers that the boat is stationary. It is the water underneath it that is moving. In light of this, the same should be true about a car. A car is stationary. The wheels underneath it are moving. The *poskim* taught that a public domain has 600,000 *bok'im* (traversers). People sitting in a car are not traversing. They are sitting still. *Halachah* views them as being stationary. It is the wheels underneath them that are moving. Wheels do not make a street a public domain. Only pedestrians walking or running through can make it a *reshus harabim*; people in cars are stationary, and therefore they cannot make the area a public domain. In light of this insight, a busy street such as Ocean Parkway in Brooklyn would not be considered a public domain. Although there are many cars on it, it does not have 600,000 pedestrians. Those sitting in cars would not make the area a public domain (*Mesivta*).

Bava Metzia 10**Reciting a Blessing on the Actions of an Employee**

Our *Gemara* teaches that an employee is an extension of the employer. The *Gemara* discusses the law of finding objects. Can Reuvein pick up a lost object that has no identifying sign on it in order for Shimon to acquire it? This is dependent on the question of whether a third party can seize money for a lender from a debtor. Perhaps he cannot, as he is harming other lenders who will now not be able to collect what is due them. The *Gemara* quotes a *beraisa*. The *beraisa* teaches that if an employee was hired to do work all day for the employer, and he finds an object, it belongs to the employer. The *Gemara* suggests: “The employee does not get to keep the object; his act of lifting and finding is credited to his employer. Doesn’t this prove that one can acquire an item that is ownerless for a friend, even though doing so hurts others who will now not be able to acquire the object for themselves?” The *Gemara* answers that the *beraisa* differs from the cases of seizing money for a lender or lifting up a lost object on behalf of someone else. An employee is an extension of the employer. It is as though the employer himself lifted up the object.

Machaneh Efrayim (Hilchos Sheluchim siman 11) rules that if

someone appointed an emissary (*shaliach*) to build the required fence (*ma'akeh*) around his roof, he may not recite a blessing on the actions of his emissary. However, if he hired someone to build the fence, he may recite a blessing. An employee is more than a *shaliach*. An employee is viewed by Jewish law as an extension of the employer himself. Therefore, the employer may recite a blessing on building the fence. He is considered the one building the fence through his employee. *Yismach Moshe (Parashas Eikev)* writes that generally we have a rule of *mitzvah bo yoseir mibishlucho*—it is better to do the *mitzvah* yourself than to have an emissary do it for you. However, if you hire an employee to build the fence around your roof, we would not say that it would be better to build the fence yourself. An employee is better than your *shaliach*. Your employee is your extension. It is considered as though you yourself built the fence around the roof. According to the *Machaneh Efrayim*, this is true even if the employee is a non-Jew. Employees are not *shelichim*. Non-Jews cannot be *shelichim*. However, if a non-Jewish employee builds the fence, it is considered as though the employer built the fence, and the employer can recite a blessing.

Maharit Algazi (Hilchos Bechoros al HaRamban 4:50) disagrees. He rules that you may not recite a blessing on the fence that your non-Jewish construction worker is building for you on your roof. The employee is the extension of his employer in a matter that he has a relationship and connection to. Non-Jews have no connection, relationship, or obligation to build a fence around a roof. Therefore, the non-Jewish employee building the fence is not considered an extension of the employer building the fence. *Chasam Sofeir (Orach Chayim siman 176)* agrees with the ruling of *Maharit Alagazi* but suggests a different rationale. According to the *Chasam Sofeir*, the *Gemara* only means to say that an employee is the extension of the

employer in regards to monetary issues. When the employee picks up a lost object, it is as though the employer picked up the item. However, the employee is not the extension of the employer in regards to *mitzvos*.

Shu"t Maharshag (cheilek 1 siman 63) rules that if you hire a non-Jew to build your roof's fence, you may not recite a blessing, as per the ruling of *Maharit Algazi*. However, once the fence is built, you would not need to build a new one, since your roof is now surrounded with a fence and is no longer a safety hazard.

Sedei Chemed Kelalim (ma'areches 1 siman 146) quotes all of the opinions on this issue. His conclusion is that if you wish to be lenient like the *Machaneh Efrayim* and recite a blessing on the fence your employee is building for you on your roof, you may do so (*Mesivta*).

Bava Metzia 11

Can the Cleaning Man Keep the Coins He Found on the Bus?

The Egged bus company has cleaning staff. At the end of the day of bus rides, a cleaner combs through the bus to pick up debris, filth, and lost objects. One day, a cleaner found money on the bus floor. Is the cleaner allowed to keep the money? Perhaps it belongs to the bus company. Alternatively, perhaps the bus driver is entitled to the funds.

Rav Zilberstein initially discusses whether the bus driver had acquired the money. One can argue that a bus driver has the status of a renter of the bus from Egged. He provides Egged with a benefit, driving the bus and thus contributing to the company's profits, and Egged provides him with a benefit—the ability to earn a living by driving the bus around. In this way he is like a renter, who gives money to the owner and thereby has rights to use the house or courtyard (*chatzeir*) for his own purposes. Perhaps a rented courtyard enables the renter to acquire lost objects found on it.

Rashi and *Rosh* are of the opinion that if one rents a courtyard, it becomes his courtyard and its objects will be acquired by him. *Rambam* is of the opinion that objects in a rented courtyard will be

acquired by its original owner, not the renter. *Shulchan Aruch* rules like *Rambam* in *siman* 313:3 of *Choshen Mishpat*. He rules like *Rashi* and *Rosh*, on the other hand, in *siman* 260:3. *Shach* resolves the contradiction. In the case of a lost object, the owner who rents out the courtyard will acquire objects through the courtyard. However, when someone is giving a gift, and is intending to transfer ownership to the renter (a process called *da'as acheres maknah*), then the courtyard's objects will be acquired by the renter. In our case it is a lost object. There is no active will seeking to transfer ownership of the money to the bus driver. Even if the bus is like a rented courtyard, it would be the bus company that acquires the funds through the courtyard and not the bus driver.

There is another reason that the driver certainly does not acquire the objects: the bus would not be considered his courtyard for the sake of acquisition. The driver is not entitled to use the bus for all of his personal needs. He has the right to drive the bus but he cannot do other things with the bus. He is like the poor, who have a right to walk through a field to collect gleanings. The *Gemara* teaches that they would not acquire whatever was within their six feet (four *amos*) while they walked through the field. The *kinyan* of *dalet amos* is a form of a courtyard acquiring. The poor only have the right to walk through the field of the landowner. It is still the property of the landowner. Therefore, the rights of acquisition through *chatzeir* would only be those of the landowner and not the poor who walk through. In a similar sense, since the bus driver cannot use the bus for all his needs—he merely can drive it—it is not his *chatzeir* to be able to acquire with it. (See *Ritva* on *Bava Metzia* 10b, and *Shach Choshen Mishpat* 198:6.)

Rav Zilberstein thinks that the bus company would own the money. First, since they have full rights to the bus, it is their courtyard

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and they would acquire the money left in their courtyard through the acquisition of the courtyard. Secondly, the cleaner was hired to find lost objects. When an employer hires an employee specifically to retrieve lost objects, whatever the employee finds belongs to the employer (*Bava Metzia* 12b). Since the worker was hired to find lost objects, the lost money that he finds immediately belongs to his employers, the Egged bus company. The cleaner is not allowed to keep the money for himself; it is the company's money and he has to return it to them (*Chashukei Chemed*).

Bava Metzia 12**Giftng a Lulav and Esrog to a Child**

Our *Gemara* teaches that if a child (below the age of *bar* or *bat mitzvah*), who is supported by his father, were to find a lost object, it would belong to his father. *Nimukei Yosef* teaches that the same would be true about a gift. If I give an item as a gift to a child who is still being supported by his father, the gift belongs to the father. Even if the father himself gives the gift to the child, it would revert back to the father's ownership. The child is not able to acquire it for himself since he is not independent.

Rav Shmuel HaLeivi Vozner, in *Shu"t Sheivet HaLeivi* (8:152), points out that the *Gemara* in Tractate *Sukkah* (46b) teaches that in a community where there are few *lulavim*, *esrogim*, *hadasim*, and *aravos*, and one set of four species is used by many people—with each one getting it as a gift on condition to give it back—one should not first gift the set to a child. A child can take ownership of the *lulav* but he would not be able to transfer ownership of the *lulav* back, nor can he give it to anyone else. To fulfill the *mitzvah* of *lulav* on the first day of *Sukkos*, the four species must belong to the one who waves them. If it belongs to the child, someone else may not fulfill his obligation with those items. According to our *Gemara*, however, we

would have to say that the *Gemara* in *Sukkah* is talking about a child who is independent and not supported by his father. If the child were still eating in his father's home, then the gift of the *lulav* to him would be meaningless. It would belong to the father.

In light of this idea, how do we fulfill the *mitzvah* of training our dependent children to fulfill the *mitzvah* of *lulav* nowadays? If we gift the *lulav* to them, it becomes ours again, since, as dependent children, they are not able to own an item. If they cannot own their own property how can they fulfill the *mitzvah* of *lulav*? *Lulav* must be “*lachen*”—the property of the one waving it—to fulfill the *mitzvah*.

Rav Vozner suggests that a child need not get all the details of a *mitzvah* right in order to fulfill the *mitzvah* of *chinuch*. He may fulfill his obligation with a borrowed *lulav*. If a father gifted a *lulav* to his son, the *lulav* would belong to the father; however, the son would be a borrower of the *lulav* and that would be enough to fulfill the obligation of practicing the *mitzvah* of *lulav* (*Mesivta*).

Bava Metzia 13**Can One Recite a Blessing on Tefillin
That He Found in a Genizah?**

Our *Gemara* teaches that if a promissory note was dropped by someone and then found by others, a question has been created about the validity of the note. A valid loan document would not have been easily lost by the lender. The fact that the note was found in the street makes us think that there is something wrong with it. Perhaps it was written when the borrower intended to borrow, but he did not actually borrow on time. We do not have such fears about a regular loan document presented in court, but since this document was lost we have reason to think that there are problems associated with it.

Based on this *Gemara*, *Shu"t Halachos Ketanos (cheilek 2 siman 166)* suggests a novel law. If someone finds *tefillin* that had been put into a *genizah* (a place for damaged and discarded holy writings), he should suspect that they are not kosher. Even if he brought them to a scribe and the *sofeir* checked and found that all the letters were perfectly shaped and spaced, he should suspect that the *tefillin* were written with the wrong motivations or by a disqualified scribe. Our *Gemara* teaches that finding a lost loan document is reason to believe there is a disqualification in the document. So too it is with *tefillin*.

Why would anyone allow kosher *tefillin* to end up in a *genizah*? If the *tefillin* were in the place of the non-kosher holy writings, one must assume that they were in some way disqualified. One should not recite a blessing on such a pair.

Mishneh Halachos (*cheilek 6 siman 11*) suggests that perhaps one can assume that the *tefillin* were kosher. Some have the practice when a person passes away to take his *tefillin*, open the boxes, and deposit them in the *genizah*. Perhaps these *tefillin* were kosher and they were placed in the *genizah* by followers of that custom. If the *tefillin* still have their straps attached to them, they also should be kosher. If the *tefillin* were disqualified because of who wrote the *parshiyos*, or how he wrote the paragraphs, there would have been no reason to put the straps away in the *genizah*. The straps would have been kosher. The straps should have been taken off and saved for use on another pair. Therefore, if the straps are on the *tefillin* that were found in the *genizah*, you may assume that the *tefillin* are kosher and yet somehow ended up in the *genizah*. Therefore, you may use them, as long as the scribe found the letters to be correctly written. You may even recite a blessing when putting them on (*Mesivta*).

Bava Metzia 14**May One Break an Engagement If He Finds Out That There Are Rumors About His Bride?**

Maharit (*Yoreh Dei'ah siman 49*) was asked by a groom if he could break his engagement. A woman had been proposed to the groom. He had been told that she was righteous and that her family was exemplary. He got engaged. He swore that he would marry her. Then he heard that there were rumors about her behavior. In addition, he was told that her father had run off and converted to Christianity. The groom asked *Maharit*, “May I break the engagement? I never intended to marry into such a questionable family. I did not think that my bride was a person of questionable morals when I promised to marry her.”

Maharit rules that the engagement may be broken. He bases his ruling on our *Gemara*. In our *Gemara*, Abaye teaches that if a man purchased a field and then heard that there are others who claim ownership of the field, if he had not yet done *chazakah* (which usually means the formal act of acquisition on the field), he may change his mind and force the “seller” to take the field back. The *Gemara* asks what is the definition of *chazakah*. It answers that *chazakah* means a survey of the borders of the field.

Tosfos struggle with this *Gemara*. Normally, *chazakah* means

building a fence. Why does the *Gemara* ask here, “What is meant by *chazakah*?” *Tosfos* therefore explain that Abaye is dealing with a case where the buyer had performed the act of *chalifin* with the seller. The seller had lifted a handkerchief and the field had become the property of the buyer. Abaye is introducing a novel insight. Even after an act of acquisition has been performed, the buyer is not really agreeing to buy the field. He still wants to see it. If he has not yet examined it, we are sure that he has not fully agreed to the purchase. *Chazakah* in our *Gemara* does not mean what it means elsewhere. Here it refers to the examination of the field after purchase. Only after the examination would the field become the property of the buyer. Only after examination does the buyer feel secure in his decision to purchase the field. Abaye is teaching that if after *chalifin*—but before the examination—the buyer heard that there are others who claim the field, he may back out of the deal. In light of Abaye’s ruling, *Maharit* rules that the groom may break the engagement once he has heard that there are rumors about the bride and that the father-in-law had betrayed his faith. Even though the groom had taken an oath and had performed an act of *chalifin*, he had not fully committed himself. He is like the buyer who had yet to examine his field. He can still renege on the deal. He certainly did not intend to enter into a match with someone about whom there are negative rumors. He may therefore break the engagement, as it was based on a misrepresentation. The agreement to marry the woman had been a *mekach ta’us*.

Maharit pointed out that even though the rumors are about illicit behavior performed while the woman was single, such rumors are also significant. The *Gemara* (*Sanhedrin* 75a) teaches that rumors about illicit behavior of a single woman are also damaging to the family name (*Mesivta*).

Bava Metzia 15

He Meant to Give a Gift

Our *Gemara* discusses laws concerning a person who purchased a field that was stolen. If the buyer knew that the field was stolen and he still gave money to the seller-thief to “buy” the field, Rav and Shmuel argue about the status of the funds the buyer had given when the victim of the theft comes and reclaims the field. Rav is of the opinion that the buyer is entitled to get his money back. Shmuel is of the opinion that the buyer is not entitled to get back the funds he had given.

The *Gemara* explains both points of view. Rav is of the opinion that a buyer who gives money for a known stolen field knows that he is not gaining title to the field by means of his monies. He merely intends to deposit the money in the hands of the seller. Therefore, once he loses control of the field, he is entitled to get his money back. Shmuel feels that since the buyer knew he was paying for a stolen field, and as a result the field would not become his through the payment, he intended to give a gift to the seller. He did not state explicitly that he was giving a gift to the seller for he thought that would embarrass the seller. He therefore pretended that he was buying the field. In truth, he intended to give the money as a gift. Therefore, once the

field was seized from him, he has no right to reclaim the monies that he had given.

Rama (*Choshen Mishpat* 246:17) makes a surprising ruling about invitations. He teaches that if someone invites you to eat and does not specify that he is offering the food to you as a gift, but rather he only says, “Eat with me,” he can charge you for the food. You would have to pay. We do not say that he intended to give you a gift. You benefited, now pay. Asks Rav Elyashiv: Our *Gemara* teaches that a gift-giver seeks to hide the fact that he is giving a gift. A gift-giver is concerned with the dignity of the recipient. In our *Gemara*, the recipient of the largesse is a thief who sells known stolen fields, and the gift-giver according to Shmuel gives him money as “payment for the field,” because he seeks to preserve his respect. If so, shouldn’t we say that the host was seeking to give a gift and to preserve the dignity of the guest, and that was why he did not say explicitly, “Please eat with me as a gift”? Why do we assume that the host sought to charge for the food he served?

Rav Elyashiv answers that we must draw a distinction between money that is still extant and a person who enjoyed food. Once a person has enjoyed food, he has already benefited. He should pay for his benefit. If there had been an explicit instruction that the food was a gift, he would not need to pay for the benefit. Absent explicit instructions, he cannot assume that it was a gift. However, in our case, the money is still extant. The thief-seller has not yet benefited from the money that was given to him as “payment” for the stolen field he sold. We assume that the money was intended as a gift from the “buyer,” and he merely hid its identity as a gift by saying that it was payment for the field. Why would a man hand over money to his friend, when it is clear to all that the field is stolen? The only rationale is that he intended to give a gift. When someone invites a friend to

eat, there is a rationale other than gift-giving that can explain the behavior. He wanted his friend to pay him for the food he gives.

In light of Rav Elyashiv's insight, Rav Zilberstein suggests that if I were waiting at a bus stop to board a bus from Bnei Brak to Beit Shemesh and someone offers me a ride and I take him up on it, he can then charge me the cost of the ride. Just as *Rama* rules that one who says "eat with me" can later demand payment, one who says "ride with me" can also later demand payment. The offer of a ride is not indicative of a gift. He may be looking for help in defraying the cost and that is why he offered the ride (*Chashukei Chemed*).

Would a Slaughterer Who Colored His Hair Lose His Credibility?

A slaughterer was embarrassed about his graying hair and dyed it black. A man is not permitted to dye his white hairs black. This slaughterer violated Torah law. The question arises, is the slaughterer still reliable to slaughter? Perhaps we must be suspicious about his reliability. Perhaps we should require someone to examine his slaughtering knife before food prepared from his slaughtering is accepted as kosher.

Shu"t Beis She'arim (Yoreh Dei'ah siman 19) responds that first we need to determine whether he violated a Biblical command. Only one who wantonly violates a Torah directive loses his credibility. Is it Biblically prohibited for a man to color his hair? *Rambam (Hilchos Avodah Zarah 12:10)* rules that a man who colors his hair from white to black violates a Biblical prohibition. *Ra'avad* maintains that the man has only violated a Rabbinic enactment. Seemingly, according

to *Rambam* it would be necessary to check this slaughterer's knife, whereas according to *Ra'avad* it would be unnecessary since he did not violate a Biblical commandment.

Shu"t Beis She'arim then suggests that even according to *Rambam*, the man would be permitted to slaughter without needing to have his knife examined by others. This ruling is based on the comment of *Tosfos* on our *Gemara*.

Our *Gemara* discusses a person who is selling a known stolen field. Shmuel is of the opinion that a buyer of a known stolen field is not entitled to his money back from the seller-thief when the victim of the theft takes the field from him. Rav is of the opinion that the buyer would get back the money he paid for the field. The *Gemara* explains that according to Shmuel every buyer knows he cannot acquire a stolen field. When he gave the money to the seller he was intending to give him a gift. He did not tell him it was a gift so as to avoid embarrassing him. When the victim reclaims his field, the "buyer" cannot get his money back because he had given it away as a gift. Rav is of the opinion that since every buyer knows that he cannot purchase a known stolen field, the money he gave to the seller-thief was a deposit. He wanted the seller to watch the money for him. Once he returns the field, he is therefore entitled to demand his deposit back.

Tosfos (s.v. *venasan lo*) are bothered by Shmuel's view. Here Shmuel states that all know that one cannot purchase a known stolen field, and therefore the money given to the seller-thief was a gift. However, in *Arachin* (29b) Shmuel teaches that one who bought an ancestral field during the *yoveil* year, when the sale never takes effect, would get his money back. Why wouldn't we say that the buyer of an ancestral field meant to give a gift because he knew that he could not buy an ancestral field during *yoveil*? Why would he be entitled to get his money back?

Tosfos resolve this question by pointing out that no one thinks one can buy a known stolen field by paying funds to the thief. However, during the Jubilee year there is a Rabbinic opinion that allows for a field to be purchased. Whenever there are differing opinions and there is no compelling evidence to indicate that the *halachah* should follow one of those opinions, we do not invoke the principle of “*adam yodei'a...*”—a person knows that his attempted purchase is an impossibility and he means to give a gift.

Therefore, *Shu"t Beis She'arim* suggests, the same logic would hold true about our slaughterer. A slaughterer becomes discredited if he violates a well-known Biblical law. In our case there is a Rabbinic disagreement whether a man who colors his hair violates a Biblical prohibition. We cannot say, “He knew he was violating a Biblical law.” The slaughterer was not considered a wanton violator and he did not lose his reliability.

Despite his lenient conclusion, *Beis She'arim* writes that the slaughterer should be suspended for a short time. He has behaved improperly. In addition, he should accept upon himself additional stringencies to restore his religious stature (*Mesivta, Daf Yomi Digest*).

Bava Metzia 16

Gifts and Transactions

Our *Gemara* teaches that according to one opinion every gift is really a mutual transaction. Gifts come about after a person has ingratiated himself with a friend. Due to all the person did for the friend, the friend gave him a gift. Every present is really a payment.

Teshuvos Ramatz utilizes this idea in an interesting context.

Mahari Weil (*siman* 125) rules that if one sent an agent on a mission and, in the course of carrying out the mission, the agent died, the sender requires atonement for putting his fellow in danger. He instructs the sender to give money to the orphans and to fast for forty days.

Shu"t Tzemach Tzedek (*siman* 63) asserts that *Mahari Weil's* ruling is limited to a case where the victim had been performing his task as a favor. But if the agent had been paid for his job, there would have been no need for acts of penance. People in need of livelihood put their health and lives at risk to earn funds. The verse states about an employee (*Devarim* 24:15): "*Ve'eilav hu nosei es nafsho*"—"and to it he carries his life." *Rashi* explains that it is normal for a worker to risk his life to earn funds. The worker knows that he is putting his life at risk. He accepts that risk. It is the way of the world that some

climb roofs or serve as soldiers even though these professions entail risk. The employer would not need atonement if unfortunately his employee died while working. Due to our *Gemara*, however, *Shu"t Ramatz (Orach Chayim siman 46)* challenges the *Tzemach Tzedek*.

Our *Gemara* declares that every present or favor is really a sale. As such, there should be no distinction between someone who is paid to carry out a task and someone who is not paid for that task. The one who is doing a favor is really engaged in a business exchange. If people risk their lives to earn money, they would also risk their lives to perform a favor, because every favor is a business transaction, and therefore the sender should not need any atonement if the messenger died while performing a favor (*Mesivta, Daf Yomi Digest*).

Bava Metzia 17**The Need to Respect the Court**

Our *Gemara* teaches that if a court convicted a man and demanded of him, “Go pay your lender,” he would not be believed if he claimed that he had paid the money without anyone seeing it—if payment had been previously demanded of him in front of witnesses and he had refused. Such a man is considered a *huchzak kafran*—one who has been established as having been caught lying—and he would no longer have credibility.

The *Tumim* (90:10) is bothered by this law. *Halachah* teaches that if a man was accused of being a thief and he denied it but witnesses came and testified that he had in fact taken the property of his friend, the accused thief would have lost credibility. He would no longer be allowed to serve as a witness, nor would he be allowed to swear in court. Nevertheless, if he claimed that he had repaid that which he stole, he would be believed. Why is a thief believed when he says that he privately repaid that which he stole? Why don't we say *huchzak kafran*?

The *Tumim* suggests that our *Gemara* is teaching a lesson about respect for the court. If the court convicts a borrower and he still denies culpability before witnesses, his brazen disrespect for the

court causes the court to take away his credibility. However, if a man is accused of stealing and denies it, but is then proven wrong by testimony from witnesses, his actions do not display disrespect for the authority of the court. As a result, although he would not be believed as a witness, he would still be believed if he claims that he privately and quietly returned the stolen funds.

In light of this novel insight, Rav Zilberstein suggests a unique law.

Rav Chaim Palagi was granted permission by the Islamic ruler of Turkey to levy a fine on a member of his community who was violating Shabbos. One man in the community kept his restaurant open on Shabbos. He was cooking and deliberately violating Torah prohibitions on Shabbos. Another man had a flower stand. He sold flowers on Shabbos. Selling goods on Shabbos is merely a Rabbinic prohibition. The rabbi could only levy a fine on one of the individuals. He had a question: Whom should he fine?

Should he fine the restaurateur because he was violating Torah law? Alternatively, perhaps he should fine the flower merchant. The flower peddler had been warned repeatedly by the court. The *beis din* had sent many emissaries to him demanding that he close his business. Perhaps his brazen disregard of the rabbis and the court should be dealt with before dealing with the man who was cooking on Shabbos.

In light of the idea of the *Tumim*, Rav Zilberstein initially suggests that the rabbi should fine the flower merchant. The sin of the cook was worse; however, he was not flagrantly ignoring the court. The flower merchant was guilty of unashamedly rejecting the authority of the court. Our *Gemara* teaches that we must preserve the dignity of the court. Those who flagrantly reject the court deserve special opprobrium.

Ultimately, however, Rav Zilberstein is not sure of his ruling.

In our discussion, both the thief and the man who refused to pay were guilty of a Biblical sin of theft. One's theft also entailed flagrant rejection of the court's authority. He is therefore to be treated more harshly than the man who stole but had not yet rejected a ruling of the court. However, in the case of Rav Chaim Palagi, one Jew was violating a Biblical law of Shabbos. The other one was merely violating a Rabbinic law—albeit while ignoring the court and rejecting its authority. Perhaps the rabbi should first fine the man who was guilty of Biblical violations, to try and save the Jewish community from the terrible sin of violating Shabbos (*Chashukei Chemed*).

Bava Metzia 18**How to Bless**

Our *Gemara* teaches about a town in which two people have the same name—each is Yosef son of Shimon. If a document is found that states that money is owed to Yosef son of Shimon, the finder is unable to return the promissory note to the Yosef son of Shimon who claims it. He has to fear that perhaps the document belongs to the other Yosef son of Shimon.

The *Rashba* (*Toldos Adam siman 352*) writes that in certain cases one can know to whom the document belongs. If one Yosef's father is still alive and the other's father is deceased, and in the document it was written, יוסף בן שמעון נר"ו, "Yosef son of Shimon, may God protect him and grant him success," clearly the Yosef whose father is alive is the rightful owner. One would never write a wish for added life and success about a deceased individual. The document therefore could not be the possession of the Yosef son of Shimon whose father Shimon is deceased.

Beis Yosef (*Choshen Mishpat siman 49*) disagrees with the *Rashba*. He argues that perhaps the blessing of נר"ו — "may God protect him and grant him success"—is not intended for Shimon. Rather it is intended for the son, Yosef. Both Yosefs are alive. We cannot know

then which Yosef is the rightful owner of the document, and the document cannot be returned to either.

Shu"t Torah Lishmah (siman 337) defends the view of the *Rashba*. He argues that if the intent in the document had been to bless Yosef, the scribe would have written, יוסף נר"ו בן שמעון —“Yosef, may God protect him and grant him success, son of Shimon.” According to *Torah Lishmah*, one always places a blessing right next to the name of the one being blessed.

The *Shach* (*Choshen Mishpat* 49:7), on the other hand, defends the view of the *Beis Yosef*. The entire document is about Yosef. Yosef is the one who had made the loan. Therefore, if there is a blessing in the document, it is clearly intended for Yosef and not for his father. In regards to practical law, the *poskim* argue who is right, *Rashba* or *Beis Yosef*.

Rav Yosef Chayim quotes many sources in which the title is attached to the name of the person who deserves it, and other sources in which the compliment about a person is mentioned after the father's name, even though the compliment refers to the son. On *Chanukah* we say in the *Al HaNissim* prayer, “*Biymeis Matisyahu ben Yochanan Kohein Gadol*” —“In the days of Matisyahu son of Yochanan the High Priest.” Who was the High Priest? According to the *Rashba* it was Yochanan. According to the *Beis Yosef* it could have been Matisyahu. Rav Moshe Sofer suggests that the name “Maccabi” can shed light on this question. He suggests that Maccabi is an acronym; מכבי stands for מתתיהו כהן בן יוחנן, Matisyahu, the priest, son of Yochanan. This indicates that he believes that Matisyahu had been the High Priest, but that Yochanan had not been the *Kohein Gadol* (*Me'oros Daf Hayomi*).

Bava Metzia 19**A Jew Misplaced His Esrog on the First Day of Sukkos. Someone Found a Lost Esrog. The Jew Claims the Esrog with a Slight Sign and His Recognition of the Item. Can He Recite the Blessing?**

On *Sukkos* we have a *mitzvah* to lift up and wave the four species. One must own the items to fulfill one's obligation on the first day of the holiday. Generally, when in doubt, we do not recite a blessing—*safeik berachos lehakeil*. Rav Zilberstein was asked the following question: Reuvein had purchased an *esrog*. He brought it to *shul* on the first day of *chag*, and he misplaced it. He looked all around and could not find it. Several hours later, a man came into the *shul* and announced that he had found an *esrog*. Reuvein gave a weak sign identifying that it was his *esrog*. When the man showed him what he had found, Reuvein claimed it as his own due to the fact that he recognized it as his, a claim called *tevias ayin*. Are these proofs of ownership sufficiently powerful to allow Reuvein to recite a blessing on the *esrog*? Would we be sure, based on both a sign and recognition, that it was Reuvein's fruit, such that Reuvein may fulfill his obligations with it?

Our *Gemara* deals with a similar story. Rabbah bar Bar Chana

had been given a bill of divorce (*get*) and told to deliver it to the particular wife. He lost the *get* in the *beis midrash*. Others found it. He told them, “I have a weak sign, and I recognize it as the one I had.” They returned the *get* to him. He was unsure whether they had returned it to him because they felt that Biblically even a slight sign was significant enough to warrant a return, or whether the reason for the return was that since he was a Torah scholar they were accepting his *tevias ayin*. *Lechem Abirim*, *Ein Yosef*, *Ashdos Hapigah*, and others ask why Rabbah did not consider the possibility that it was returned to him because he had both a sign and recognition.

They answer that if a slight sign on its own and recognition on its own would be insufficient to garner the return of an object, together they would not warrant forcing the return of an object. If a slight sign is not a Biblical proof of ownership, a slight sign with recognition by a scholar is not proof of ownership. Because of the slight sign, a person’s mind will play tricks on him. He will deceive himself into thinking that he recognizes it; however, perhaps in truth he does not recognize it.

Based on this novel insight, Rav Zilberstein rules that if the *esrog* owner only has a slight sign about the fruit, he should not recite a blessing on the *esrog*. Perhaps it is not really his *esrog* that has been found. Maybe his mind is deceiving him. Perhaps it is someone else’s fruit. One may only recite the blessing on that which certainly fulfills the divine command, a fruit that is certainly his (*Chashukei Chemed*).

Bava Metzia 20

Torah Can Only Be Transmitted by Modest and Humble Sages

Our *Gemara* has a story that contains a lesson about transmitting Torah.

A woman's *get* was found in the court of Rav Huna. In the bill of divorce, it was written that it had been written in the town Shviri that stands on the banks of the Rachis River. An emissary claimed that he had dropped the *get*. He demanded it back because he wished to deliver it to the woman to effect her divorce. Rav Huna ruled that the *get* could not be given to the emissary. Perhaps there is another town called Shviri somewhere else on the Rachis River, and the *get* came from there. Rav Chisda told Rabbah to investigate this question, because in the evening Rav Huna would ask him about it. Rabbah found a *Mishnah* that seems to refute the ruling of Rav Huna.

The *Mishnah* teaches that if one found a court document, such as a writ of *chalitzah*—a document testifying that *chalitzah* had been performed—or a validated loan document, the document should be returned. This *Mishnah* indicates that we do not suspect that perhaps there is another town by the same name and the document came from there. Rav Amram challenged Rabbah: “How can you try to rule

about matters of personal status, the validity of a *get*, from a source that deals with the less weighty topic of monetary law?” Rabbah responded, “You are a lazy person; the *Mishnah* I quoted deals with documents of personal status and not only documents about funds, for it also discusses a writ of *chalitzah*.” After this discussion, the beam supporting the house of learning collapsed. Rav Amram said it collapsed because Rabbah had called him lazy, whereas Rabbah said it collapsed because Rav Amram had challenged him with an inappropriate question, which was an attempt to publicly humiliate him.

Why did the *beis midrash* collapse because of the language the Sages used when talking with each other?

Rav Eliyahu Mann *shlit”a* explains our *Gemara* in light of the famous lesson of the Talmud about the students of Rabbi Akiva. The *Gemara* relates that we mourn the deaths of the 24,000 students of Rabbi Akiva between *Pesach* and *Shavuos*. They died for not treating each other with respect, and according to the *Midrash*, for being critical and stingy toward one another. Why was disrespect a reason for them to die?

Rav Yechezkel Levenstein explains that elsewhere in *Shas* we learn that Hashem brought our teacher Moshe forward in time and showed him the learning prowess of Rabbi Akiva. Moshe thought the Torah should have been given through Rabbi Akiva. Hashem disagreed and made Moshe the father of our learning tradition. Why did Hashem not make Rabbi Akiva the father of Torah transmission?

Rabbi Akiva was a giant of scholarship—he could derive heaps of laws from the little crowns atop letters; however, Moshe Rabbeinu was the greatest in character. Moshe Rabbeinu was the most humble of all men. To be a master of Torah transmission, one must be a giant in modesty and humility. No one ever reached Moshe’s level

of humility. That is why Moshe was chosen to be the primary transmitter of Torah to the Jewish nation. Rabbi Akiva's students did not die as sinners. They were great individuals. They had reached great levels of knowledge. They were at a point when they should have become teachers, but their character was not fully refined. They did not treat each other with respect. Their disrespect to one another stemmed from some jealousy and negativity toward one another. As a result, they passed away, because they had finished their individual tasks and could not fulfill the national task of transmitting Torah to others. Only the fully humble and modest merit to transmit Torah. This is why we mourn their passing during the days that lead up to our commemoration of the receiving of the Torah. To receive Torah and to transmit Torah, we must be people of refined character.

Our *Gemara* is also teaching this lesson. In some measure, Rabbah and Rav Amram were not displaying fine character traits to each other. As a result, the *yeshivah* building collapsed. A *yeshivah* building can only stand when its members act according to the highest possible level of good character that they can reach (*Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 21

**A Child Found a Lost Object Before
the Owner Knew He Had Lost It. Later
the Owner Despaired. The Child Then
Reached Adulthood. Must the Child
Return the Object?**

Our *daf* deals with the *mitzvah* to return lost objects. If the owner of the object experienced *yei'ush* (despair) and afterwards the object was found, the finder does not need to return the object. Once witnesses hear the owner say, "Woe to me for my financial loss," the owner has surrendered his ownership; if the item is then found, the finder does not need to return the item.

Our *Gemara* then discusses a person who found an object about which the owner will despair, but the owner does not yet know he has lost it when the object was found. This scenario is called *yei'ush shelo mida'as*. Abaye and Rava argue about *yei'ush shelo mida'as*. The *halachah* is in accordance with the view of Abaye that if someone finds an object before the owner knows he has lost it, when the owner subsequently despairs, the object does not become the property of the finder. The finder must still return it to the owner.

A child found an object before the owner knew he had lost it.

A short while later, the owner became aware of what he lost and despaired of getting it back. Then the child grew up and became an adult. Does he still have to return the object?

Minchas Chinuch (*mitzvah* 539:8) rules that the finder may keep the item and would not need to return it. *Ramban* (*Milchamos Hashem* 14b in the old *Rif* pages) has a profound explanation for why despair without knowledge is not considered despair. When a finder picks up a lost object, he becomes a watchman for the object, a *shomeir aveidah*. As a watchman, he is an extension of the domain of the owner. An owner cannot despair about that which belongs to him and is still in his home. Despair takes an item that was out of the owner's domain away from him; however, if before the owner despaired the finder became the watchman, then the item was still in the owner's domain at the time of the despair—and as a result he did not surrender his rights to the item when he despaired. A child who finds an object does not become a watchman. As a result, the child was never a *shomeir aveidah*. At the age of thirteen, when he becomes an adult, he then can become a *shomeir*. However, by that time the owner had already previously despaired. Therefore, the finder may keep the item and would not need to return it (*Chashukei Chemed*).

Bava Metzia 22

**Should a Teacher Refuse an Honorary
Aliyah His Student Gives Him out of
Concern That It May Not Have Been
Given with a Full Heart?**

A teacher came to a *shul* on *Yom Kippur* morning. The *shul* had sold the special honorary acts of the day on *Yom Kippur* eve. One man, the teacher's student, had spent a lot of money and purchased the honor of being the third reader called to the Torah at *Minchah* and reading *Maftir Yonah*. The student felt bad having such an honor in the presence of his teacher. He told the attendant to tell his teacher that he was gifting the honor to him. The teacher asked Rav Zilberstein, "Should I refuse the gift? Perhaps it was not given with a full heart. On the other hand, the *Gemara* (*Berachos* 55a) teaches that there are three things that shorten a person's life. One of them is being given a *Seifer Torah* to read from and not reading from it. Therefore, perhaps I must read and I cannot refuse this gift?"

Our *Gemara* has a story that seems similar. The *Gemara* mentions the law that if a man sent a messenger to separate fruit as tithes, and the sender then came into the field and said, "You should have taken the nicer ones," if there were nicer ones then the tithing took effect,

and if there were no nicer ones, he was merely being sarcastic and the tithing did not take effect. It then relates a story.

Ameimar, Mar Zutra, and Rav Ashi came to the orchard of Rav Mari bar Isak. The sharecropper brought dates and pomegranates for them to eat. Ameimar and Rav Ashi ate. Mar Zutra would not eat. Mari bar Isak then showed up. He said to his sharecropper, “Why did you not give the Sages from the nicer produce that we have in the field?” Ameimar and Rav Ashi then turned and asked Mar Zutra, “Why don’t you eat? We have learned that if there are nicer fruits, then when the owner tells the emissary ‘You should have given from the nicer fruits,’ the tithing is good. The owner here is sincere in wishing that we get the nicer fruits, and there are indeed prettier fruits. Why won’t you eat?” Mar Zutra answered that there is a difference between tithes and gifts. Giving *terumos* and *ma’asros* is a *mitzvah*. All Jews want to perform *mitzvos*. Thus, when we have reason to take the owner’s words literally, we may. However, there is no *mitzvah* obligation for Mari bar Isak to feed us. Perhaps when he said that he wholeheartedly wanted the Sages to eat—and even would have preferred to have given them more—he only said so out of embarrassment. He was embarrassed to tell Sages that he never wanted them to take and that the sharecropper had been wrong to give to them.

In light of the lesson of Mar Zutra, if the teacher is sure that the student did not intend to give him the honor wholeheartedly and only gave it to him because he was afraid of embarrassment, then it would be an act of virtue to refuse the gift.

In terms of the concern that not going up to an *aliyah* might shorten one’s life, perhaps a responsum of the *Shu”t Torah Lishmah* can allay that worry. *Torah Lishmah* rules that if there is a reason to refuse the offer to read from the Torah, the refusal would not lead

to a shortening of life. *Mishnah Berurah* (139:1) rules that in those places where the *oleh* reads from the Torah himself, one may refuse to go up if he had not prepared the reading beforehand. *Torah Lishmah* rules that if each person called up in the *shul* then gives a donation, a person may refuse to go up if he does not have the financial means to give generously. Therefore, Rav Zilberstein rules for our case that if it is clear to all that the teacher is refusing the honor because he feels that the student did not give it to him wholeheartedly, he may refuse the *aliyah*.

In his later years, the Steipler Gaon suffered from shortness of breath. Entering his home required climbing ten steps. Neighbors paved a road for him so that his car could drive up to the door to enable him to enter without using the stairs. He refused to use the road. He never used it even once. He feared that perhaps not all of the neighbors had wholeheartedly agreed to lose space for the road. Like Mar Zutra, he would not accept a gift if he suspected that it was not given wholeheartedly (*Chashukei Chemed*).

Bava Metzia 23**May You Walk By Bread Lying in the Street?**

Our *daf* introduces the rule of *ein ma'avirin al ha'ochlin*, we may not walk by and leave food out in the street, in the midst of a debate about what constitutes a valid sign on a lost object. Rava is of the opinion that a sign that will likely be trampled still counts as a sign—*siman he'asuy lidareis havi siman*. Rabbah believes that it would not count as a sign. The *Gemara* challenges Rabbah. We learn in the *Mishnah* that one who finds loaves made by a baker can keep them. The implication is that loaves baked by a homeowner must be returned. The loaves of a homeowner are distinctive. It sounds as though even homeowner-baked loaves found in a public domain must be returned. Those loaves will likely be trampled and their distinctive signs lost. Nevertheless, if they are found before being stepped on, they should be returned because even a sign that is destined to be trampled is considered a sign. Rabbah answers that loaves of bread in a public domain would never be in the category of items that have a sign that is destined to be trampled. There is a rule that we may not walk by food left in the street. Bread in the public domain would certainly be lifted by one who saw it. The signs on the loaves would therefore not be marks that are likely to be trampled.

How far does the law of *ein ma'avirin al ha'ochlin* extend? If I walk

in the street and see bread in the garbage, am I obligated to pick it up because *ein ma'avirin al ha'ochlin*?

Rav Zilberstein was once walking with his father-in-law, Rav Elyashiv, and they saw a piece of bread on the ground. Rav Zilberstein bent down and picked it up. Rav Elyashiv told him that he had not needed to do so. Rav Elyashiv explained that the law is that *ein ma'avirin al ha'ochlin*—we may not walk by food. Leaving food in a disgraceful position is not allowed. Our times are different from the times of the Talmud. People are very careful about germs and cleanliness nowadays. Bread that has languished on the floor, and has picked up many germs and dust, is not eaten by anyone. Such bread is therefore not considered food anymore. One is allowed to walk by that which had once been food but now is no longer edible.

According to Rav Moshe Feinstein (*Dibros Moshe Bava Metzia* 31:15), the law of *ein ma'avirin al ha'ochlin* is not truly binding. *Rambam* and *Shulchan Aruch* never quote it. *Magein Avraham* (471:1) is the only *poseik* who records it. It is merely an act of heightened virtue and piety to insist on lifting up fallen food. If it is not really mandated even for real food, we can certainly understand why Rav Elyashiv ruled that regarding items that no one would eat there is no need to lift them (*Chashukei Chemed*).

Bava Metzia 24**Should a Collector Lie About the Generosity of His Donors?**

The *Gemara* teaches that a Torah scholar who rarely misrepresents the truth can regain a lost object with his claim that he recognizes that the item is his. He does not need to present a distinctive sign in the object. Torah scholars usually are very truthful. They deviate from the truth only in regards to *masechta*, *puriya*, and *ushpiza*—tractates (i.e., how much he has learned), procreation (i.e., inappropriate matters), and hosts. Such individuals are to be given a lost object when they definitively claim that they recognize that it is theirs.

Rashi explains why a Torah scholar is allowed to create misunderstandings about the three topics listed above. If a Torah scholar is asked directly whether he is an expert in a tractate, he is permitted to insist that he does not know it even though in truth he is proficient in it, as an expression of humility. If he is asked directly whether he engaged in marital relations, he may lie and say that he did not, to maintain modesty. If he is asked whether his host treated him well, he may lie and say that he was not greeted warmly. Not telling others of the generosity of the host is a good attribute. If he shares how generous his host was, bad people might

seek to take advantage of the host's good heart and eat him out of his own home.

Tosfos (s.v. *be'ushpiza*) quote the lesson of *Rashi* but then modify it. *Rashi* teaches that the scholar is encouraged to represent his host as a tough man so as to discourage parasitically-minded people from taking advantage. This is an expression of a lesson in Tractate *Arachin* (16a). It is taught there that "one who loudly blesses his friend early in the morning and in the evening, it will be considered a curse for him." By loudly complimenting his host, he causes financial loss to the good man. *Tosfos* challenge this from a *Gemara* in *Berachos* (58a). The *Gemara* there teaches that a good guest says, "All that my host did, he did for me." If a guest is not supposed to tell others about the goodness of his benefactor, why did the *Gemara* there say that a good guest loudly compliments his host?

Tosfos answer that the rules are contingent. When speaking to parasitical people, one should not tell them of the goodness of a host. However, when speaking to upright, sensitive, and ethical people, one should tell them about the generosity of a host. The *Gemara* in *Berachos* deals with a person who is talking to kind people. They would never take advantage. The right thing to do is to tell them that "all my host did, he did for me."

Rav Moshe Feinstein in *Igros Moshe* (*Yoreh Dei'ah cheilek 3 siman* 95) was asked if a charity collector may tell others about his generous donors. May a poor man who received a large donation from Reuvein tell another poor man that Reuvein had given him a large amount?

Based on *Tosfos*, Rav Moshe allows the collector to tell other collectors about his donors. *Tosfos* teach that the Torah scholar hides the generosity of a host only from people who are bad and likely to leech off the host. However, among upright people, a guest should share compliments about a host. Therefore, a collector may tell other

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charity collectors who are upright people about the generosity of certain individuals. Doing so will not harm the givers. If they were to be solicited, they would gain the chance to give more *tzedakah*. It is a favor to help people give charity. If they could not afford to give more charity, they could always refuse to give. There is nothing shameful or embarrassing about telling a solicitor that you are unable to give him as large a donation as you gave to someone else. Since it is permitted for a collector to share donor data with others, a philanthropist should never be upset if the details of his donation to one cause become known to a different charity (*Mesivta*).

Bava Metzia 25**May We Use the Gentile Calendar Date?**

Our *Gemara* has a discussion about returning lost coins. Some *poskim* derive from this discussion a lesson about what date a Jew is to use on his documents.

The *Mishnah* teaches that a finder of three coins arranged like a tower—with the widest coin on the bottom, then a slightly smaller coin, and then the smallest coin on top—must attempt to return the coins to the rightful owner. He is to announce that he found coins. When claimants come, he is to return the coins to the person who correctly identifies the fact that there were three coins in the tower formation. Rav Ashi wonders, “What would the law be if he found three coins in the formation of the stones of Bei Kulis?” The *Gemara* quotes a *beraisa* that resolves the question. If coins were found in a format like the stones of Bei Kulis—two side by side and the third atop them resting on them both—the finder must return them and cannot keep them for himself. *Tosfos* point out that Bei Kulis is a reference to the idolatry our sources call Merkulis. The real name of this idolatry was Kilus, which means praise. Our Sages here call it Bei Kulis and elsewhere Merkulis because a Jew may not mention the name of an idolatrous faith. We should deliberately distort their names.

Is it correct to use the gentile date? The gentile years are a reference to the life of the founder of Christianity. Perhaps using such a year violates the law not to use a place of idol worship as a location marker. Furthermore, the secular names of several of the months are also references to paganism. For example, January is a reference to Janus, the god of beginnings in Roman mythology. Perhaps, based on the lesson of *Tosfos* on our *daf*, a Jew should only use Jewish dates, and avoid terms that give homage to gentile beliefs.

Shu"t Maharam Schick (*siman* 171) was asked about a person who put a gentile date on a tombstone. *Maharam Schick* strongly criticizes the action. He argues that a cemetery is a *chatzeir hashutfin*—a courtyard owned by partners. One man has no right to put up a monument to a false faith in the communal area. He believes that use of the gentile date is a violation of the verse: “*Vesheim elohim acheirim lo sazkiru*”—“And the name of foreign gods you shall not mention” (*Shemos* 23:13).

Not all authorities agree with *Maharam Schick*. *Piskei Teshuvos* (*siman* 156) quotes letters from *Rama*, *Maharam Padua*, *Shach*, *Chavos Ya'ir*, and others who used the gentile date. Perhaps they felt that the names of the months and the number of years are no longer displays of honor to foreign faiths. They are simply widely accepted conventions about how to mark time, and therefore they may be used by all (*Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 26

Who Owns the Money That Fell out of a Couch?

An elderly childless couple lived near a *yeshivah*. They decided to gift their apartment to the *Rosh Yeshivah* when they would pass from the world. They passed away. The *Rosh Yeshivah* gifted the apartment to the *yeshivah*. The *yeshivah* administrator went to the apartment and saw that it was filled with furniture. He had no use for the couch. He called the nephew of the deceased. He told him that he could come take the piece. The nephew responded that he did not care for the old furniture and the *yeshivah* could do with it as it pleased. The administrator asked for students in the *yeshivah* to volunteer their time and come to remove the couch. The boys gladly gave of their time. While removing the couch the pieces fell apart. Inside one of the cushions there was cash and jewelry. Who gets to keep the cash? Does it belong to the *yeshivah*? Does it belong to the nephew of the couple?

Tosfos on our *Gemara* sheds light on this case. The *Gemara* on our *daf* teaches that if a person found rusted coins in an old wall he may keep the coins. He does not need to try and return them. *Tosfos* are troubled by this law. Generally there is a rule that a person's

courtyard can acquire on his behalf: *chatzeiro shel adam koneh lo shelo mida'ato*—a person's courtyard can acquire for him without his knowledge. If someone put something in my courtyard without my knowing about it, I would acquire the object. Here, there is an owner of the wall. Why would his wall not acquire the coins on his behalf? *Tosfos* answer that a courtyard will not acquire an item that the courtyard owner might never know about. It is possible that he will never become aware of the coins in his wall; as a result, his wall could not acquire for him. Rav Soloveitchik *zt"l* explained the logic of *Tosfos*. A courtyard acquires because it controls the object. If a man might never know that his courtyard had that object, we cannot say that the courtyard asserted mastery over the object.

In our case, the money hidden in the couch was like the coins hidden in an old wall. Years could go by without anyone knowing about the items being in the couch. The couch and apartment belonged to the *yeshivah*. However, they could not acquire the money with *kinyan chatzeir*. The money was therefore not in the possession of the *yeshivah*.

It was also not the property of the nephew. The nephew had told the school that they could do whatever they wanted with the couch. He had clearly despaired of there being money in the couch for himself. He had displayed *yei'ush*—despair of getting the money.

Rav Zilberstein ruled that the *yeshivah* boys could keep the cash and the jewelry that had dropped out of the cushions of the couch (*Reshimos Shiurei Maran Hagrid HaLeivi al Maseches Bava Metzia, Chashukei Chemed*).

Bava Metzia 27**A Mirror Fell off an Egged Bus. Must the Finder Bring It Back to the Company?**

The Egged bus company was a cooperative owned by its drivers. A man was walking down the street, and he saw a bus from the Egged company sideswipe a street pole. The mirror on the side of the bus fell off. He retrieved the mirror and tried to wave the bus down to return the mirror to the driver. The bus driver saw him, mouthed to him, “Keep it,” and drove off. The finder came to Rav Zilberstein with his question. Was he allowed to keep the mirror? Was this a case of willful loss, אבדה מדעת, because the driver had told him “Keep it”? Perhaps, since there were other partners in the bus—namely, all the other drivers—he had to return the mirror to the central office of the company?

Rav Zilberstein pointed out that based on our *daf*, he might not need to return the mirror. Our *Gemara* teaches that if an item is worth less than a *perutah*, one need not return it. The driver did not own the mirror exclusively to be able to give it away. The mirror was owned jointly by all the partners in the company. If the finder knew the value of the mirror and he knew that there were so many partners in Egged that each had a share worth less than a *perutah* in the mirror, he would not need to return it. *Shulchan Aruch (Choshen*

Mishpat siman 262:2) rules, “Even if the lost object is very valuable, if it belongs to many, many partners and therefore the share of each partner is less than a *perutah*, the finder does not need to return it.”

Rav Zilberstein asked: What if there was an insurance company owned by a few partners that had insured the bus? Would he have to return the mirror? While the bus owners did not each have a *perutah* of ownership in the mirror, if he will not return the mirror the insurance partners will each suffer a loss of more than a *perutah*. Perhaps to save them from loss he is obligated to return the mirror to Egged?

Based on a lesson of Rabbi Akiva Eiger, Rav Zilberstein thought that there would be an obligation to return the mirror.

Rabbi Akiva Eiger (*Chiddushim* to *Bava Metziah* 22b) asked: If a Jew accepted responsibility to watch an object belonging to a gentile, and it was lost and you found it, do you need to return it? The normal thought would be that a finder can keep the lost object. The Torah created a novel obligation on the finder to return the lost object. This law was for *aveidas achicha*, your brother’s lost object, not the lost object of a gentile. What about when not returning will cause the Jew to have to pay? Must you return the object to the gentile? Rabbi Akiva Eiger ruled that the finder would have to return the object to the gentile. The *Gemara* teaches that the law of returning lost objects includes a mandate to prevent Jews from suffering financial loss. If I see a river about to swamp my friend’s field, I am obligated to jump in and try and prevent the flood. Therefore, the finder would be obligated to return the lost object to the gentile to save the Jewish watchman from loss. So too, in our case, if the partners in the insurance business will each suffer a loss of a *perutah* or more, the finder should return the mirror to the bus company to prevent them from losing money (*Chashukei Chemed*).

Bava Metzia 28**Utilizing the Police to Return Objects**

Our *Gemara* teaches that when the *Beis Hamikdash* stood, the finder of a lost object would announce to the entire Jewish nation that he found the item. All Jews would come to Jerusalem three times a year to celebrate the three *regalim* near the Temple. A finder was obligated to announce the finding of the item during the three festivals, and again for another week after the last festival. Once we lost the *Mikdash*, the Sages instituted that lost objects be announced in the synagogue. The *Sma* (*siman* 267:4) taught that in the past finding of lost objects would be announced when the people gathered for prayer. In our days, it is the practice in many *shuls* to hang up notes on bulletin boards publicizing the lost objects.

How many *shuls* need to get the notice?

Some authorities hold that the finder must announce the lost object in all the synagogues and study halls in the city. He has a lost object. He must announce it to a large audience, just as in the days of old, the finder would announce the lost item to the entire nation (*Ein Yehoseif*). However, Rav Moshe Feinstein disagreed (*Igros Moshe Orach Chayim* 5:9). He taught that a finder of an object did not need to hang up notices in every synagogue in New York. It was enough

to announce the item in each *shul* in the area where the lost object was found.

The *Chasam Sofeir* (*Shu"t Choshen Mishpat siman 122*) wrote that in his time it became the practice to announce the found object in the newspapers. Many people find out the news through the papers. Announcing the find there would be a good way to get the news to the owner of the item. *Pis'chei Choshen* (Chapter 3) suggests that one should list the find in all the newspapers that will carry it, because no one knows which paper the owner of the item reads. If it would cost money to list the lost item in the paper, the finder would not need to spend money to announce the item. However, if he is confident that the owner of the item would reimburse him for the cost of the listing, he should list the item in the paper.

Pis'chei Choshen also discusses bringing a found item to a police station. The police often have a unit dedicated to lost and found items. They often successfully get the object back to the owners. The Jerusalem Police Department reports that most of the lost items brought to their stations are successfully returned to their original owners. *Pis'chei Choshen* ruled that if one found an object and he brought it to the police department, he fulfilled his obligation to announce the find. He also argued that if the finder can merely inform the police of what he picked up and the police will connect him with the person looking for such an item—and the finder would not need to actually hand over the item to the police department—he should certainly do so. Telling the police would be a fulfillment of the finder's obligation to publicize the fact that he discovered a lost object.

A Lost Object Found in a Cab

The book *Hashavas Aveidah Kehilchasah* (3:16) quotes a number of rabbis who state that if you find a lost object in a cab, you may give

it to the lost and found department of the taxi company. Even if the company does not follow Jewish law and will not insist on the owner giving them an identifying sign about the object before returning the item to him, you can give the item to the company. Anyone who gets into a cab knows that if he leaves an item in the taxi, it will end up at the company lost and found. He accepted that reality when he entered the cab. Therefore, you are correct in giving the item to the corporation's lost and found department (*Me'oros Daf Hayomi*).

Bava Metzia 29**Taping a Rebbe's Class Without Permission**

A Rebbe was teaching a difficult subject. A student wanted to record the lesson. He asked Rav Zilberstein, “May I tape the class without my Rebbe knowing? May I then distribute the recording widely?”

In our *Gemara* there are lessons about how to treat objects. The *Gemara* quotes a *beraisa* about a watchman. If you were given a scroll to watch, you may not read from it. *Mordechai* quotes Rav Yuda Gaon who taught that just as the watchman may not read from it, he also may not copy from it. Copying from a scroll wears away and tears the document. Therefore, if the depositor did not grant permission to use the scroll, the watchman may not even copy one letter from the scroll. Then, the *Mordechai* issued a novel ruling: Our *Gemara* was only talking of an ignoramus who was given the scroll to watch. However, if someone deposited a scroll with a Torah scholar, the sage may read from it and copy from it if he does not own his own copy of the work, even though he was never granted permission to do so.

Mordechai gives two reasons for his ruling: First, one who deposits his scroll with a sage knows that the scholar uses scrolls and books and will likely use his as well. By choosing the sage to be his watchman, he was giving implicit permission to the scholar to

read from the work and copy it. The *Gemara* will later teach that a man who gives loose coins to a money-changer to watch is granting permission to the dealer to use them. The same is true with the depositor of a scroll. Choosing a sage means that he is granting the sage permission to use it. In addition, he gives a second reason to allow a sage to read from and use a scroll of Torah that is in his home without permission from the owner.

Midrash Mishlei has a novel interpretation of the following verse (6:30): “*Lo yavuzu leganav ki yignov lemalei nafsho ki yir'av*”—“They will not disparage the thief who steals to fill his hungry soul.” The verse is teaching that no one should disparage one who steals words of Torah, or one who copies them without permission. According to this *Midrash*, it is never theft when one is taking Torah.

Rama (*Choshen Mishpat* 292:20) rules like the *Mordechai* and quotes his first reason: “A Torah scholar who does not have his own copy of a holy scroll may read and copy from the scroll that he was given to watch. The depositor certainly knew that he would use it. He gave it into his domain intending to allow him to use it.” *Rama* does not quote the second rationale of the *Mordechai*. *Sma* (45) argues that *Rama* did not quote the *Midrash* that absolves Torah thought from theft because he did not agree with it. If the depositor were to explicitly forbid the Torah scholar watchman from using the scroll, he would not be allowed to use it. However, the *Shach* (35) disagrees with *Sma*. He claims that *Rama* accepted both rationales of the *Mordechai*, even though he only quoted the first one. According to the *Shach*, it is the view of the *Rama* that a scholar can assume that the depositor of the scroll meant to allow him to use it, and it is impossible to steal words of Torah. According to the *Shach*, even with express disapproval from the owner, you may open up his scroll and copy words of Torah from it. Seemingly, in light of the *Shach*'s

ruling it would be permissible for a student to illicitly tape his teacher and to disseminate the lesson. Words of Torah cannot be owned by a person. Anyone who is trying to learn is not stealing, even if he gets access to holy words without permission.

Igros Moshe (Orach Chayim 4:19) ultimately rejected this conclusion.

Rav Moshe Feinstein distinguished between a book of Torah and a class from a teacher.

Rav Moshe Feinstein taught that generally one would be allowed to record a lesson of Torah from a Torah teacher. However, if the teacher explicitly stipulated that he is only teaching on condition that his words not be taped, no one may tape them. Even though it would not be theft to tape his words of Torah and disseminate them, as per the *Shach* and *Mordechai*, the teacher is entitled to feel that some lessons should not be taught to all. Many might misinterpret his words. Even in the *Gemara* we have the concept of *halachah ve'ei morin kein*—it is the law but we will not spread it to many people. The teacher might be unsure of his lesson. He might have proposed an idea to his class but he still intends to continue to research the thought. He has not come to a conclusion. If he was taped and the lecture publicized, people would mistakenly quote him as having reached a conclusion. For these reasons the teacher is entitled to refuse to allow his lesson to be taped.

He could not tell students that they may not take notes of his remarks. Note taking helps a student learn and recall information. Part of teaching Torah is the obligation to help the student know the information and recall it. However, a tape is a lasting record that can cause the teacher shame if he decides to change the position he took in a lesson. Therefore, Rav Moshe ruled that a teacher may refuse to allow any taping of his classes and the students would then have to adhere to those instructions (*Chashukei Chemed*).

Bava Metzia 30

**Must I Accept Suffering Humiliation to Save
Someone Else's Life?**

Based on our *Gemara*, *Chochmas Shlomo* (*Hagahos LeShulchan Aruch siman 426*) issued a shocking ruling: If I see my neighbor drowning in a river and the only way to save him requires that I undress and jump naked in front of many people into the waters to extricate him, I am exempt from saving him. The obligation to save a life is derived from the obligation to return a lost object (*Sanhedrin 73a*). *Bava Metzia 30* teaches that an honorable sage need not return an object if taking the object would be beneath his dignity. Just as *halachah* does not obligate me to humiliate myself to return property, it does not obligate me to shame myself to save a life.

Klei Chemdah (*Ki Seitzei os 6*) challenged the ruling of the *Chochmas Shlomo*. Our *Gemara* taught that if the sage would carry his own lost object, then he would have to retrieve a similarly lost object of his friend. For instance, it is not respectful for a sage to have to lead a donkey in the street. If a great Torah giant saw Shimon's donkey wandering lost in the streets, he was not required to catch it and lead it back to Shimon. However, if that same Torah scholar was poor and he would swallow his dignity and lead it home if his donkey

was lost, he would have to lead Shimon's donkey to Shimon. If so, if any of us were drowning and the only way to save our lives would be to undress and publicly swim naked, we would certainly do so; therefore, I should be obligated to undress and publicly swim naked to save the life of my friend.

Rav Zilberstein suggested a possible answer to the view of the *Chochmas Shlomo*. *Pri Yitzchak* discusses the law that obligates the sage to engage in a degrading act of return if he would do so for his own property. He wonders if the law is an indication or a reason. Perhaps *halachah* exempted the sage from humiliating himself to save the property of another. However, the *Gemara* was teaching that if the sage would perform such an act for his own property, it would prove that such a behavior was not humiliating for him. Alternatively, maybe the fact that he would perform this action for himself was the reason why he had to perform it for others. The Torah exempted the sage from doing for others what he would not do for himself. However, if he would do that act for his own property he must do it for the property of others. Rav Zilberstein suggested that according to the *Chochmas Shlomo*, one who would lead his own donkey in the street despite the humiliation must return the donkey of his friend because his actions prove that for him leading a donkey is not a disgrace. However, getting undressed is always a disgrace. Even though he would do it to save his own life, it is because a person will do anything to preserve his own life. It is still degrading. Man need not be degraded to return an object, and therefore, he need not be degraded to save a life, according to *Chochmas Shlomo*.

Rav Zilberstein pointed out that a careful reading of *Migdal Oz* (*Even Bochan os 13*) indicates that he feels that even a sage must undergo great humiliation to save a life. However, humiliation that would reach his own life—namely a shame that he might not be

willing to accept even to save his own life—he need not undertake to save the life of another (*Chashukei Chemed*).

Finding a Muktzah Item on Shabbos

There is a *mitzvah* to return lost objects. However, this *mitzvah* does not overrule other obligations. If a *Kohein* sees a lost object in a cemetery he may not enter the impure space in order to retrieve the lost item. This led the *poskim* to fascinating discussions about the possibility of returning a lost *muktzah* item on Shabbos.

As one of the laws of Shabbos the Sages did not allow us to move certain items, called *muktzah*. One of the forms of *muktzah* is an object whose primary use is for activities prohibited on Shabbos. For instance, candlesticks are *muktzah* on Shabbos because they are *keilim shemelachtam le'issur*. The primary use of a candlestick is to hold lit flames, an activity prohibited on Shabbos. Such objects may not be moved to save them. If it is raining and the candlesticks might get ruined, we cannot pick them up and move them. However, if one needs to use such an item for a permissible purpose, one may move it. For example, a hammer is also a *kli shemelachto le'issur*. If one wishes to use the hammer to open up a walnut, one may move the hammer to break the walnut.

Rav Akiva Eiger even permitted a groom's family to send candlesticks to the bride on the Shabbos of the *aufbruch*. Such a use is a permitted use of the candlesticks. They are not being used to hold lit candles or to be saved. They are being used for a permitted use—increasing the joy of the bride (*Chiddushei Rabbi Akiva Eiger Orach Chayim* 306:15).

In light of these rules, it would seem that one who finds a *muktzah* item on Shabbos may pick it up to return it. It would not be moving a *muktzah* item for a prohibited purpose. It would be moving it for a *mitzvah*—the *mitzvah* of returning lost objects.

Chasam Sofeir (*Orach Chayim siman 82*) ruled that one may not pick up a lost *muktzah* item on Shabbos. *Chasam Sofeir* made his ruling based on logic. Imagine if one was allowed to move a lost *muktzah* item to return it. The finder, though, could not lift his own *muktzah* item on Shabbos. If he went out to the street on Shabbos and saw two pens, one his own and the other belonging to a friend of his, would *halachah* say he could pick up his friend's pen because it is a *mitzvah*, but he cannot lift his own pen because it would be moving *muktzah*? It is unimaginable that one could move someone else's property on Shabbos to save his friend from loss, but that he cannot move his own property to avoid loss to himself. Therefore, *Chasam Sofeir* ruled that a person cannot lift his friend's lost pen on Shabbos.

Chasam Sofeir brought an interesting proof to his thesis. *Shu"t Rashba* ruled that a finder can announce in *shul* on Shabbos that a lost *muktzah* item was found. If a person can pick up and move a lost *muktzah* item it would be obvious that the discovery of *muktzah* items can be announced in *shul*. The fact that *Rashba* had to teach that a *muktzah* item can be announced on Shabbos is proof that such an item cannot be moved and returned on Shabbos (*Me'oros Daf Hayomi*).

Bava Metzia 31

**If While Walking near a Closed Store
I Hear the Air Conditioner Running,
Do I Need to Inform the Storeowner?**

I was walking near a store on a Friday afternoon. Shabbos was rapidly approaching. I heard that the air conditioner was on in the store. I felt bad for the storeowner. Someone had forgotten to turn it off. The owner was about to lose money in unnecessary electricity costs. His store would be closed over Shabbos and there was no need to have an air conditioner running to cool customers for the next twenty-five hours. Did I have to make an effort to find out who owned the store and warn him about the air conditioner so that he could turn it off?

Rav Zilberstein pointed out that our *Gemara* teaches that I did have to try and find the storeowner and alert him to the possible loss. The *mitzvah* of returning a lost object is broad. If I see a lost item I must retrieve it, protect it, and get it back to its owner. In addition, I am to take measures to preserve the wealth of my friend. From the words of the verse, “*lechol aveidas achicha*”—“to all the lost objects of your friend,” Rava derived that even my friend’s land must be protected. The *Gemara* taught that if you see a river overflowing and about to flood and ruin the field of your friend, you must build

a wall to stop the water and save the field from sustaining damage. Therefore, when I noticed that the electricity had been left on by mistake, I had an obligation to save him from financial loss. I was obligated to look for him and alert him to what was happening in his store so that he would not suffer a loss.

However, if he deliberately left the air conditioner on because he was reckless and didn't care about the loss, I would not have an obligation to alert him about what is happening in the store. If a person willfully loses an item, you do not need to retrieve it and return it to him. Our *Gemara* teaches that if a person allowed his cow to graze in vineyards of heathens and they warned him that they intended to kill his cow for causing them damage, you do not need to get the cow out of the fields. He was given a warning. He chose to ignore it. Reckless abdication of the responsibilities of ownership does not impose an obligation on others to intervene. Yet Rav Zilberstein pointed out that you should tell the reckless storeowner who leaves his electricity running that he is violating the Biblical mandate not to waste—*bal tashchis*.

If you see that a housewife left out the family laundry to dry, and it has dried and now it is about to rain, are you obligated, based on the rules of returning property, to quickly inform her so that she will bring in the clothes before they get wet?

Rav Zilberstein pointed out that while *halachah* requires that we save the property of another Jew, it is a mandate to save from financial loss. Clothing getting wet is not a loss. The clothing will dry again with time. However, while it would not be *hashavas aveidah* to warn the housewife, it would be a *mitzvah* to do so based on the verse, *ve'ahavta lere'acha kamocho*—love your neighbor as yourself (*Chashukei Chemed*).

Bava Metzia 32

Can a Father Lose His Entitlement to Kaddish?

A man separated from his wife and did not pay any child support. The wife demanded that the father sign a pledge stating that due to his neglect he was renouncing any rights of a father that he had toward his children. The father signed. He had nothing to do with his children. He then died. The son asked Rav Zilberstein, “Do I need to mourn for my father? Do I need to sit *shiva*? Observe thirty days of no haircuts? Do I have to say *Kaddish* for eleven months?”

Rav Zilberstein suggested that a discussion among the commentators to our *Gemara* would shed light on this question.

Our *Gemara* taught that if a father instructed his son not to return a lost object, the son may not listen. The source for this ruling is the verse that puts honoring parents together with the *mitzvah* to observe Shabbos. Shabbos was linked to the honor of parents to teach that one need not listen to a parent who instructs his child to violate Shabbos—or any other *mitzvah*. The *Gemara* asks: Why do we need a special verse to teach us that we need not listen to our parents if they instruct us to sin? Honoring parents is merely a positive command. Returning a lost object is a positive command and

a prohibition. It is obvious that a positive command cannot overrule a positive and negative obligation. The *Gemara* answers that since honoring parents is compared to honoring the Almighty, we would have thought that this positive command overrides even a positive and negative obligation. Hence, the need for the verse that honoring parents never overrides any Torah obligation.

Shitah Mekubetzes is bothered by the *Gemara's* dialogue. Why would we think that honoring parents is a positive command that can override a single prohibition? If a father waives his honor, he is not entitled to honor. Any *mitzvah* that can be suspended based on the wishes of a person is not a full *mitzvah* obligation in regards to the ability to override a prohibition. The *Gemara* in *Kesubos* (40a) discusses the *mitzvah* of the person who forced himself on a young lady to marry her. The *mitzvah* of *lo sihyeh le'ishah*—she shall be his wife—would not overrule any prohibitions because it is not an absolute obligation. If the victim decided not to marry the coercer, there would be no *mitzvah* for them to marry. Since it is a *mitzvah* that would be suspended by the words of a person, it is not a *mitzvah* that can trigger the rule of *asei docheh lo sa'asei*. Honoring a father should be the same.

Rosh suggested a distinction. A victim who states, “I do not want to marry the man who forced himself on me,” forever suspends the *mitzvah* of *lo sihyeh le'ishah*. An obligation that can be annulled forever by the words of a person is weak and cannot overrule a prohibition. However, if a father waived his rights to honor from his children, that would only be temporary. The *mitzvah* would still eventually take effect; it would be suspended, but ultimately, binding. This is why honoring a father is a strong obligation. It would have overruled a prohibition had there not been the verse of *ish imo ve'aviv tira'u ve'es shabsosai tishmoru*.

Radbaz (*cheilek* 1 *siman* 524) disagreed with the *Rosh*. He argued that a father could permanently waive his rights to honor. A father could say, "I will never again ask anything of you." If he said that, the son would never again have to honor him. If so, the *mitzvah* of honoring a parent should be like the *mitzvah* of *lo sihyeh le'ishah*. Both can be forever suspended with the words of a person.

Divrei Yechezkeil answered for the *Rosh*. He argued that even a father who said that he permanently waived the honor due to him had merely suspended the obligations. He could still retract his waiver. He could change his mind and the children would then have to honor him.

It emerges that according to *Radbaz*, in our case the son would not need to say *Kaddish*. Saying *Kaddish* is a form of honoring one's father. The father had signed a document renouncing any rights he had. That waiver caused a permanent negation of the obligation to honor the father. However, according to *Divrei Yechezkeil*, the father could always change his mind. Presumably, in our case the father repented and changed his mind before passing away. Therefore, according to *Divrei Yechezkeil*, the child should say *Kaddish* for his deceased father, even though the dad had deserted and neglected him.

In regards to mourning, Rav Zilberstein felt that *shiva* and *shloshim* (the thirty days of no haircuts) for a parent were not only expressions of honoring parents. They were obligations imposed regardless of the wishes of the parents. Therefore, the son would be obligated to sit *shiva* and to observe the laws of *shloshim*. However, the added mourning of twelve months is unique to one's father and mother. Therefore, perhaps the son did not need to mourn for twelve months. Others might argue that only when the father explicitly asked the child not to mourn for twelve months would the child be

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exempt from those laws, but not when the father merely surrendered his rights to honor during his lifetime. Perhaps, therefore, the son should mourn for the full twelve months (*Chashukei Chemed*).

Bava Metzia 33

Do We Honor Parents Because of Gratitude?

A woman wanted to abort her fetus. The doctor demanded a lot of money. At the last minute, due to her lack of funds, she did not terminate the pregnancy. A boy was born. Was that boy obligated to honor her? When she passed away, was he obligated to recite *Kaddish* for her?

The *Midrash (Bereishis Rabbah 39:7)* states: “Hashem told our father Abraham, I exempt you from honoring your father and I do not exempt others.” Why did Hashem exempt our patriarch from honoring his father Terach?

Zeicher Shlomo gives a novel answer. There are three partners in the creation of man: Hashem, his father, and his mother. Because father and mother gave life to the child, the child has a *mitzvah* to honor them. Terach handed Avraham over to Nimrod, who threw him into a furnace. Terach had willfully risked his son’s life. As a result, he was no longer entitled to the honor due to him for having had a role in the creation of Avraham. When he performed actions that almost killed Avraham, he lost his right to honor.

Chid”a (Devash Lefi Ma’arachah Alef os 39) also suggests this principle. “I heard from *Mahari Segal* that in the book *Bigdei Aharon*

it is written that Avraham did not need to honor his father Terach because there are three partners in a person—God, father, and mother—and Terach lost his portion when he handed Avraham to Nimrod.” *Chid”a* also explained that King Hezekiah dragged the remains of his father King Achaz on a bed of reeds through the street because his father lost his right to Hezekiah’s honor when he handed him over to *Molech* (an idolatry in which sons were killed by fire). In light of these sources, the son, in our case, should be exempt from honoring his mother. She was like Achaz and Terach. She tried to kill him and therefore was no longer entitled to honor as a partner in his creation.

Perhaps one can make a distinction. Avraham lived before Sinai. The Torah had not yet been given. At that point a son had to honor his father based on a sense of gratitude to his dad. Once Terach sought to kill Avraham, he was not deserving of gratitude. However, our case is different. It is after Sinai. Even though our *daf* teaches that a child must honor his father because he brought him into this world and a Rebbe must be honored because he brings the individual into the eternal world, in our days, honoring one’s father and mother is a command from Sinai, and that is the main reason why parents are to be honored. Commands are to be fulfilled because Hashem gave them, even if the reasoning does not seem to apply. Perhaps, in our day, the son would be obligated to honor his mother, even though he conceptually does not owe her anything. Perhaps, based on divine command—which is above logic or explanation—he must say *Kaddish* for her.

Achaz and Hezekiah were also after Sinai. However, perhaps Achaz was not deserving of the commandment of honor because he was a wicked man. *Chid”a* perhaps was adding that he also was not deserving of honor based on gratitude because he sought to kill his

son as a *Molech* offering. However, in our case, the mother repented. She was not a wicked woman anymore. As a mother she deserved honor based on the *mitzvah*, even though the logic of gratitude may not be applicable to her.

This analysis would not be true about gentiles.

God gave seven commands to the children of Noach. Honoring parents was not one of them. However, Rav Moshe Feinstein (*Yoreh De'iah cheilek* 2 130) taught that based on *hakaras hatov*—gratitude—even gentiles must honor their parents. The father created the child. The child therefore must show gratitude and thanks by honoring the father. Hashem was upset with Adam for being ungrateful for the gift of Chavah. Basic human decency is expected from all. Therefore, if a gentile mother sought to abort her child, and if despite her efforts the child was born, the child would not need to honor his mom. His obligation was exclusively based on logic and a feeling of gratitude. Since the mother had tried to eliminate him, he did not owe her any thanks.

Netziv in *Ha'amek Davar* (*Shemos* 20:12) writes explicitly that for Jews the *mitzvah* of honoring parents is not merely an obligation of expressing gratitude. Rather, it is a divine command. It is binding even when the logic of gratitude does not apply (*Chashukei Chemed*).

Bava Metzia 34**Mentally Forgiving a Debt**

Shimon lent money to his friend Yehudah. Later, Shimon became aware that Yehudah was deeply in debt and unable to repay. Shimon mentally forgave the loan. He decided to leave the debt in the past and never ask Yehudah to repay. Then Yehudah's fortune changed. He became wealthy again. Shimon was uncertain whether he could collect the money. Perhaps his previous thoughts had negated his right to collect.

Rav Moshe Sternbuch suggested that this scenario would be subject to a dispute between authorities recorded in *Ketzos Hachoshen* (12:1). *Ketzos* teaches that *Maharshal* maintains that a lender who mentally waived the right to collect a loan is not permitted to subsequently demand payment. *Ketzos Hachoshen* disagrees and asserts that there is no source that indicates conclusively that a person's thought by itself can affect the status of a loan. *Ketzos* accepts the conclusion of *Maharit*, who cited conflicting sources on the matter, and writes that the lender should not collect only if a person's thoughts to forgo collection of the loan were well known. However, if no one knew of his thoughts then he could still seek payment. *Imrei Binah* follows the position of *Ketzos Hachoshen* and cites the commentary of *Ritva* to our *Gemara*.

Our *Gemara* teaches about watchmen. According to the Torah, an unpaid watchman must only pay his depositor if he was negligent. But if he did his job and the watched item was stolen or lost, the volunteer guard need not pay. A paid watchman must pay even if the item was stolen or lost from his domain. However, he does not have to pay if the item was lost through a force out of his control, *oness*. A borrower must pay even when the animal drops dead or breaks a leg. He is only exempt if the animal died in the course of the work it was borrowed to do, *meisah machmas melachah*. Our *Mishnah* taught that if an animal was stolen from the home of an unpaid watchman and the watchman decided to pay for the animal instead of claiming theft and swearing, then the watchman would receive the double payment if the thief would be found and obligated to pay. Our *Gemara* teaches that even though the watchman would be entitled to pay for the item, and then be entitled to receive the double payment, he would still have to swear that the item was not in his domain. Perhaps he liked the item and chose to keep it while paying for it. The court would make him take an oath that he did not have the item.

Rambam writes that the watchman would swear that he does not have the object and then the depositor would receive the payment for the object from him. *Ritva* inferred from *Rambam* that if the watchman already paid for the object, we would not make him swear. *Ritva* was bothered by this. He argued that even if the watchman paid we should suspect that he was holding onto the object, and we should make him take an oath that he did not have the object. *Ritva* rejects the idea that the depositor's acceptance of money was a waiver of the right to get an oath. Feelings in the heart are never powerful enough to create financial realities. Therefore, *Ritva* suggests that even if the watchman would pay first, he would be made to swear that he did not have the item in his domain. The *Rambam* merely phrased the law in

the manner of how it would likely happen. However, if the watchman paid first he would still need to swear. It emerges from *Ritva* that a thought to forgive a loan has no validity, just as a thought to forgive an oath obligation has no validity.

Therefore, for our case Rav Moshe Sternbuch ruled that Shimon still could demand his money. He had only thought to forgive the debt. He never articulated a waiver. Words in the heart are not words.

An exception to this ruling would be if Yehudah was poor and deserving of *tzedakah*. Since *Rama* rules that I may obligate myself to give *tzedakah* with a mere thought, then if Shimon forgave the loan in his heart to an impoverished Yehudah, it was a *tzedakah* vow. The commitment was binding. The lender would not be allowed to subsequently change his mind and collect (*Daf Yomi Digest*).

Bava Metzia 35**Profiting from Someone Else's Property**

Rav Yosi established a principle in our *Mishnah*. Reuvein cannot be allowed to profit off the cow of Shimon. Reuvein rented a cow from Shimon; as a renter he would not have to pay if the cow dropped dead. Ya'akov then borrowed the cow from Reuvein. A borrower must pay even for losses that occur through *onsin*, events man cannot control. If the borrowed cow dropped dead in the home of Ya'akov, the Sages said, Reuvein would not have to pay anything to Shimon while Ya'akov would have to pay the value of the cow to Reuvein. Rav Yosi rejected this view. He established that it is impossible to accept that Reuvein can profit off the property of Shimon. Ya'akov should pay the value of the cow to Shimon.

Halachic authorities point out that application of this rule requires care.

A man rented a car from Shimon for a day at the cost of 100 shekel. He then rented it to another man to use it that day for 150 shekel. Did he have to give the extra 50 shekel to the owner of the car? Would we say in this case that a man may not gain profit off the property of his friend?

Machaneh Efrayim (Hilchos Sechirus siman 19) ruled that in this

case the car owner would not be entitled to the added 50 shekel. Those 50 shekel were not given for the body of the car. They were paid for the usage of the car. The original renter had full rights to usage of the car. He owned the car's usage for that day. As a result, he could sell his rights for a profit. In the case of our *Mishnah*, the renter had lent the cow and the cow died; the borrower was paying for the body of the cow that died. The cow's body belonged to Shimon. Reuvein could not keep the funds given for the body of Shimon's cow.

Another scenario dealing with this principle is found in *Shu"t Chelkas Ya'akov (Choshen Mishpat siman 26)*. A congregation in Brooklyn dwindled. Few prayed there. The synagogue attendant deposited the Torah scroll with a *yeshivah* to safeguard. There was a fire in the *yeshivah*. The Torah scroll was burned and ruined. Newspapers reported the story. The community felt terrible. A Torah scroll had burned in their *yeshivah*. People sent in donations for a new Torah scroll to be written. Enough money was received to write a new scroll. The synagogue attendant approached the *yeshivah*. "You should not be able to profit off a scroll that was not yours. Just as Rav Yosi taught that the borrower should give the money to the owner of the cow and not the renter, the donations came because of our scroll, and the new scroll should be given to our *shul*." Was the attendant right?

Chelkas Ya'akov ruled that the synagogue was not entitled to the new scroll. The *yeshivah* administration had not done business with an object that was not theirs. They did not get money for it or in its place. A tragedy had occurred. The story had stirred hearts. Those people donated funds to the *yeshivah*. The *yeshivah* did not have to give the funds away to the *shul* whose scroll had been burned. People had been inspired to donate to the *yeshivah*, and the *yeshivah* could keep the funds, even though part of what had inspired them came about through property owned by others.

Or Samei'ach (*Hilchos Sechirus* 5:6) dealt with this principle as well. Reuvein rented an apartment from Shimon. He then purchased an insurance policy on the apartment. There was a fire. The insurance company paid Reuvein money for the loss. Shimon came with a claim: "You may not profit off my apartment. Give the insurance payment to me." *Or Samei'ach* ruled that Reuvein would not have to give the money to Shimon. Reuvein had spent money for this right. He had given his money to purchase the option of reimbursement. He was therefore profiting from his own money and he could keep that profit. In our *Mishnah*, the renter was not looking to profit from the borrower. He lent the animal with the intent that he would get it back, maybe use it a bit more, and then give it to the owner. Rav Yosi taught that when the animal died he was not entitled to the payment for the body of the animal. But when a person invests in an insurance policy it is different. The investor spent money to purchase an option. He was therefore entitled to keep the profits that emerged from that option (*Me'oros Daf Hayomi*).

Bava Metzia 36

Reporting a Doctor's Error to the Ministry of Health

A doctor performed surgery on a child. A mistake was made. A bandage had been left in the child's throat. It could have killed the boy. Fortunately it was discovered in time. A second operation was performed and the bandage removed.

An argument broke out among the doctors. Some argued that the surgeon was a well-known professional. He was a good doctor. There was therefore no need to report his error to Israel's Ministry of Health. He was afflicted with guilt about his mistake. He would certainly never repeat the error. Others disagreed. They felt that the physician had made a mistake that almost cost a life. Perhaps he would endanger other lives with his recklessness. He should be reported to the authorities. They brought their dispute to Rav Yitzchok Zilberstein. What is the opinion of the Torah?

Rav Zilberstein initially suggested that the answer might be contingent. If the norm in the operating room was for the surgeon to count out all the tools and bandages to make sure they were removed from the throat and he had not done so due to laziness, then he had been negligent about human lives and should be reported to the authorities. However, if it was

not his job to count the items at the end of each surgery then he had not made the mistake. The doctors should, then, not report him.

Rav Zilberstein brought the question and his proposed answer to Rav Elyashiv.

Rav Elyashiv disagreed with him because of our *Gemara*. Our *Gemara* records a dispute between Rav and Rav Yochanan. According to Rav if a paid watchman hands an object to a volunteer watchman to guard, then he would not have to pay. Rav Yochanan was of the opinion that it was negligence. According to Rav Yochanan the watchman who handed over the object would be liable if the object was damaged. Rav was of the opinion that the watchman who handed it to another would be exempt because he had given the object to a responsible person, a being with intelligence. Therefore, even if the doctor's job was to count off all the items at the end of the surgery and he did not do so, he had asked the nurse to do so. Asking the nurse is deputizing an intelligent being. Since he had empowered an intelligent being it was not negligence, and he should not be reported to the authorities.

Rav Elyashiv added that even if the consensus of the other doctors was that the surgeon was at fault, they should not report him to the authorities right away. First they should take him to a religious court. To make a determination that a person erred medically and deserves to have his professional standing questioned, one must first ask halachic experts if Jewish law would allow for such a radical step. If they called him to a *din Torah* and he refused to go then they should report him to the health authorities (*Chashukei Chemed*).

When the Housekeeper Steals, Is the Homeowner Liable?

Our *Gemara* introduces a rule. When a person gives an item to a friend to watch, he understands that members of the household will

help with the watching. Giving an object to Reuvein to watch means that I know that Reuvein's wife and adult children will do some of the guarding. In light of this principle a woman brought the following question to *Shu"t Perach Shoshan* (*Choshen Mishpat* 1:1).

A friend had given her money and in return had asked her to watch her jewelry. She put the jewels in a safe with her own trinkets. Her housekeeper broke into the safe and took all the valuables. The friend argued, "As a paid watchman you must reimburse me for theft and loss. Since this was a theft, you must pay." She argued, "You knew that members of my household would do some of the watching. Our *Gemara* teaches that anyone who deposits knows that the wife, adult children, and members of the household of the guard will participate in the watching. I left it in the hands of the housekeeper. That was the correct standard of watching. If the housekeeper stole I am not responsible to pay. I did everything I was supposed to do." She asked the author of *Perach Shoshan* if she was correct and exempt from paying.

He responded that *Shu"t Maharshach* (*cheilek 2 siman* 85) dealt with a similar question. He ruled that the *Gemara* only taught its rule in regards to a volunteer watchman. Not much is expected from a *shomeir chinam*. Therefore, when one deposits with a *shomeir chinam*, the depositor knows that the *shomeir* might give the item to his family members. However, more is expected of a paid watchman. A paid watchman cannot claim that the depositor knew that he would give the item to family members to guard. The paid watchman must watch the item himself. Therefore, in our case, since she was a paid watchman, she was responsible to pay back for the jewelry even though it had been the housekeeper who stole. *Ritva* in our *sugya* supported this view of *Maharshach*, that the *Gemara* is only dealing with an unpaid watchman. *Perach Shoshan* ruled that the woman had to reimburse her friend (*Daf Yomi Digest*).

Bava Metzia 37**Using a Lie Detector to Return a Lost Object**

Our *Mishnah* taught that the view of the Sages was that if two men deposited money with me to watch—one gave a hundred and the other two hundred—if both come and claim they had deposited the two hundred, I am to give each one hundred and wait with the other hundred until Elijah (meaning, I guard it and wait for Messianic times for the disputed amount to be decided). Rav Zilberstein raised the following modern question. We now have machines that can tell with a high degree of accuracy if someone is lying. If I administered a lie detector test to each claimant and one seemed far more credible than his friend, would *halachah* say that the depositor who passed the lie detector test deserved the two hundred?

Rav Zilberstein believed that a successful lie detector test would be very powerful. The machine has eighty percent accuracy. Such a high degree of accuracy would be a strong majority, a *rov*. *Shu"t Bris Avraham (siman 13)* taught that a *rov* can be effective to claim a lost object even though a single witness is not believed to gain title to a lost object based on his testimony. *Rov* is stronger than a single witness. If *rov* can confer title to a lost object, it can also force a watchman to release the object and return it to its rightful owner. A

lie detector established an overwhelming probability that the item belongs to the man who passed the test, and the watchman should give the two hundred to that man.

Igros Moshe (Even Ha'ezzer cheilek 4 siman 98) dealt with a tragic case. A man was sick. He could not speak. He could not communicate. His wife did not want to stay married. The court had no way of knowing if the husband wished to give his spouse a bill of divorce. Was the woman stuck? Rav Moshe Feinstein allowed them to rely on a lie detector test. He had the court put the electrodes on the man. They told him true comments and measured his heart rate. They told him false comments and they saw how his heart rate changed. They told him, “It is true that you wish to divorce your wife.” His heart rate registered the same lines that it did when he had been told other honest things. Based on the polygraph results, Rav Moshe ruled that we could be sure that he wished to give a divorce and that a *get* could be written and delivered on behalf of the husband to divorce the woman (*Chashukei Chemed*).

Notice the Poor Students

Daf Yomi Digest records a story about Rav Meir Shapiro, the founder of the *Daf Yomi* study program, that related to our *daf*:

Efraim Bitrik was a brilliant child, but he was the son of a tailor. Efraim's brilliance and vast potential was not even noticed in his school. One person noticed—Rav Meir Shapiro of Lublin, *zt"l*. He decided to wait for the right moment to bring it to the attention of others.

When Rav Meir was asked to publicly test the *cheder* children in front of the notables of the city, he decided that the time had come.

In the middle of the test he asked young Efraim to recite the *Mishnah* in *Bava Metzia* 37 by heart.

The boy easily rattled it off. “If two people deposited money with a watchman—one left one hundred and the other two hundred, and both claim that he left the higher sum—we give each a hundred and leave the other hundred until Eliyahu comes. Similarly, if two people deposited a vessel with a guard—one vessel was worth one hundred and the other was worth one thousand and each claimed the expensive object—one is given the small vessel, the larger vessel is sold off, one hundred of it is given to the second one, and the rest of the money is left to wait until Eliyahu comes.”

The Rav then asked, why in regards to money did the *Mishnah* give a case of one hundred and two hundred while in regards to vessels one was worth a hundred and the other a thousand? Efraim answered, “Because with money *Chazal* say elsewhere that if he has one hundred he wants two hundred. But when it comes to vessels we find that people naturally prefer their own. As our *Gemara* will say, ‘A person wants his own *kav* (a unit of measure) more than nine *kavin* of his friend.’ Therefore the *Mishnah* said that the utensil was worth one thousand—ten times more than his own—because had it been worth any less he would not have tried to ask for it, since he would have preferred his own vessel.”

Rav Meir then added, “Just one more question that really troubles me: Why is a brilliant child like yourself in such a low class?” Efraim replied immediately, “It is because the *parnasim* of this city ignore the dictum of our Sages, ‘Be careful with the children of the poor, since Torah will emerge from the impoverished.’” From that day on, people started to take notice of the young prodigy and under Rav Meir’s guidance he grew to true greatness (*Daf Yomi Digest*).

Bava Metzia 38**Trust Our Sages**

The *Mishnah* taught a dispute. If someone gave me fruit or wheat kernels to watch for him and I notice that some are spoiling, the Sages say I may not sell the fruit. Rabban Shimon ben Gamliel said I may sell the fruit to save my depositor from suffering a loss. Rav Elyashiv made a penetrating observation about this dispute. The dispute arose only if the fruit were rotting and the depositor was in danger of losing money. If there was a way to preserve the fruit and make sure that they not go to waste, then even Rabban Shimon ben Gamliel would agree that the watchman may not sell the fruit and give the owner of the fruit the money. As a watchman, he is obligated to take efforts on behalf of his friend. Our *Gemara* taught that a man prefers his own small measure of self-grown produce to nine such measures of his friend's produce. If I can preserve his fruit, I must do so, and return to him the item he made, because he treasures it greatly.

Rav Zilberstein related the following story: A grocer in Jerusalem noticed on a Friday afternoon that someone had left a bag of grapes in his store. He did not think that the grapes would stay fresh in the Jerusalem heat. He went to Rav Elyashiv: "Someone left grapes in the

store. May I sell the grapes because they will spoil in the heat? When the man comes back after Shabbos and proves to me that he was the one who left the grapes in the store, I will give him the money.” Rav Elyashiv told him, “No. You may not sell the grapes. Put them in a refrigerator. The fridge will keep them fresh. After Shabbos the man will return to your store and you will be able to return the grapes to him.” The storeowner protested, “It is right before Shabbos. My fridge is full. I have no space in the fridge for grapes.”

The *rav* told him, “Go to your neighbors. Give each some of the grapes to store in their fridges. *Bava Metzia* 38 taught that a man prefers his item more than multiple amounts of that item that he will receive from others.” The grocer, disappointed, left the home of Rav Elyashiv.

On his way home he met a wealthy customer. The man told him that he had just merited to have a son born. He was going to host friends for a *Shalom Zachor* party that night. He had no fruit or treats. All the stores were closed. “Do you know where I can purchase grapes or fruits now?” The storeowner decided to ignore the ruling of Rav Elyashiv. He reasoned that he could get an inflated price for the grapes. The owner of the grapes would certainly appreciate the money that he would give to him. He charged the wealthy man five times the normal price for the grapes and sold the bag of grapes to him.

That Friday night there was a knock on the door of the storeowner. A *chasid* was standing outside: “I am the attendant of the Toldos Aharon Rebbe. He needs grapes for his health. We mistakenly left his bag of grapes in your store. Here are the signs of the bag. Can you please give us back the grapes?” The owner was embarrassed and he admitted that he had ignored the ruling of Rav Elyashiv and had sold the grapes. The attendant was very disappointed. The Rebbe was very

careful with the laws of tithing. The grapes he had left in the store had been personally tithed by him. He would not trust that borrowed grapes had been tithed. One may not separate *terumos* and *ma'asros* on Shabbos. Dejected, the attendant left the storeowner and told his Rebbe the bad news.

We should always rely on our sages and listen to their rulings. Had the man listened to the *psak* of Rav Elyashiv, he would have been spared shame and the sin of stealing (*Daf Yomi Digest* quoting *Aleinu Leshabei'ach* part 6 pages 482-483, *Chashukei Chemed*).

When We Find Out That News Is Good, Should We Recite Shehecheyanu?

Our *Gemara* discusses the issue of sending an heir to work a field of a relative who was taken captive. The *Gemara* taught that if a man was taken captive, and it is unknown if he is alive, and he might suffer losses if his field was left unattended, we would send his relative to the field to work it and preserve it. If we found out that the man was not alive, the heir would inherit the field and our actions would have spared him losses. If the captive came back, the heir would be entitled to get paid as if he were a sharecropper.

Rav Zilberstein raised a question about a case in which it was thought that someone was dead and then it was found out that the person was alive; should the relatives recite the blessing of *Shehecheyanu* for the good news?

A religious man received a phone call from the nursing home of his mother in London. They told him that unfortunately she had passed away. He did not have the time to get to London before

Shabbos. He did not want to delay the burial. He asked that the *chevra kadisha* bury his mother as per Jewish law. A week later his mother called him. He asked her, “How can I hear your voice? The nursing home had called me with terrible news.” His mother did not know what he was talking about. She advised him to call the nursing home. He called them. They checked their records. They realized they had made a terrible mistake. His mother’s roommate had passed away. They had mistakenly called the wrong American.

The chastened nursing home administrator picked up the phone to call the son of the woman who had in fact expired. He was embarrassed. He admitted that the staff had erred. Unfortunately, the man’s mother had passed away. The son responded, “Please burn the body.” Again, the nursing home administrator apologized: “She has already been buried.” The son screamed, “She won!” and the line went dead.

It turned out that the son had left our faith. He had converted to Catholicism. His mother was deeply upset. She would often argue with him. He was estranged from her. He would threaten, “When you die, I will have your body cremated.” The righteous woman had prayed and beseeched the Almighty. Hashem, in His kindness, had arranged for a “mistake.” Hashem had arranged for the woman to have a Jewish burial. The wicked son’s plans had gone awry.

When the truth came out and the first son found out that his mother was alive, should he have recited the blessing of *Shehecheyanu*? *Shulchan Aruch (Orach Chayim 222:1)* rules that when one hears news that is only good for him he should recite *Shehecheyanu*. When he hears news that is good for him and for others he should recite *Hatov Vehameitiv*.

Rav Chaim Kanievski ruled that he should recite the blessing. He had been gladdened with the good news. As a result, a blessing of *Shehecheyanu* was in order.

Shu"t His'orerus Teshuvah (cheilek 2 siman 45) was asked a question by a person who thought he had the winning numbers on his lotto ticket and had recited *Shehecheyanu*. He was then told that he was mistaken and had not won. He checked again and realized that in fact he had won; should he recite *Shehecheyanu*? *Shu"t His'orerus Teshuvah* ruled that he should recite the blessing again. The blessing was for the joy. Since he had become joyous again, he should recite the blessing again (*Chashukei Chemed*).

Bava Metzia 39**Captivity and Presumption of Life**

Our *Gemara* relates a story about an elderly grandmother who had three daughters, and was unfortunately taken into captivity together with one of her daughters. The story touched on the subject of the *sugya*. The topic our *Gemara* was discussing was *moridin karov lenichsei shavui*—sending a close relative to care for the field of a captive. There was a point of view that when someone was taken captive and we do not know his fate, we should send the next of kin to tend to his field. If no one will care for his fields the property might get ruined. A close relative will treat the field well because he will realize that it is possible his captured relation is no longer among the living and as a result he has inherited the field and it is his private property. People always treat their own property well. Even if the relative returns from captivity, the Sages legislated that the heir who worked the field would receive compensation like a sharecropper. Since the man knows that he will be reimbursed, he will responsibly care for the field and not abuse it in any way. The *Gemara* added that this law would not be applicable if the heir or the captive was a child. In the story of the grandmother, we did not know what happened to the old lady and her captured daughter; however, one

of her free daughters died and left a child orphan. Abaye dealt with all the possibilities. He taught that it was possible that the captured grandmother and daughter had died. The woman's property had therefore been inherited by her surviving relations. The living free daughter of the old lady would not be granted permission to tend to all the fields. Half of them might belong to her young niece. A relative is not allowed to tend to the field of his relative who is a child.

Tosfos were bothered by this discussion. The Talmud in *Gittin* (28a) teaches that a living person is presumed to always still be alive. If an elderly man gave an emissary a *get* to bring to his wife, the *shaliach* could deliver it to his wife. The emissary is allowed to presume that the man who sent him is still alive. If people are presumed to be alive, why did Abaye suspect that the grandmother had passed away in captivity?

Tosfos give two answers.

One, usually Jewish law does not presume that the person is still alive. In *Gittin* an emissary could presume that the husband who sent him was still alive based on a special Rabbinic enactment. The Sages did not want married women to be stuck. If they feared that the husband who wrote the *get* had died before his *shaliach* could deliver the *get*, the wife would be stuck. She would be unable to marry. The *get* would not be delivered based on a fear that the husband was dead, and on the other hand, she would not be allowed to remarry because perhaps her husband was alive; if she and her husband had no children, without a *get*, even if her husband had died she could not remarry because she would be a woman bound to her husband's brother. Therefore, to enable a woman to remarry with ease, the Sages enacted a norm that we presume the husband who gave her the *get* was still alive. In our *Gemara* we are not dealing with divorce. We were dealing with property rights. Here we have

to be more careful about what might be property of an orphan. We suspect that the grandmother may have passed away, and we do not allow relatives to occupy what might be the field of an orphan. *Tosfos* also give a second answer, which had relevance to a question before *Shu"t Eimek Halachah*.

Secondly, our *Gemara* deals with captivity. In captivity, the captors usually torture their victims. The *Gemara* in *Gittin* teaches that there is a presumption of life. Even an old man is presumed to still be alive. However, in captivity, due to the torture, we cannot assume that the prisoner is still alive. Due to the torture, Abaye suspected that the grandmother had passed away. *Rabbeinu Yerucham* accepted this idea of *Tosfos*. He also taught that it applied to both a man and a woman. If someone was captured, we cannot assume he or she is still alive. Perhaps due to the torture they have passed away. *Bach* limited the ideas of *Tosfos* to when a woman is taken captive. If a man is taken captive, we would presume that he is still alive. Men are usually strong. Even in the face of torture, we should assume that the man is still alive.

During World War II, a family was informed by the US Army that their son was missing in action. The father made a vow: "I will not eat meat or sleep in a bed until I find out that my son is still alive." For several months he did not eat meat or sleep in a bed. He invested many efforts in trying to find out what had happened to his son. Eventually, he found out that he had been captured by the Japanese. He approached the author of *Shu"t Eimek Halachah*: "Now that I know that my son is a prisoner of war, may I sleep in my bed and eat meat? I know he is alive." *Shu"t Eimek Halachah* pointed out that according to *Rabbeinu Yerucham*, since all he knew was that the son had been captured, he would still not be allowed to sleep in his bed or eat meat. According to *Rabbeinu Yerucham's* interpretation

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of our *Tosfos*, we assume a person may have died when he was in captivity due to the torture. Therefore, perhaps the son was no longer alive and the father did not have confirmation that the child was alive (*Daf Yomi Digest*).

Bava Metzia 40**Who Must Pay When Mice Damage?**

Reuvein went to the local grocer to buy some food items in the evening. After paying for his groceries, he asked that the grocer deliver them to him the next morning. The proprietor put the food in a box. He locked up his store. When he came the next morning, he saw that mice had eaten from the box of foodstuffs. Did the storeowner have to replace the food that the mice had eaten?

Rav Zilberstein suggested that our *Gemara* seems to indicate that the storeowner would not be liable. The *Mishnah* taught that if Reuvein gave Shimon wheat to watch and Shimon mixed his friend's wheat with his own and ate from the pile, when Reuvein comes to reclaim his deposit Shimon must give him what he had deposited with him—but he may subtract from it the normal amount of wheat that mice consume. The *Gemara* adds that if Reuvein and Shimon had agreed that Shimon would store Reuvein's wheat in a corner, if Shimon had not touched the wheat and some of the wheat was missing when Reuvein came to reclaim his item because mice had eaten from the pile, Shimon could tell Reuvein, "*harei shelcha lefanecha*"—"Behold your item is before you." Shimon could return the wheat as it is. He would not be responsible to reimburse for the

damage caused by the mice. It emerges from these sources that our Sages felt that it was impossible to protect from some amount of loss from mice. A watchman would be exempt from paying if mice ate from the food he was watching. In our case the grocer was an unpaid watchman. He was not getting compensated to store the food over the night. The customer therefore should have to bear the loss that the mice caused.

Rav Zilberstein mentioned that perhaps our times differ from those of the Talmud. In the days of the Talmud, they did not have mousetraps, glue pads, and poisons that would clear an area of mice. In those days it was impossible to stop the mice entirely. Perhaps there is a different law in our days. If a storeowner did not utilize the services of an exterminator and try his best to keep the mice from his store, he was negligent. Maybe he would be responsible for the damage to the food that his negligence allowed. Therefore, perhaps only if the storeowner had done all that is normally done in our time to keep the mice away, and the rodents still ate the food from the box, would he be exempt. However, if the storeowner did not make a complete effort he would be responsible for the food damage.

Furthermore, if the normal custom is that the grocer reimburses the customer when the mice eat the food the man bought but left in the store, then the grocer would have to reimburse the buyer. Our *Mishnah* may have taught a law about what is considered negligence. However, in all monetary matters, *hakol keminhag hamedinah*—everything follows the custom of the country. If the custom is that the grocer pays, he must pay (*Chashukei Chemed*).

May Pharmaceutical Companies Charge Exorbitant Prices for Lifesaving Medications?

In the early 1970s, a major pharmaceutical company introduced a drug, Levamisole, to deworm sheep. The National Cancer Institute sponsored a study by Dr. Charles Moertel. He studied combining Levamisole with a chemotherapy drug as a treatment for cancer. The study proved that the combination could help patients with advanced colon cancer. It cut deaths by a third. The FDA quickly approved Levamisole for human use.

The pharmaceutical company started to sell the drug under the name Ergamisol. Ergamisol cost \$1,500 for a year's supply. The same drug cost \$14.95 for use on sheep. Would *halachah* allow for such pricing?

Our *Gemara* teaches that the Sages made an enactment. They wanted to ensure access to basic food. They wanted all to be able to live. As per the Biblical mandate of "And your brother shall live with you," the Sages legislated that basic foods could not be sold for a profit in excess of one sixth. The *Gemara* related a story of Rav Yehudah, who purchased a barrel of wine that contained 48 portions for six *zuz*. He was careful not to get too much profit from the barrel because of the Rabbinic enactment prohibiting too much profit from basic food necessities. Wine was a basic food in the days of the Talmud. Rav Aaron Levine *zt"l* argued that pharmaceutical drugs that can save lives would be included in this enactment.

The Sages would want all to have access to lifesaving drugs. It was wrong for the pharmaceutical company to charge such high prices. A company was entitled to demand reimbursement for its costs. However, the costs of the drug research in this case had been

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borne by the US government. *Halachah* would not have allowed the company to charge an exorbitant fee to derive profits far in excess of one sixth from a lifesaving commodity (*Case Studies in Jewish Business Ethics*).

Bava Metzia 41

Is a Shomeir an Employee?

Our *Gemara* discusses the disagreement between Rabbi Yishmael and Rabbi Akiva. If a watchman misappropriates the deposit he becomes a thief. A thief is liable even if the item is damaged by an act of God, *ones*. Rabbi Yishmael was of the opinion that if the custodian, who had taken the object to misappropriate it, then returned the object to the domain of the owner, he was no longer a thief and would be a guard again even though he had not informed the owner. However, Rabbi Akiva ruled that the custodian had to inform the owner to no longer be considered a thief. If the guard had misappropriated the item and then returned it to the domain of the owner without informing the owner, he would still be a thief. Only if he told the owner and returned the item to the owner, would he lose the status of thief and return to being a watchman with limited liability.

A related question arises regarding a case of a custodian who agreed to watch an item for a designated period of time and wants to return the item within that time. Imagine a *shomeir sachar* who agreed to watch jewelry for thirty days, but then changed his mind and contacted the owner after only ten days and said that he intended to return the item that day. Could he give the item back?

Shulchan Aruch (*Choshen Mishpat* 293:1) rules that the *shomeir*

cannot force the owner to take back the item against his will. *Sma* explains that the owner has the right to tell the custodian that since he agreed to watch the item for thirty days he cannot renege on that agreement.

Mishnah Lamelech challenged this ruling. A worker is always allowed to quit his job. The *Gemara* teaches that “*pòeil yachol lachazor bechatzi hayom*”—“an employee has the right to quit his job in the middle of the day.” Why then is the watchman denied the right to quit his job as *shomeir* on day ten? *Ketzos Hachoshen* (293:2) answered that a custodian is not considered an employee. The laws of a watchman are really rules of liens on property. They are not laws that govern a type of employee.

A *shomeir* makes an agreement with the owner to guarantee the return of the item. He promises to pay the value of the item to the owner if he cannot return the object. As such, the custodian placed a lien on his property to guarantee the deposited item. He was not an employee of the owner. Since he is not an employee, he cannot back out of the agreement that he made with the owner. Therefore, even if the item was given back to the owner on day ten, and the owner knew about it, if it was stolen or lost from the owner’s possession, then the custodian would remain liable to pay the owner the value of that deposited item. The watchman had placed a lien on his own property. If he did not return the item itself at the end of thirty days, the value of the item would be repaid to the owner from his assets. Since the item was stolen, his assets would have to compensate the owner (*Daf Yomi Digest*).

Bava Metzia 42**Financial Advice**

Our *Gemara* teaches about the degree of watching expected of an unpaid custodian, a *shomeir chinam*. If the watchman bundled money he was given to watch in a scarf and carried it over his shoulder on his back, or if he gave the coins to his children who were minors to watch, or if he locked the coins behind a wall that could not withstand a normal wind, he had been negligent. If the coins were stolen he would be responsible to replace them. These laws led to lessons about responsible financial stewardship.

The *Gemara* teaches that blessings are found in money that is not counted. The verse states, “*Yetzav Hashem it’cha es haberachah be’asamecha*”—“Hashem will command a blessing with you in your granaries.” The Hebrew word for granaries, *asamecha*, shares a resemblance with the Hebrew/Aramaic words for hidden from sight, *samuy min ha’ayin*. The verse can be read to impart that Hashem will command His blessing to that of yours which is hidden. *Rabbeinu Bechaye* taught that the reason for this divine practice is that Hashem wants us to know that He is taking care of us in a hidden way. We are surrounded with hidden miracles. Therefore, when money is not counted and the blessing is not apparent, Hashem sends blessings to

the money and increases it, to teach us that His guidance is hidden and supportive.

Rav Chaim Kanievski gave surprising advice based on this *Gemara*. He was asked if a pregnant woman should undergo an ultrasound exam. Perhaps doctors would find a flaw in the fetus and would be able to treat it. He advised against it. He pointed out that if the fetus had Down's Syndrome or a debilitating disorder, *halachah* would not allow an abortion. If you maintain that a test should be done to discover an illness that can be treated, he argued that when the state of the fetus is hidden from the eye there will be more blessings. Hashem sends blessings to what is hidden. If the parents had an ultrasound carried out on their fetus, a problem might be discovered; once a problem is identified, it will be harder for the Almighty to fix it, because that would be an open miracle. *Rabbeinu Bechaye* taught that the Almighty prefers to guide and bless from the shadows. Better that the state of the fetus be hidden and that the Almighty send His blessings to heal it and protect it, just as money that is hidden is blessed. Others disagreed with this ruling.

The *Gemara* also teaches that a person should divide his assets. A third should be in land, a third in merchandise, and a third in cash. An investment manager once went bankrupt. His investors lost all the money they had given him to invest. There were young men who lost all their assets with his collapse. When Rav Moshe Feinstein heard what happened he was doubly upset. He was upset with the behavior of the manager. He was also upset with the investors: "Our Torah contains guidance for life. In *Bava Metzia* 42 the *Gemara* taught that a person should divide his money into thirds: a third should be in cash; a third in land; a third in merchandise. How could religious Jews ignore this advice and put all their money in investments? A Jew should always keep a third of his wealth in cash."

In light of our *Gemara*, the *Hafla'ah* explained a *Gemara* in Tractate *Kesubos*. *Kesubos* 63a relates the story of Kalba Savua, the father-in-law of Rabbi Akiva. Kalba Savua vowed that he would not allow his daughter to benefit from any of his property because she had married his shepherd. Once he discovered that his son-in-law had become a Torah giant, he annulled the vow. The *Gemara* states there that Kalba Savua “fell on his face, kissed Rabbi Akiva’s foot, and gave him half of his wealth.” *Hafla'ah* asked: Jewish law mandates that one not spend more than a fifth on charity or a *mitzvah*. How could Kalba Savua give half of his assets to his son-in-law to fulfill the *mitzvah* of supporting a Torah scholar? He answered that Kalba Savua followed the advice given in our *Gemara*. A third of his assets were in land, a third in merchandise, and a third in cash. Half his money meant half of the cash. He had given Rabbi Akiva a sixth of his total wealth, an amount that one may give (*Daf al Hadaf, Chashukei Chemed, Daf Yomi Digest, and Veshinantam Peninei Hadaf*).

Bava Metzia 43

**A Custodian Falsely Claimed He Did Not Have
the Deposit to Teach a Lesson; Is He a Thief?**

Two friends moved apart. Years later Reuvein came to Shimon's town for a Shabbos. He contacted his former friend and asked if he could stay with him for the weekend. Shimon graciously welcomed him. They went to pray at Shimon's *shul*.

Shimon's *shul* was Chassidic. Each word of the prayers was screamed aloud by the congregants at the tops of their voices. Reuvein could not take it. "Why do you pray at such a *minyán*? What is wrong with the legacy of your parents? Why don't you pray in a *minyán* that is quiet and respectable?" Shimon did not answer.

After Shabbos, Reuvein asked Shimon to give him back the wallet that he had deposited with him. As Friday had ebbed Reuvein had asked Shimon to store his wallet in a safe spot. Shimon had put it in a safe. Now Reuvein wanted it back.

"I do not have your wallet. You never gave me any wallet. What are you even talking about?" Reuvein requested his deposit back again, this time in a slightly higher tone.

"I do not have your wallet. You never gave me any wallet. What are you even talking about?" Reuvein started to scream.

"Give me back my wallet. I have a lot of money there. We used

to be friends. How can you do this to me? I saw you put my wallet in the safe. Give it back!”

Shimon then said, “Why are you screaming? Why not speak softly and respectfully?”

Reuvein responded, “I am screaming because you are stealing my money.”

Shimon then said, “You see, when it really hurts you scream. In our *shul*, all the congregants feel that they are in desperate need. They need Hashem to help them. It really hurts. They scream for Hashem’s help. I was non-cooperative with you to teach you the answer to why I pray in my *shul*. I will give you your wallet now.”

Was Shimon a sinner? Was he a thief?

Bava Metzia 61b teaches that one may not steal in jest or to annoy. However, here Shimon never actually lifted the object. Our *daf* teaches that according to Beis Hillel a custodian who declares that he intends to keep the object that was placed in his domain for himself is not yet a thief. Only if he lifts the object would he be considered a *sholei'ach yad* and treated as a thief. *Ketzos Hachoshen* (348:2) asked: Once the *shomeir* declared that he wished to keep the object he should have acquired the object that was in his home, and he should be considered a thief? He answered that theft only happens when the thief lifts the stolen item. If a *shomeir* made a nasty declaration he is not considered a thief.

Perhaps, according to the *Ketzos*, in our case Shimon would not be considered a thief. He had made a false representation. However, he did so to teach a lesson. He never intended to take the object for himself. He also never touched the object in an illicit way. Therefore, perhaps his behavior was not an act of theft (*Chashukei Chemed*).

Bava Metzia 44**What Should a Child Call His Father
Who Is Also His Rebbe Muvhak?**

Pesachim 56a relates a story about our father Ya'akov. He wanted to reveal to his children when the current exile would end. Inspiration deserted him. He lost his prophetic abilities. He wondered if he lost his prophecy due to sins among his children. The holy *shevatim* then said, “*Shema Yisrael, Hashem Elokeinu, Hashem Echad*”—“Hear Israel, Hashem is our Lord, Hashem is one.” Israel was a reference to Ya'akov, who had a second name, Yisrael. The holy *Shelah* (*Parashas Vayechi*) found this tale difficult.

How could the holy children of Ya'akov call him by his first name? It is not respectful for a child to call his father by his name. He answered that the name Yisrael means *serara*—leadership and greatness. Calling their father Yisrael was the equivalent of calling him *adoneinu*—our master. Based on this understanding, *Shelah* suggested that if a child's father was also his Rebbe, it would give the father more honor to call him Rebbe than to refer to him as Dad or Abba. One must honor his Rebbe even more than one must honor his father. Therefore, if your father is also your Rebbe, call him Rebbe.

Darchei Moshe (*Yoreh Dei'ah siman 242:1*) also writes that if your father is your Rebbe, you should call him Rebbe and not Abba Mori. He brought support to his lesson from our *Gemara*. In our *daf*, Rabbi Shimon called his father Rebbe. *Darchei Moshe* added that this is only true if his father is his primary teacher—his *Rebbe Muvhak*.

However, if his father is not his primary teacher, then honoring him as father comes before anything else. *Rama* ruled (*Yoreh Dei'ah siman 242:1*) that if the child's father was not his primary teacher, he should call him Abba.

The *Shach* pointed out that this is not the accepted practice. It is normal practice to call one's father Abba, even when the father is also the primary teacher. Therefore, the *Shach* proposed that Rabbi Shimon bar Rebbe called his father Rebbe for a different reason. Rebbe means the great one. Our Sages have said that from Moshe Rabbeinu until Rebbe there was no one who had both greatness in Torah and greatness in power and wealth in the same place. Because Rebbe was so exceptional, even his son called him Rebbe. However, a regular person should call his father Abba, even if his father was his *Rebbe Muvhak*. First of all, as a child, before he learned, he called him Abba and therefore he should continue to call him Abba. Secondly, fathers forgive the honor due them. Even if it would be a greater expression of respect to call his father Rebbe, he may call him Abba (*Mesivta*).

Bava Metzia 45**Using Money for Mishlo'ach Manos**

Shu"t Terumas Hadeshen (siman 111) was asked about *mishlo'ach manos*, sending gift portions to a friend on *Purim*. If someone sends his friend robes, sheets, or other such dry goods, would he fulfill the *mitzvah* of *mishlo'ach manos*?

He answered that since the main reason for the enactment of *mishlo'ach manos* was that each person should have food for his or her meal, one would not fulfill his obligation with robes and sheets. He further argued that the word “*manos*” always refers to a portion of food. If one sent a robe he did not send a portion of food.

Rambam (Hilchos Megillah 2:15) writes, “A man is obligated to send to his friend two portions of meat, or two types of cooked dishes, or two types of food.” In regards to gifts to the poor that we each must give on *Purim* day, *Rambam* writes (*ibid.* 2:16), “And one must give gifts to the poor...money or types of cooked food, or types of food.” A careful comparison of *Rambam's* words in regards to *mishlo'ach manos* and his words in regards to *matanos la'evyonim* shows that in regards to *mishlo'ach manos* he only lists food portions, while in regards to the poor he mentioned money as well. Apparently, one can only fulfill his obligation of *mishlo'ach manos* with food; robes or sheets would not fulfill the obligation.

Shu"t Pis'chei She'arim (siman 47) first suggested that based on our *Gemara* one could fulfill the *mitsvah* of *mishlo'ach manos* with non-food items. Our *Gemara* teaches a lesson about *ma'aser sheini*. *Ma'aser sheini* is to be eaten in Yerushalayim. One can transfer the holiness from the *ma'aser sheini* grain or fruit to coins. Our *Gemara* teaches that in Jerusalem, the holiness in those coins can be transferred to copper coins. Why can one put *ma'aser* holiness on coins? The holiness of *ma'aser sheini* coins in Jerusalem should be transferred onto food. Apparently, since those coins can easily be turned into food, they are considered "food." So too, argued *Pis'chei She'arim*, if one gave his friend a gift of money that can easily become food for the *Purim* meal, it should fulfill the obligation of *mishlo'ach manos*. However, ultimately, he rejected the comparison. *Manos HaLeivi* taught that *mishlo'ach manos* must be a gift that brings joy. Money will not create immediate joy. Portions of food will create joy. *Pis'chei She'arim* ruled that one can only fulfill his obligation of *mishlo'ach manos* with food portions (*Mesivta*).

Bava Metzia 46

**The Customer Left His Purchases in
the Store. They Were Stolen. Is the
Storeowner Liable?**

A customer purchased two boxes worth of groceries in a store. He could not carry all of the goods home. He paid for the goods. He left them in the store because the storeowner promised that next morning he would have his worker deliver the goods to the customer. There was a break-in at the store. Thieves stole the boxes of goods. Did the storeowner have to replace all the goods that had been stolen?

Halachah teaches that a paid watchman, a *shomeir sachar*, must pay for loss or theft. An unpaid watchman does not need to work as hard. He is not held to the same standard. An unpaid watchman does not need to pay for theft or if the item gets lost. Our customer had purchased the items. The storeowner had promised to watch the goods and deliver them the next morning. Was the storeowner a *shomeir chinam*? If he was an unpaid custodian he should be exempt. If the storeowner was considered a *shomeir sachar* he would be obligated to pay in the event of theft.

Our *Gemara* mentions the view of Rabbi Yochanan. Rabbi Yochanan felt that, Biblically, merely paying for an item made the

item the possession of the buyer. However, the Sages legislated that the item would not belong to the buyer until the buyer actually lifted the item. They did this because if a man purchased wheat, paid for the wheat, but had not yet lifted the wheat he had purchased, perhaps if a fire broke out the seller would not try to save the wheat. The seller would reason: I have been paid; I do not care if my customer loses money when his wheat burns. However, now that the item does not yet belong to the buyer, because he has not lifted the wheat, the seller has a motivation to save the grain from fire. The seller knows that the grain might appreciate in value and he can renege on the deal and gain that appreciation. Our case is similar in that after the item was purchased it was lost.

Beis Yosef (*Choshen Mishpat siman* 198) rules: “*Rabbeinu Yerucham* wrote, (regarding) one who acquired an item in a manner in which neither party can renege and change the deal: if the item is still in the domain of the seller, some Sages say the seller is an unpaid watchman; others say that he is even less responsible than an unpaid watchman. This (meaning the latter) point of view seems to be most correct.” This seems to address our case. The customer paid for and lifted the groceries. They belonged fully to the buyer. Neither the buyer nor the grocer could renege. *Beis Yosef* rules that the grocer is less than an unpaid watchman. As a result, he should not be responsible for theft.

Rav Zilberstein argued that perhaps our case would differ from the scenario of the *Beis Yosef*. *Beis Yosef* may not have been dealing with a grocery store. He dealt with a seller and a buyer. In our case, it is possible that the grocer charges a fee for delivery. If the customer will pay for delivery, the grocer is a paid watchman. Furthermore, even if there was no charge for delivery, the storeowner is happy to deliver the goods. He knows that without offering a delivery service

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he would not get customers to purchase from his store. Perhaps the pleasure of having a customer renders him a paid watchman. Since a *shomeir sachar* is liable for *geneivah* (theft), the grocer must pay even though the items were stolen from his store (*Chashukei Chemed*).

Bava Metzia 47**Can a Rabbi Use a Soiled Napkin at a Wedding?**

Rav Zilberstein suggested that our *Gemara* might teach a cautionary lesson to rabbis performing marriages. At a Jewish wedding, some business matters are taken care of. At the groom's reception the officiating rabbi administers a *kinyan chalifin* with the groom. The groom lifts a utensil or garment, such as a handkerchief. Through his lifting he transmits a lien on his property to his wife for the value of the *kesubah*. Our *Gemara* contains many lessons about *chalifin*.

It teaches that *klei maroka* cannot be used for *chalifin*. *Rashi* explains that *klei maroka* are utensils made out of dried excrement. Apparently, a disgusting object may not create the *chalifin* acquisition.

Rav Zilberstein argued that if someone were to lift a soiled plastic cup from the garbage and wishes to use it for *chalifin*, it would be a modern-day *klei maroka* and unusable for *chalifin*. The same should hold true for a plastic cup that had been used in a doctor's office to collect a urine sample. A metal soda can, from which the soda had already been drunk, should also be disqualified.

Rabbis often use a handkerchief to effect *chalifin* at a wedding. A handkerchief can become soiled if someone sneezed into it. It might

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have stains on it that cannot be removed. In light of the law of *klei maroka*, perhaps such an item would be disqualified. An object that is clean and pleasant is what should be used for *chalifin* (*Chashukei Chemed*).

Bava Metzia 48

Can You Back Out of Your Promise to Attend a Meal at Your Friend's House In Order To Go to Another Friend's Bris Celebration?

Chelkas Ya'akov (*Shu"t Orach Chayim 24*) was asked about keeping promises. Shimon was hosting a number of guests at his house and asked Reuvein to come and visit while the guests would be at his home. Reuvein was a very prominent person. Reuvein's visit would give Shimon honor. Reuvein told Shimon he would come. Before the date of the visit arrived, another friend of Reuvein invited him to the *bris milah* of his son and to eat at the meal. *Rama* (*Yoreh Dei'ah 265:12*) rules that one who is invited to the meal of a *bris milah* and does not attend deserves to be excommunicated from Heaven. Reuvein asked Rav Breish (the author of the *Chelkas Ya'akov*) what he should do. Should he follow his first commitment to Shimon or should he attend the *bris*?

Chelkas Ya'akov answered that Reuvein should keep his initial promise. He should not attend the *bris*. He should spend the time with Shimon. This, he taught, could be derived from another law

in the laws of circumcision. *Rama* rules that if there are unsuitable people at the *bris* meal one need not eat with them.

Our *Gemara* teaches that if you gave your word to your friend, and he was relying on your word thinking you would fulfill it, you are deserving of a divine curse if you renege and do not fulfill what you promised—He who punished the generation of the flood and the generation of the dispersion will punish the person who does not fulfill his word. Agreeing to visit Shimon is similar to promising a friend to give him a small gift. *Shulchan Aruch* rules that if you promised an inexpensive gift and then did not give it, you lack integrity and are disregarding the teachings of the Sages. A Torah scholar is permitted to skip the meal of a *bris milah* in order to avoid eating together with unsuitable people. Therefore, you are certainly permitted to not attend a *bris milah* in order to not become an unsuitable person! One who disregards the teachings of the Sages is not a suitable person (*Me'oros Daf Hayomi*).

Watch Your Word

Daf Yomi Digest records a story about the *Chazon Ish* in regards to the importance of keeping to commitments:

Rav Tzvi Oberlander, *shlit"á*, related how the *Chazon Ish* taught him to be most careful with his words and promises.

My elderly uncle was childless and he wanted a *ben Torah* to say *Kaddish* for him. I was the member of the family learning in *yeshivah*. He naturally wanted me to promise to recite *Kaddish* for him after his passing. I really did not want to do it. As a *yeshivah bochur*, it would be distinctly uncomfortable to publicly lead others in *Kaddish*. In

addition, at the time, my mother was still alive, and I did not know how she would feel about me saying the memorial prayer. However, I was willing to learn *Mishnayos* for him.

I went to the *Chazon Ish* and explained that I wanted my cousin, who was not a *ben Torah*, to say the *Kaddish*, while I would learn *Mishnayos* for my uncle. I was afraid to tell my uncle that I did not want to say *Kaddish* for him. I asked the *Chazon Ish* what I should do.

The *Chazon Ish* said, “Tell your uncle you will learn *Mishnayos* for him.”

I explained that my uncle was a simple person. He would not understand the importance of *Mishnayos*. To him, only *Kaddish* was meaningful. If I told him that I would learn *Mishnayos* for him, it would pain him. Could I tell him that I would say the *Kaddish* and, if in fact he would pass away, have my cousin say the *Kaddish*?

The *Chazon Ish* had been lying in bed as I asked my question, but at this he stood up and spoke in a very strong tone of voice: “It is forbidden to lie! It is forbidden to lie!”

He made this statement three times. It caused me to lose all interest in promising my uncle what I had no intention of fulfilling. It also filled me, for months, with powerful *yiras shamayim* (fear of heaven) (*Daf Yomi Digest*).

Bava Metzia 49**He Told a Kohein He Would Redeem His Firstborn with Him; May He Back Out?**

A new father invited a *Kohein* to come to his home for the *mitzvah* of *pidyon haben*—redeeming the firstborn son. A few days later he met a *Kohein* who was known as a descendant of a prominent *Kohein* family—a *Kohein meyuchas*. The second *Kohein* had a family document tracing himself back to Aharon the High Priest. Can the father change his mind? Can he revoke his offer to the first *Kohein*?

Rama (*Yoreh Dei'ah* 264:1) rules that if a father told one man that he would have the privilege of circumcising his son, he may not revoke the offer and ask another man to be the *moheil*. However, even though he is not allowed to do so, if he revoked the invitation, the second person appointed is allowed to do it. *Taz* (5) explained the *Rema*. Jews should not do wrong. We must not speak falsehoods. People may call a man a “*rasha*” if he offered a privilege to his friend and then retracted the offer. However, in our case, perhaps since *pidyon haben* is a gift of a small amount of money, he would be unable to retract the offer he had made to the first *Kohein*. Our *daf* teaches that when a person offers his friend a small gift he may not change his mind.

Taz writes that in regards to a circumcision, if a man offered his friend the privilege of serving as *moheil* but then a great *tzadik* came, the man may renege and offer the honor to the *tzadik*. The reason for this ruling is that when he first offered the honor to the first *moheil*, he did not know that a *tzadik* would come by. Had he known the *tzadik* would be available he never would have offered the honor to the first *moheil*. Rav Zilberstein suggested that the same should apply to our case. Perhaps, since he had not known he would have the chance to use a *Kohein* with such distinguished lineage when he had invited the first *Kohein*, he was allowed to change his mind and use the second *Kohein* (*Chashukei Chemed*).

Poskim point out that the distinction between offering a small gift, which he cannot revoke, and offering a large gift, which he can change his mind about, does not always apply. The reason for the law is that the recipient relied on the giver's word. He was sure the giver would give what he promised to him. When a large gift was promised the recipient never really trusted that he would get it. However, if a community promises a large gift, since people rely on them, it cannot change its mind (*Me'oros Daf Hayomi*).

Bava Metzia 50**The Time Frame to Reverse a Deal**

Our *Gemara* discusses laws of price gouging. It teaches that if a person was overcharged and he paid a sixth more than the going price, he was the victim of *ona'ah* and is entitled to his money back. However, he needs to make his claim quickly. We accept that if he purchased, then showed, the item to his relative or another merchant, and heard that he had overpaid, he could immediately demand reimbursement. However, if more time elapsed and he then came to demand reimbursement, he would not be entitled to any money back. After the amount of time it takes to show a purchase to a relative or merchant, we are sure that he found out that he had overpaid and view his lack of immediate response as a sign that he had forgiven the fact that he paid too much. He had been *mocheil* what had been done to him. He was not entitled to reimbursement any more. Rabbi Tarfon gave the victim a little more time. He ruled that the victim had all day to claim reimbursement.

Rif (30b in the old *Rif* pages) and *Rosh* (*siman* 15) rule that the time limit for a claim of fraud only applies to a dispute about cost. However, if the buyer discovered a physical flaw in the purchased item—that had he known about he never would have spent the

money—he could return the object and reverse the deal at any time.

A man purchased a building. He then found out that in the last year three young neighbors had passed away in the building. The buyer wanted to return the building and get his money back. He claimed the building had a deficiency. He claimed that even though some time had passed from the moment of purchase, the fact that three young people had died inexplicably in the building was a physical flaw in the purchased item. He asked Rav Zilberstein if he was right and it was a *mekach ta'us* and he could return the building, even though significant time had elapsed from the time of purchase.

Rav Zilberstein ruled that Jewish sources do not give credence to fears that arise because three people died in a building. Such an unusual occurrence did not make the building into a damaged item. If people fear living in the building because of what happened in the past in the structure, the buyer should affix new, more beautiful *mezuzos* and he should build a fine *sukkah* on the grounds. Through using the property for *mitzvos* he will merit that the property will be protected and no one will be harmed when using it (*Chashukei Chemed*).

Bava Metzia 51

Can There Be a Violation of Overcharging When a Homeowner Sells His Used Washing Machine?

A man had a washing machine for several years. Over time it began to consistently break. He decided to buy a new washing machine. After he purchased the new machine he put the used machine up for sale. A neighbor came to buy it. He overcharged the neighbor. He charged him more than a sixth more than the machine was worth. Was this a case of violating the prohibition against *ona'ah*? Would he have to take the machine back and return the ill-gotten funds?

Rav Zilberstein pointed out that our *Gemara* might indicate that it was not a violation of *ona'ah*. Our *Gemara* teaches that *ona'ah* only applies to a merchant. None of the laws of *ona'ah* apply to a homeowner who sells his household items. *Rashi* explains that a buyer knows that the homeowner is emotionally attached to his goods. It is hard for the homeowner to part with them. He only agrees to part with them for a good price. One who buys from a homeowner is, therefore, virtually agreeing to a stipulation that he is buying the item without the right to claim that he was overcharged. Here, it was a homeowner selling the used machine, not a merchant

in a store. Perhaps our *Gemara* teaches that a homeowner who sells is never within the rules of *ona'ah* and the buyer has forgiven his claim.

On the other hand, there are grounds to distinguish. *Rashi* said a buyer from a homeowner cannot claim *ona'ah* because the buyer knew he would have to overpay due to the emotions of the homeowner. In our case, the homeowner was not attached to the old washer. He wanted to discard it. He had purchased a new machine. Perhaps in such a case the laws of *ona'ah* would apply, even though it was a homeowner selling?

Rav Zilberstein posed this question to his brother-in-law, Rav Chaim Kanievski. Rav Chaim answered that since a washer is attached to the wall, it is considered ground. It can only be used once it is plugged into the wall socket. As ground, it is not something to which there is a law of *ona'ah*. The Torah mentioned *ona'ah* in regards to items that get acquired from hand to hand. Since the machine was considered earth, the buyer could not make a claim of *ona'ah* and demand a reversal of the deal (*Chashukei Chemed*).

Bava Metzia 52**May a Man Wear a Necklace?**

Our *Gemara* teaches that if a coin's weight was worn down, it should be ruined so that it will not be used by deceiving people. The owner should puncture the coin in its middle and hang it on a necklace on the neck of his son or daughter. This statement is striking. The Torah commands us not to cross-dress: “*Lo yihyeh kli ge'ever al ishah; velo yilbash ge'ever simlas ishah ki so'avas Hashem Elokecha kol oseh eileh*” — “The garment of a man shall not be on a woman, and a man may not wear the dress of a woman, for all who do so are an abomination to Hashem your God.” How then could the *Gemara* encourage a person to make a necklace for his son?

Some might suggest that perhaps the Torah prohibited a man who dresses up to appear as a woman. A cross-dresser will likely integrate with women in a manner that is inappropriate. However, to merely wear a piece of jewelry around the neck would not be such a sin. It is apparent to all from the way he is dressed that he is a man. No one will mistake him for a woman because he wears a necklace. Others disagree.

Rashi (*Devarim* 22:5) explains that the verse prohibits a man from removing the hair that he might have under his armpits. Such

an act is not public. No one would see it. A man who shaved under his arms would still look like a male to all. Nevertheless, he may not do the feminine act of removing the hair that is under his armpits. Apparently, even a small and not easily noticed feminine act is forbidden. Then, how could our *Gemara* permit a father to turn an inferior coin into a pendant on a necklace for his son?

Kiryas Melech (commentary to *Rambam Hilchos Avodas Kochavim perek 12*) suggests that an object worn by members of both genders is not prohibited by the verse of *lo yilbash*. A man may not remove the hair that is under his armpits because that is an innately feminine act. Perhaps our *Gemara* allowed a man to put a necklace on his son in a place where it was common for both men and women to wear such a piece of jewelry. Since it was not an exclusively feminine item, it was allowed.

This answer is not universally accepted. Some feel that even items worn by both genders should not be worn by a man. However, some suggest that perhaps in the times of the Talmud it was the practice for only boys to wear a necklace with a punctured coin on it. If our *Gemara* was discussing such a case it is understandable why it was permitted—since at that time only boys wore such an item, it was not a case of a boy wearing a girl's item. When the *Gemara* said that the man could make such a necklace for his daughter, it meant to say in those places where only girls wore such items, it could be made for his daughter (*Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 53**May I Annul Treif Utensils by Majority?**

If a prohibited food item, like a little bit of pork, falls into a large mixture of kosher food by mistake, *halachah* allows a person to eat the entire mixture. Since the pork is mixed in and not seen by itself, if there is an overwhelming majority of kosher food, the entire amount is permitted. Our *Gemara* introduces a limitation to this law. It teaches that if the prohibited item was a *davar sheyeish lo matirin*—something that could become permitted by other means—then the overwhelming majority of kosher food in the mixture could not make it kosher.

The *Gemara* invokes this law in regards to *ma'aser sheini*. *Ma'aser sheini* is a tithe of produce that the farmer is to bring to Jerusalem and eat within the walls of the city. If *ma'aser sheini* were to get mixed up in a large mixture of permitted grains, *halachah* would not say that the farmer could eat the entire mixture outside of Jerusalem. The *ma'aser sheini* produce is a *davar sheyeish lo matirin*. The Torah allows us to remove the *ma'aser sheini* status from grain kernels and invest it into coins. Therefore, if the grains were in a mixture, there was an option other than *bittul berov*—annulment by majority—to permit the grains. They could be deconsecrated. The fact that the

grains were a minority in a mixture would not permit them. The *Gemara* quotes a *Mishnah* that teaches that it would be possible for *ma'aser sheini* to be annulled in a mixture where there was a majority of another matter. But isn't *ma'aser sheini* a *davar sheyeish lo matirin*?

The *Gemara* answers that the *Mishnah* discussed a case when a few grains, all together worth less than a *perutah*, of *ma'aser sheini* get mixed into a mixture. One cannot deconsecrate grains worth less than a *perutah* onto a regular coin. The *Gemara* asked: But Chizkiyah taught that if a person had coins that he had already placed *ma'aser sheini* status into, he could add the *ma'aser* status of the few kernels that were worth less than a *perutah* into those coins. If so, shouldn't the kernels be considered a *davar sheyeish lo matirin*?

The *Gemara* answers that the *Mishnah* dealt with a person who did not have any coins that he had vested with *ma'aser sheini* status; he only had a few grains of *ma'aser sheini*, and these grains fell into a mixture. For him, there was no option to permit the grains other than *bittul*. Therefore, the grains could get annulled in the majority.

Rashba (*Toras Habayis Ha'aruch*, bayis 4 sha'ar 4) asked a question. The grains should still be considered a *davar sheyeish lo matirin*. The farmer could go and acquire coins that had *ma'aser sheini* status in them. He could then take the holiness of *ma'aser* off the kernels and move it into those pre-existing *ma'aser* coins. There was an option other than annulment to permit the kernels. Why then would majority annul them?

He answered that our *Gemara* teaches an important principle. If it is hard, expensive, or tiresome to permit the item, the item is not a *davar sheyeish lo matirin*. It would be hard for a farmer to acquire coins that had already been vested with *ma'aser* holiness. Therefore, *halachah* does not consider that to be an option. The farmer who did not have pre-existing *ma'aser* coins, who merely had a few kernels

of *ma'aser*, had prohibited grains without an option to permit them other than *bittul berov*. Therefore, the majority annuls them.

If a man had a pot that someone cooked *treif* in, and it then got mixed up with many other pots, would we say that the pot is annulled in the majority? Some wanted to say that there would be no annulment. A *treif* pot can be kashered. One can purge the taste out of it with boiling water. Therefore, it is a *davar sheyeish lo matirin*. A *davar sheyeish lo matirin* does not lose its prohibited identity in a mixture. These *poskim* argued that the person would have to purge all the pots in the mixture and then they could be used.

Rashba argued that based on our *Gemara* the pot would be annulled in the majority. Since purging is a hassle, a tiresome option does not render the item a *davar sheyeish lo matirin*. The pot was fully prohibited. There was no option to permit it other than annulment by majority.

Shulchan Aruch (*Yoreh Dei'ah* 122:8 and 102:3) records the opinion of *Rashba*. The *Shach* (8) quoted the *Maharil*, who argued with *Rashba*. He felt an option to permit an item that entailed a small bother would still render the item a *davar sheyish lo matirin*. It is a small bother to kasher a pot in a large baker's pot, and therefore, the *treif* pot is a *davar sheyeish lo matirin* and it does not lose its identity to the majority of the mixture (*Daf al Hadaf*).

Bava Metzia 54

Can the Gabbai Seize Property from the Donor's Home?

A community was blessed with a conscientious *gabbai*. He would give out the *aliyos* on Shabbos and Yom Tov. After Shabbos, he would immediately follow up with anyone who made a pledge to collect the pledge for the *shul*. Rav Zilberstein wondered if the *gabbai* could seize collateral from donors who pledged but did not have the cash on hand to pay what they had promised. Perhaps he may not enter the home of pledgers and seize items of value. After all, the Torah prohibits a lender from entering the home of the borrower and seizing collateral (*Devarim* 24:10).

A novel insight of the *Rashash* would seem to indicate that he was not allowed to enter the home of the donor and seize property.

Our *Gemara* discusses different times when Jewish law demands that a fifth be added. If a farmer seeks to deconsecrate his *ma'aser sheini* grains by transferring their holiness onto coins, he must add an additional fifth. If a man made his object *hekdeish* and he then wished to buy the item back from the Temple trust, he would need to add a fifth. The *Gemara* teaches that there would be a difference between the fifth paid to *ma'aser sheini* and the fifth paid to *hekdeish*.

If the farmer put aside coins equal to the value of his grains, and he did not set aside the added fifth, some would say he could not yet eat the grains outside of Jerusalem. Our Sages feared that he might never give the added fifth. They therefore did not allow him to eat the grain outside of Jerusalem. They rendered his deconsecration ineffective. However, if a man purchased his item back from *hekdeish* and he only gave *hekdeish* the value of the item and did not add the fifth, the item could be used. We would not fear that he would never add the fifth. The executor of the Temple trust, the *gizbar*, would collect the fifth from the man in the market.

Rashash pointed out that the *Gemara* only mentions that the *gizbar* would collect from the man in the market. Why did the *Gemara* specify market? The *gizbar* could collect the fifth anywhere.

Rashash taught that just as a lender may not enter the home of his borrower and seize property, a *gizbar* may not enter the home of the redeemer and seize property. He could only collect from the redeemer in the market. According to this principle, in our case as well, the *gabbai* would not be allowed to enter the home of the donor and seize collateral. He is like a *gizbar* and could only collect the debt from the man while the man was in the street.

Other *poskim* disagree with the *Rashash*. *Chafetz Chayim* in *Ahavas Chessed* (*Nessiv Hachessed* 7:20) ruled that the prohibition to enter a borrower's home only applies to an obligation created through a loan. However, a man who promised funds to a *shul* or a charitable cause is not within this rule. The *gabbai* is allowed to enter his home and seize an item of value to collect the pledge. Our *Gemara* did not mention the market to imply that the *gizbar* cannot go to a house; it is to be understood the way *Tal Torah* understood it. In those days it was the practice for the *gizbar* to collect the pledges in the market. However, he was technically allowed to enter a home

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and seize an item of value to satisfy the obligation of the redeemer to add a fifth. The obligation of a fifth was a debt that had not begun as a loan. Those responsible to collect it were allowed to enter a home to seize it (*Chashukei Chemed*).

Bava Metzia 55**The Blessing in Communal Mitzvos**

Shu"t Binyamin Ze'ev (182) dealt with a dispute in a *shul*. A man had lent his Torah scroll to the *shul*. They used it every week for several years. Then, the community collectively purchased a Torah scroll. They wished to use the scroll they bought. He argued, "There was a presumption that we used my Torah each week. My Torah should continue to be the one that we all read from each week." *Binyamin Ze'ev* argued that our *Gemara* is the source that the community should reject his claims and the communal scroll should become the primary Torah of the community.

Our *Gemara* teaches that the word "*ha'olah*" teaches that the first sacrifice in the Temple every day must be the *korban olah* of the morning daily sacrifice. No one may offer his own offering before the *olah* of the *korban tamid* was brought. The reason why the first offering must be the *olah* is that the *olah* was the offering of the entire Jewish nation. The sacrifice of the nation is more special than any individual sacrifice. The *Gemara* states that whatever is holier comes first. A Torah scroll of the community is like the *korban tamid*—it is a communal *mitzvah* object and therefore its use should precede the use of a scroll that merely belongs to an individual. Using the

communal scroll will add the merit of the community to the *mitzvah* of Torah reading. It is better to have the merit of the community than to use a scroll that just belongs to an individual.

On the other hand, Judaism treasures peace. The man whose scroll had been used in the past was demanding that his Torah continue to be the primary one. He would be upset if the community now shifted to the communal scroll. Great is the importance of peace. For the sake of peace *halachah* allows for falsehoods and for Hashem's name to be erased. Therefore, *Binyamin Ze'ev* proposed that they read from the communal scroll for two weeks, and then for one week read from the individual's scroll, and then for the next two weeks read from the communal scroll, etc. In this way, the communal scroll will be the primary scroll and peace will still be preserved.

Rav Zilberstein was asked a question about a *Megillah*. There was a *shul* where they would read from Reuvein's *Megillah* each *Purim*. However, the *ba'al keriah* passed away. They needed a new reader. A member offered to read. However, he insisted that he read from his own *Megillah*. Reuvein argued that since his *Megillah* had been used each year, he was the one entitled to have his *Megillah* used. He argued that the *gabbai* must go out and find a new reader who would read from his *Megillah*.

Rav Zilberstein ruled that the *gabbai* did not have to find someone who would read from Reuvein's *Megillah*. In addition, since the new *Megillah* was written in accordance with the opinion of the *Beis Yosef*, and the *Chazon Ish* argued that that script was superior to the script of the *Ari* (Reuvein's *Megillah* was written in the *Ari* script), they could switch to using the new *Megillah* (*Chashukei Chemed*).

Bava Metzia 56**Is There Ona'ah in Overcharging for an Esrog?**

Shu"t Avnei Cheifetz, by Rav Aharon Levine, dealt with a painful question. During World War I, Central European nations were cut off from the lands of the south. As a result, it became virtually impossible to get *esrogim* in Austria, Hungary, and other Central European lands. Jews petitioned the Austro-Hungarian emperor and begged him to allow for the import of *esrogim*. The emperor gave permission and a few *esrogim* were brought to Vienna, the capital city. Very few *esrogim* were brought to Vienna. Towns throughout the Austrian empire stood no chance of having *esrogim*. In one town a merchant came a few days before *Sukkos* with a single *esrog*. He offered to sell it to the town; however, he demanded a very high price. The community agreed to pay the exorbitant fee. He was paid and he gave them the *esrog*. He decided to stay in the town that night. The next morning another man came to the town. He too had an *esrog* for sale. He offered it to the townspeople for a very low price. The people told him, "We were just fleeced. Fortunately, the first man is here. We will go to him and reverse the deal. He overcharged us far more than a sixth. We will get our money back and return the *esrog* to him. We will then buy your *esrog*." When the townspeople approached the first

merchant, he refused to reverse the deal. He argued that the price had been fair and there were no grounds for a claim of *mekach ta'us*. Rav Levine addressed the scenario. Who was right?

Our *Gemara* teaches that there are items that do not have the law of *ona'ah*. Would this scenario be an exception to the laws of *ona'ah*?

Avnei Cheifetz initially thought that the townspeople were correct. The *Gemara* in *Kesubos* (97a) relates a story about the town of Nehardea. There was a famine. No one had food. The people sold their homes for food. They were then told that the boats with the grain for the town were in the docks. Rav Nachman ruled that they were entitled to their houses back. They had only sold their homes because they thought that there was no food coming. Had they known that the boats were about to arrive with grain they never would have sold their homes. Since the sale was based on misunderstanding reality, the sale was a *mekach ta'us* and could be reversed. The same would be true about our case. The people overpaid for the *esrog* because they thought no other *esrogim* were available. Had they known another *esrog* would be available at a cheaper price they never would have paid so much for the first *esrog*.

However, Rav Levine rejected this analysis. He pointed out that there were differences between the cases. In *Kesubos*, the boats were bringing grain to Nehardea. Had the people known that the boats were coming they never would have sold their homes. Here, we cannot honestly say that had people known that another *esrog* merchant was coming they never would have bought the first *esrog*. The merchant was not traveling particularly to this town. People would have still purchased the first *esrog* for fear that the second merchant might sell his fruit in another town. People would also have feared that perhaps the second fruit was not as beautiful. As a result, the claim of *mekach ta'us* as in the case of the wheat to Nehardea was not true.

In fact, Rav Levine ruled that the sale was not a *mekach ta'us* and the merchant did not have to return the funds he had received. *Machaneh Efrayim* taught that there is no *ona'ah* regarding an item that does not have a fixed market value. During the war, when many towns did not have the option of purchasing even a single *esrog*, one could not claim that *esrogim* had a fixed value. Since the *esrog* was an item that did not have a fixed value, there was no possibility of claiming *ona'ah* and *mekach ta'us* for overcharging for it. In addition, he quoted the view of the *Beis Yitzchak*. The *Beis Yitzchak* (*Orach Chayim siman 118:3*) ruled that for *esrogim* there can never be *ona'ah* or *mekach ta'us*. *Beis Yitzchak* argued that since the price of *esrogim* fluctuates by the hour, there is no rule of *ona'ah* or *mekach ta'us* for them. Items whose market value constantly changes are not subject to the rules of *ona'ah*.

Rav Levine ruled that the people could not force the first merchant to return the funds and take back his *esrog* (*Daf Yomi Digest*).

Bava Metzia 57

**Is There a Prohibition of Interest When the
Added Funds Go to a Yeshivah?**

A Jew had a check-cashing business. A customer would give him a check, he would charge a small fee, and he would give the customer the cash value of the check. A restaurant owner brought the man a check. He gave the restaurateur the cash. When he went to deposit the check in a bank, the check bounced. There were insufficient funds in the account to cover the amount on the check. He went to the restaurant owner. The man agreed that he had been wrong. He promised that in a month's time he would give the moneychanger the amount of money written on the check, plus an additional amount due to the fact that he had not delivered the funds on time. The month came and went. The moneychanger had still not received his due. They agreed that the restaurateur would deliver meals from his store each day to Torah students. He would do this until the cost of the meals delivered equaled the amount that had been on the check plus the amount the he had promised to add. The man did so. The *yeshivah* students approached Rav Zilberstein with a question. Were they allowed to eat the food? Perhaps eating the food was aiding and abetting the sin of collecting interest payments from a fellow Jew?

Rav Zilberstein pointed out that *Tosfos* on our daf (s.v. קפסו) teach that while the *Gemara* in *Bava Metzia* teaches that Biblical interest exists only between a lender and a borrower, and it would not apply to a sale, if a lender told a borrower, “Here is a hundred dollars as a loan; in a month’s time, you are to give 120 dollars to charity,” it would be Biblical interest. The fact that the borrower would give money to someone based on the words of the lender would be viewed by Jewish law as if money was given directly to the lender. This is like the law of the guarantor. The *Gemara* in *Kiddushin* (7a) teaches that if a woman told a man, “Give money to Reuvein and I will be married to you,” if the man gave the money to Reuvein, she would be married to the man. Since he gave it to the person based on her words, it would be considered as giving to her. The same would be true for a lender and borrower according to *Tosfos*. *Rama* rules like *Tosfos*.

Shu”t Radbaz (see *Birkei Yosef* end of *siman* 161) disagrees. *Radbaz* argues that only interest between a lender and a borrower is Biblically prohibited. When a man says, “Here is a hundred dollars so that you will give two hundred to charity,” it is not Biblical interest. It might be Rabbinic interest. However, for the sake of the poor, the Rabbis would not impose a law of interest on such a transaction.

Rav Zilberstein ruled that ideally all should follow the *Tosfos*. The moneychanger should waive the added payments and only ask for the principal back. That principal amount can be given to the *yeshivah* students. However, if he did not do so, the *yeshivah* students could eat the food that was given to them, even though some of it represented extra payment due to a loan. According to some *poskim*, this would be permitted. The deal did not begin as a loan. It started as a purchase. According to some *poskim*, what begins as a purchase is never Biblically a form of interest. It could only be a Rabbinic prohibition. The Rabbis did not impose a prohibition when it would

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hurt the poor. The *yeshivah* students could rely on those authorities and eat the food (*Chashukei Chemed*).

Bava Metzia 58**Why Public Humiliation Is So Terrible**

Our *Gemara* discusses *ona'as devarim*—causing pain with words. Just as one may not overcharge or underpay—*ona'as mammon*, one may not cause pain with words—*ona'as devarim*. A man may not say to his friend, who is a convert, “How could a mouth that ate animals that were not ritually slaughtered now speak words of Torah?” If his friend was a penitent, he may not tell him, “Remember your earlier deeds.” If you have no interest in purchasing an item, you may not go to a store and ask the seller what its cost is. The *Gemara* adds that there are three individuals who descend to *Gehenom* and never get out: a person who has relations with a married woman, one who shames his friend in public, and someone who calls his friend by an uncomplimentary nickname. The *Gemara* points out that when a person is publicly embarrassed, the color drains from his cheeks and he appears pale. The blood leaving his face is akin to a man dying, whose face turns ashen and pale as his blood stops circulating and his soul exits.

Ben Yehoyada explained why shaming a person in public is worse than murder. Our *Gemara* taught that one who shames another in public will descend to *Gehenom* and never ascend, yet a murderer is

not punished so harshly. If one who shames is akin to a murderer, why is his punishment more severe?

Ben Yehoyada explained that if Ya'akov shames Reuvein in public, Reuvein dies many deaths. Whenever Reuvein sees any person who was there when he was shamed, he will be reminded of the pain that he suffered and he will re-experience the feelings of death. *Sha'arei Teshuvah* gave another answer for why one who publicly shames deserves a more severe punishment than the actual killer. One who shames publicly usually does not feel remorse. He does not think that he did anything wrong. A murderer immediately feels guilt. He regrets his actions. He feels remorse. The remorseless man who did acts akin to killing is worse than the man who kills but then feels regret and remorse and does *teshuvah*.

Our Torah leaders have always been most careful to try and encourage all not to publicly shame each other. *Daf Digest* related the following story:

Rav Chunah Halberstam, *zt"l*, *Av Beis Din* of Kalshitz and author of *Divrei Chunah*, visited a city whose leader was known for his caustic style. The *Rosh Hakahal* would embarrass everyone, but was especially harsh with those he felt were of lower social status than himself. Although people had tried to explain the severity of this sin to the man, he would just brush such rebuke aside and continue to publicly shame others.

Rav Chunah—who knew of the problem—turned to the *Rosh Hakahal* and said, “You should know that one is literally obligated to give up his life before embarrassing a fellow Jew. Everyone knows that we are obligated to give up our lives for the three cardinal sins of murder, idolatry, or *giluy arayos*. But it is not only these sins themselves but also the subsidiaries of these three sins—*abizrayhu*—that demand such a response. *Bava Metzia* 58 teaches that anyone who

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embarrasses another is compared to having killed him. Embarrassing others is therefore *abizrayhu* of murder. One must give up his life before embarrassing another, since this is just like murder!”

These fiery words of rebuke, which were spoken with pain, made a great impression on the *Rosh Hakahal*. From that day people noticed an improvement in his behavior as he became more sensitive and gentle in public (*Portal Daf Hayomi, Daf Digest*).

Bava Metzia 59**Tearing Keriah for the Death of a Dog**

A man who had recently become religious came to Rav Zilberstein with a dilemma. Before he had become religious he had been very attached to his dog. He had raised the dog and the dog had protected him and showed him love. He was now religious. He had learned that when a family member dies, the relatives recite the blessing *Baruch Dayan Ha'emes*—Blessed is the True Judge—and they tear their garments, called *keriah*. His dog had now died. He was very sad about the loss of the dog. Could he recite the blessing of *Dayan Ha'emes* and perform *keriah*?

In regards to the blessing, Rav Zilberstein's first thought was that the man could recite *Dayan Ha'emes*. *Biur Halachah (Orach Chayim 222 s.v. dayan)* writes that if a person was informed that his wine had spoiled he recites the blessing of *Dayan Ha'emes*. The same is true if he was told that his possessions had been lost in a fire or that his animal had died. Any distressing news deserves the blessing of *Dayan Ha'emes*. Perhaps, since he had loved his dog, hearing of the death of the animal would be sufficient grounds for the blessing of *Dayan Ha'emes*.

One might question if the man would be allowed to perform

keriah. In *Bava Kama* (91b) Rabbi Eliezer taught that one who tears too much for his deceased relative deserves lashes for the sin of waste—*bal tashchis*. *Rama* (*Yoreh Dei'ah* 404:4) rules that when one is not obligated to tear, he may not tear. *Pis'chei Teshuvah* added there that one may not tear more than he must, and if he tears more than necessary, he violates the law of *bal tashchis*. Since *halachah* does not obligate a man to tear upon the loss of his dog, tearing would seem not to conform to these sources. It should be forbidden based on the rule of *bal tashchis*.

Perhaps our *Gemara* may indicate that he would be allowed to tear his garment, even though he was not obligated to do so.

Our *Gemara* relates the story of the *Tanur Shel Achnai*. This oven was made of pieces that were held together by mud. Rabbi Eliezer argued that it was pure. The Sages disagreed and held that it was impure. Rabbi Eliezer brought many proofs supporting his opinion. The carob tree, the irrigation canal, and the walls of the study hall all performed miraculous feats to confirm Rabbi Eliezer's position. Rabbi Yehoshua rejected all the illustrations. Ultimately, a voice emerged from heaven and declared that Rabbi Eliezer was right. Rabbi Yehoshua rejected the voice:

“The Torah is not in heaven. Hashem has given it to man and decided that the majority of the Sages should establish the final law. The majority has ruled that Rabbi Eliezer is wrong and that the oven is impure.”

Rabbi Eliezer refused to accept the ruling of the Sages. They excommunicated him. Rabbi Akiva went to convey the bad news to Rabbi Eiliezer. He entered the home of Rabbi Eliezer. He sat six feet away from Rabbi Eliezer and did not say anything. Rabbi Eliezer was surprised: “Akiva, why is today different than yesterday? Why are you acting this way?” Rabbi Akiva responded, “It seems to me that the

Sages are separating from you.” Rabbi Eliezer then tore his garments, took off his shoes, sat on the floor, and wept.

Tosfos (s.v. *vekara*) point out that in Tractate *Mo'eid Kattan*, the *Gemara* was unsure if an excommunicated individual had to tear his garments. Was our story a proof that excommunication requires tearing a garment? *Tosfos* respond that Rabbi Eliezer's actions were not a proof that excommunication requires tearing of garments. Perhaps Rabbi Eliezer tore his garment out of pain and sadness.

It emerges from *Tosfos* that when one tears his garment in pain it is not *bal tashchis*. If it was wrong to tear garments in pain, Rabbi Eliezer would not have ruined his clothes.

Bal tashchis is an obligation not to needlessly destroy. However, if the tearing of an item helps alleviate pain it is permitted. The *Gemara* that decried excess tearing dealt with a man who was tearing for a deceased relative. He had already torn that which *halachah* demanded. His tearing of more items was merely a waste. It did not help him feel better. However, Rabbi Eliezer may not have been obligated to tear. He had not already torn a garment. When he tore his shirt, he was alleviating his distress, so it was therefore allowed.

In light of these sources, perhaps in our case, the man who had an emotional bond with his dog was allowed to tear a garment to alleviate his feelings of pain.

Ultimately, Rav Zilberstein argued that the man should not tear *keriah* and recite the blessing of *Dayan Ha'emes*. The *Jerusalem Talmud* contains a tale about a man who seated his dog at the table. He did so because he felt he owed the dog his thanks. It had protected his wife. Therefore, perhaps, actions of gratitude were in order; however, once the dog dies it will not feel better from the *Dayan Ha'emes* or the torn shirt and therefore they should not be performed (*Chashukei Chemed*).

Bava Metzia 60**Coloring Hair and Permissible Deception**

Our *Mishnah* rules that a seller may not create a misimpression to help sell an item. A seller may not create a falsely positive appearance for a person, animal, or utensil that he wishes to sell. *Rashi* explains that person, in the *Mishnah*, refers to a non-Jewish slave. If an owner seeks to sell his slave, he may not color the slave's hair to make him appear younger than he really is in order to trick the buyer into paying a higher price for the slave. *Acharonim* questioned this *Gemara*. Dyeing the hair of a slave should have been prohibited even if it was not done to deceive a potential purchaser. A man may not wear a woman's garment. *Rambam* (*Hilchos Avodah Zarah* 12:10) and *Shulchan Aruch* (*Yoreh Dei'ah* 182:6) rule that *lo yilbash* prohibits a man from dyeing his hair to appear younger. Why, then, does our *Gemara* only condemn this behavior because it might mislead a buyer? It should have been prohibited as *begged islah*.

Shu"t Sho'eil Umeishiv suggested that *Rashi*, as a resolution to this question, was precise in explaining that the *Gemara* was dealing with a non-Jewish slave. A gentile slave does not have all the *mitzvah* obligations of a Jew. He must observe only the *mitzvos* a woman must perform. A woman may dye her hair to look younger! Since

our *Gemara* was dealing with a non-Jewish slave, it correctly taught that it was prohibited to dye his hair only based on the obligation not to fool a customer. Others disagree. They rule that a male *eved kena'ani* may not dye his hair. However, according to *Beis Yosef*, a man performing feminine acts is only prohibited when he intends to be feminine. Here the hair was dyed to make him look younger so he could be purchased more easily. It wasn't part of an attempt to act like a woman. Therefore, there was no prohibition of *lo yilbash gever simlas ishah*.

Ya'avetz understood *Rashi* differently. He taught that *Rashi* explained that our *Gemara's* case related to the attempted sale of a gentile slave, because when selling a Jewish slave dyeing hair is permitted. A Jewish slave is not sold as an object. A Jewish slave is sold if he needs money to live or if he stole and needs money to repay for the theft. Purchasing a Jewish slave is a form of giving him charity. Every Jew wishes deep down to give charity. Just as *Rambam* ruled that a court can force a man to say he wants to give his wife a *get*—because deep down the recalcitrant husband wants to do the right thing—each Jew deep down wishes to give charity. Therefore, a man may dye his hair to sell himself as a Jewish slave. The coloring of the hair would be viewed by *halachah* as a way of getting to the inner will of the buyer. It is akin to the court using coercive methods to reveal the inner will of the husband.

Ya'avetz suggested that the same would hold true for a father who wished to send his Jewish daughter into the home of a Jewish man as an *amah ivriyah*. It would be permitted to dye the hair of a prospective *amah ivriyah*. Deep down, all want to do the *mitzvah* of helping the poor family. Dyeing the hair of the young lady to encourage her purchase would be analogous to a story in Tractate *Nedarim*.

The *Gemara* in *Nedarim* relates a story about Jewish beauty. A man

was supposed to marry his niece. He did not like her appearance. He made a vow that he would never derive any benefit from her. Rabbi Yishmael was informed about what he had said. Rabbi Yishmael bedecked the girl in jewels and cosmetics. He brought the man to see the young lady. He asked him, “Is this the woman that you never want to receive benefit from?” The man responded, “This woman is beautiful. I would never have made a vow to separate myself from her.” Rabbi Yishmael informed the man that the woman he found so attractive was the same woman he had prohibited to himself. Since his vow had been based on a mistaken belief, Rav Yishmael annulled the vow. Rabbi Yishmael then wept. “All Jewish girls are beautiful. It is poverty that makes them appear unappealing,” he said.

An *amah ivriyah* can become the spouse of her master. It is a *mitzvah* to help a poor girl by marrying her. Deep down, all want to perform *mitzvos*. Therefore, the father may dye the hair of his daughter to make her more attractive.

In light of the idea of *Ya'avetz* that a prospective *eved ivri* and *amah ivriyah* may dye their hair to appear younger, Rav Zilberstein issued a remarkable ruling. A thirty-year-old woman was having a hard time finding a husband. Her hair was beginning to turn gray. She asked Rav Zilberstein if she could dye her hair and present herself as a twenty-year-old in order to get a twenty-year-old man to marry her. Rav Zilberstein ruled that she may do so. *Ya'avetz* taught that it is not deception to encourage the inner voice of a Jew to emerge. Deep down Jews want to do *mitzvos*. It is a *mitzvah* to marry a woman. It is a great *mitzvah* to marry a thirty-year-old woman who has endured years of disappointment. Deep down, the twenty-year-old man wants to marry her. He is not listening to his inner voice. Were she to appear as a gray-haired thirty-year-old, he would not hear his inner voice. She, therefore, may dye her hair and present herself as a

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young lady. The young man will marry her, as per his inner wishes. It will be a fully authentic marriage. Since she is still at an age when she can bear children and she is not so old as to shake with infirmity, the information she withheld from her husband would not be grounds to annul the marriage (*Daf Yomi Digest, Chashukei Chemed*).

Bava Metzia 61**May a Teacher Seize Tefillin to Teach a Lesson?**

Our *Gemara* taught that there are many *mitzvos* in the Torah prohibiting a person from taking possession of someone else's money illicitly. The Torah prohibits charging interest—*ribbis*, deceiving a customer on the price—*ona'ah*, and theft—*geneivah*. Why have so many prohibitions? The Torah could have taught us not to take interest and overcharge, and we would have derived that we also are not to steal. The *Gemara* explains the need for the verse prohibiting stealing. It is teaching that one may not steal even when the burglar intends to repay double. The verse also prohibits *goneiv al menas lemeikat*—one may not take someone's item, even if he took the item with the intention to give it back and merely sought to annoy his friend.

A teacher saw that his student had left his *tefillin* on a street bench outside the *yeshivah*. The bench was a spot where the holy objects might be treated disrespectfully or stolen. He took the *tefillin* and put them away. A few hours later the student came back looking for his *tefillin*. He could not find them. He became very upset. Frantically, he searched for his *tefillin*. He ran into the *yeshivah*. He asked the teacher, "Has anyone seen my *tefillin*?" The teacher told him, "I saw the *tefillin*. You were negligent. You left them in a bad spot. I saved

you. I put them in a safe spot. Learn a lesson: Never leave your *tefillin* in unsafe locations.” Was the teacher correct in his actions? Perhaps he had violated the Torah’s prohibition of *lignov al menas lemeikat*—to annoy by stealing?

She’iltos DeRav Achai Gaon (She’ilta 4) writes that if a person sees his friend not being careful with his property, he may not take the item to teach the friend to be more careful. Taking the item will cause the friend distress. Even though eventually he will return the item, and he always intended to return the item, the verse *lo signov* teaches that you may not take things belonging to your friend, even with intent to return them, knowing that in the interim your actions cause him to be upset. *Ha’amek She’alah* added that *She’iltos* defined *goneiv al menas lemeikat* as a case of intending to teach a lesson, because if the taker merely took an item to annoy someone we would not need the verse of *lo signov* to teach that it was prohibited. It would certainly be prohibited for such behavior would be a form of *ona’as devarim*—inflicting emotional harm with words or actions. In light of *She’iltos*, perhaps the teacher was wrong. He seemed to have violated the mandate against *goneiv al menas lemeikat*.

Rav Zilberstein argued that our case differed from the ruling of *She’iltos*. *She’iltos* was dealing with secular property and a neighbor, not with *tefillin* and a Rebbe. He was not dealing with a sacred object. A sacred object must be kept in a safe place. A teacher has an obligation to teach his student, even if the student is upset by the lesson. *She’iltos* taught that even if a friend wishes to teach his neighbor not to waste money, he may not take his neighbor’s item, even with the intent to return it, because it will cause distress. However, a teacher is allowed to cause his student distress to teach him to preserve *tefillin* and keep them safe from harm (*Chashukei Chemed*).

Bava Metzia 62

Whom Should the Doctor Attach to the Only Breathing Machine in the Hospital?

Our *Gemara* discusses the verse (*Vayikra* 25:36), “*Vechei achicha imach*”—“And your brother shall stay alive with you.” Two men were walking in a desert. Both were thirsty for water. One had no water and the other had a flask of water. However, there was only enough water in the flask for one person. What should be done? Ben Petura was of the opinion that I may not drink the water and see my friend die of thirst. Rather, I should share the water with my friend. Each should drink half of the flask. Hopefully, in the merit of sharing spare resources, the Almighty will send a miracle and both will be saved.

Rabbi Akiva disagreed. Rabbi Akiva taught that the verse stated, “And your brother shall stay alive with you,” implying his life is secondary to yours. Your life comes first. The man with the water should drink the water himself.

What would *halachah* say when two travelers have no water in the desert and a third man, who is not thirsty and in need, approaches holding enough water for only one person. Should he play God, choosing to whom to give life to and whom to deny the liquid? *Chazon Ish* (*Gilyonos al Chiddushei Rabbeinu Chayim*

HaLeivi, Hilchos Yesodei HaTorah) argued that a third person would be obligated to divide the water between the two thirsty men. Rabbi Akiva believed that your life comes first. However, he never taught that you have the right to choose who shall live and who shall die.

What would the law be if the two thirsty men in the desert were not equally healthy; one was a dying man with a possibility of a brief life, while the other was a healthy man who could live for many years if he would get the water? Should the third man, who has the water, still divide the water equally between the two? Perhaps he should give the water to the man who has a chance at a long life.

A religious doctor from South Africa posed this question to Rav Eliezer Waldenberg, author of *Tzitz Eliezer*. The hospital, where this doctor practiced medicine, purchased a single ventilator. The machine kept people alive. The need for it was great; there were many patients who needed help in breathing. The hospital could not afford to purchase another machine. The hospital administration feared that if the ventilator was used for very elderly, sick patients, when a younger person who needed the machine came to the hospital they would not be able to keep him alive. They therefore ordered that the machine only be attached to patients who had a good prognosis. However, if an elderly patient, already critically ill, came to the hospital needing a breathing machine, doctors were under orders not to attach him to the machine. The machine had to be left available for those who had good prospects of recovery. The head doctor in the emergency room was a religious Jew. It hurt him to see the ventilator unused and elderly individuals, with limited life expectancy, come to the hospital and not be given a chance to breathe for a bit longer. He asked Rav Waldenberg, “Does *halachah* obligate me to ignore the orders of the hospital? Should I, as a third party, act as the *Chazon Ish* directed

about water and divide the life-saving service among everyone and not choose who lives and who dies?”

Tzitz Eliezer ruled that the hospital was correct and that the doctor should follow the orders of the hospital administration. In the hospital, every day many patients came to the facility in need of the breathing machine. *Pri Megadim* (*Orach Chayim* 328 *Mishbetzos Zahav* 1) rules that if there are multiple sick people needing care from a doctor and he can only tend to one, he should tend to the one who might recover and live for many years and not to the person who is very ill and likely will not live for long. Since, every day, young patients needing the breathing machine came to the hospital, the case was like one in which there were many needy individuals before the doctor. If the machine was not in use, it was a rare occurrence that would last at most for a few hours. The doctor should prioritize saving those who will live for years before merely preserving the life of a very ill individual. The *Chazon Ish*'s ruling to divide the life-saving matter would not apply to a man who had water and before him were two individuals, one who was already deathly ill who would likely not live long and a second person who was young and strong—and were he to get the water would likely live for many years. *Halachah* would decree that priority should be given to the one who might recover and live for years (*Me'oros Daf Hayomi*).

Bava Metzia 63

**Can a Jew Sell His Chametz to a
Gentile Without Receiving Cash
at the Moment of Sale?**

A Jew may not own leavened products—*chametz*—on Passover. To avoid the sin of owning *chametz*, before Passover many Jews sell all the leavened products they own to a gentile. This sale is usually accomplished by the gentile giving a down payment of cash to the Jew for the purchase of the *chametz*.

A gentile lent money to a Jew. Before *Pesach*, the Jew approached the man and asked him to buy his *chametz*. The gentile responded, “The money you owe me is forgiven to you as the payment for the leaven. While I will not hand you cash, you are receiving a benefit from me in that I will not demand that you pay me the money that you owed me.” Would such a transaction take effect? Would the Jew have saved himself from the sin of owning *chametz* over *Pesach* through the deal?

Rav Zilberstein pointed out that our *Gemara* resolves this question.

Our *Gemara* deals with the laws prohibiting a Jew from charging interest to another Jew—*issurei ribbis*. Biblical *ribbis*—*ribbis*

ketzutzah—is when a lender lent funds to the borrower that allowed the borrower to use the money for a time and then required him to return the principal plus an additional sum. The Rabbis created many forms of Rabbinic interest. One such Rabbinic prohibition dealt with a pre-payment plan. If I approach a friend and offer him 25 shekel—which I will deliver to him immediately—for him to give me a *kur* of wheat in a month from now and the prices for wheat have not yet been set in the market, the Rabbis prohibited the transaction. The wheat may appreciate in value. I would then have given him 25 shekel and he would give me back, in a month, wheat worth 30 shekel. It would look like interest.

Our *Gemara* quotes a *beraisa* that deals with the details of this form of Rabbinic interest. I lent Reuvein a hundred coins. After a month I came to his farm and asked him to repay the hundred coins because I wished to buy wheat. He said, “I have wheat. The price has already been established. In a month I will give you the amount of wheat that a hundred coins would purchase today.” If he had wheat when he made the deal, the deal would take effect. It would not be considered a Rabbinic form of *ribbis* transaction.

Rashi explains, when the farmer turned his debt of money into an obligation to deliver wheat, if he had wheat, the deal took effect. He would be unable to renege. The Talmud teaches that there is a curse, *mi shepara*, on a man who reneges after he received payment for an item. Since the farmer could not renege on the wheat obligation, the wheat was therefore considered the property of the lender. If it appreciated over the month, it was his property that gained in value, and it would not appear to be receipt of an interest payment.

Shu”t Maharsham (cheilek 2 siman 75) found this explanation difficult. The lender did not hand over coins to the farmer for the wheat. He had a debt that the farmer owed him. How could a debt

create an invocation of the *mi shepara* curse? One cannot acquire with a debt. *Maharsham* answered that the *Yerushalmi* teaches that while forgiving a loan will not acquire a movable object, that is true only from the perspective of the buyer who forgives the loan. He can renege on the deal. However, the seller, to whom the loan was forgiven, may not renege on the deal.

Now it is understood why *Rashi* wrote that once the lender forgave the loan to the farmer and restructured it as an obligation to deliver wheat, the farmer would not be able to renege. As a seller of wheat, once the loan was forgiven, he was locked into the deal.

In light of the *Maharsham*, Rav Zilberstein thought that the same should apply to our case. The Jew was selling his *chametz*. As a seller, once a loan was forgiven to him for the sale, he was unable to renege. The gentile had forgiven the loan the Jew owed him in order to acquire the *chametz*. Since the Jew could not renege on the deal, the deal would be considered complete and the *chametz* now belonged to the gentile. Furthermore, according to the laws of the gentiles, they can acquire by forgiving debts and their laws in this instance should have validity, as well, in giving the gentile ownership over the *chametz* (*Chashukei Chemed*).

Bava Metzia 64

May a Borrower Pay a Fee to the Free Loan Society?

A delicate question surrounds free loan societies. These groups lend money without charging interest. They often have overhead costs such as rent and electricity. The societies charge the borrowers a fee for the loan in order to pay their costs. In light of our *Gemara*, perhaps they may not do so.

Our *Mishnah* teaches that a lender may not lend money to a borrower on the condition that the borrower promises to do him a favor. Even a favor not worth money is not allowed. Thus, if the borrower has a courtyard that he does not intend to rent out, the lender may not stipulate, “I will lend you money, if you repay me the loan and you let me stay in your courtyard.” While this is not Biblical *ribbis* because the borrower is not promising added money for the time he had the lender’s money, it is Rabbinically prohibited as *avak ribbis*.

Reuvein and Shimon met and had two matters to discuss. First, Shimon asked Reuvein to lend him money. Second, Shimon asked Reuvein to tutor his son for pay. Reuvein agreed to both requests. He and Shimon also agreed that his wages as a tutor would come from

the profits Shimon would earn from the money he lent to Shimon. Biblically, there would be no sin in such an arrangement. Even had Reuvein not agreed to lend money to Shimon, Shimon would have hired him to tutor and would have paid him the same amount for the work. However, *Rama* (*Yoreh Dei'ah siman 166:3*) rules that the arrangement is prohibited as *avak ribbis*. Just as our *Mishnah* prohibited the borrower from offering his not-for-rent home to the lender because it would appear to be *ribbis*, the appearances are not right if the lender is going to get his money back together with other money, even though those added funds were for his work as the tutor of the child.

Gemach Sha'arei Chessed asked Rav Yosef Chaim Sonnenfeld if they could charge fees when extending loans. He told them they could not. To this day, they do not charge fees to cover their overhead costs.

Shu"t Minchas Yitzchak ruled that a free loan society was allowed to charge a fee to cover its overhead costs. *Rama* dealt with a case of a lender receiving a benefit. He got to tutor the child of his borrower, received a salary, and was able to feed his family. Since the payment of his wages was combined with a loan and repayment of the loan, it was akin to *ribbis* and prohibited. However, the volunteers of a free loan society receive no benefit from covering the operating costs of the society. The borrowers are paying fees to cover the expenses of running the society. That does not appear to be interest and would not be prohibited at all. Furthermore, he argued that *halachah* teaches that the Rabbinic forms of interest are all allowed for the sake of a *mitzvah*. It is a *mitzvah* to lend money to the needy. Since we are only discussing the question of *avak ribbis*, it should be permitted for the sake of fulfilling the *mitzvah*.

When charging the fees, the societies should not charge a larger

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amount to the person who borrows more money. The fees should be set at a uniform amount for all borrowers. In addition, the payment of the fee and the repayment of the loan should not take place at the same time. The fee should be paid and the loan repaid on different occasions. These measures should be taken to ensure that the fee not appear like an interest payment (*Me'oros Daf Hayomi*).

Bava Metzia 65**May a Torah Scholar Accept Discounts for
Being a Sage?**

Rav Chama taught that his *tarsha* arrangement did not violate *ribbis* law. In his arrangement, he would sell merchandise in his hometown, where the price for the merchandise was low, to a buyer who would not deliver money but would promise to later pay the price the merchandise got elsewhere, in a more expensive locale. The buyer would then take the stuff to that place, sell it for the higher price, use the proceeds for his own business, and after a time bring the money he had gotten from the goods in the expensive locale back to Rav Chama. The fact that the buyer got goods in a place where they were cheap, and did not pay, and then later gave a higher price for the goods to Rav Chama was not a form of interest for use of the goods and the money they fetched due to the complexity of the transaction.

When the “buyer” first took the goods, he was not a buyer; he was a representative of Rav Chama. If the goods were lost on the journey to the more expensive place, Rav Chama would bear that loss. Only when selling the goods and getting the higher price did he become a borrower. At that point he had a duty to return the money to Rav Chama. He was a borrower of that money. He could use the coins, but he would have to return them. He was never going to pay

more than what the goods sold for in the expensive place. As a result, he was not someone paying interest.

The *Gemara* asks: But the buyer did work for Rav Chama. He brought the goods to the expensive place and sold them there. He also borrowed from Rav Chama by getting the money from the goods, using those borrowings for business, and then returning the funds to Rav Chama. Why wouldn't the transport of the goods and involvement with them be considered an interest given in addition to the borrowing and repaying?

The *Gemara* answers that the buyer was happy to do the work. Being considered Rav Chama's representative was a benefit to him, not only a benefit to Rav Chama. When he was presented as Rav Chama's representative, he was exempted from taxes. In addition, his goods were sold first in the market, because they were presented as the goods of the sage Rav Chama.

Rambam writes that a Torah scholar should not receive money from his study and teaching of Torah. Torah should be free. The scholar should be supported by other means. Some asked, was it permissible for a scholar to be awarded discounts because he was a scholar? Perhaps, based on *Rambam*, it should not be allowed.

Shu"t Chelkas Ya'akov argued that Rav Chama's words proved that a scholar is allowed to receive financial benefits. Rav Chama taught that as a scholar he was exempted from taxes and his goods were sold first. If a scholar cannot accept discounts, there would be no benefit to the representative in serving as Rav Chama's emissary. We can suggest that accepting financial benefits added to the honor of Torah. They showed that because a person is an expert in Torah, there are blessings and rewards. It will encourage others to achieve Torah greatness. According to *Chelkas Ya'akov* a scholar can accept discounts and gifts (*Mesivta*).

Bava Metzia 66**Getting Drunk with Beer on Purim**

On *Purim* I am obligated to get drunk to the point of not knowing the difference between cursed is Haman and blessed is Mordechai (*Megillah* 7b). *Eimek Berachah* explains this law as an expression of the miracle of *Purim*. On *Purim* we were in danger of annihilation. Hashem saved us. Our joy therefore should be unlimited. In scripture (*Tehillim* 104), we read, “And wine shall gladden the heart of man.” Since on *Purim* I am to have unlimited joy, *halachah* requires that I drink until I cannot tell the difference between blessed is Mordechai and cursed is Haman. At that point, I am unable to drink any more. My drinking is therefore a proper expression of an attempt to display unending joy. This analysis would seem to indicate that it is only proper to drink wine on *Purim*. Presumably, I should not drink whiskey, liquor, or beer on *Purim*. No verse ever said that beer creates joy. It is written, “*veyayin yesamach*”—“and wine shall gladden.” *Gilyonei HaShas* (*Pesachim* 107a) argued that our *Gemara*, as interpreted by *Rashi*, teaches that I could fulfill my obligations of joy with alcoholic beverages other than wine.

The *Gemara* discusses a man who had promised to his lender, “If I do not repay the loan in three years’ time, you may take my field—

even though it is worth more than the loan—and keep it on account of the loan that you had given to me.” The *Gemara* suggests that this transaction was an *asmakhta* deal. The borrower was confident that he would be able to repay the debt over the three years. He had never truly meant to say that his field could be taken from him. There is a dispute about whether *asmakhta* deals are effective or if they are null and void. Some believe that no *asmakhta* deals take effect. The person who made the condition assumed he would succeed in avoiding the cost. He never truly agreed to the cost.

The *Gemara* suggests that if the borrower was found drinking beer on the last day of the three years, it should indicate that he intended wholeheartedly to transfer ownership of his field to the lender. Had he truly believed that he could hold onto his field, he would be running about trying to get the money together to repay the debt. The *Gemara* rejects this suggestion. Rav Acha from Difti taught that perhaps the man was very stressed and worried that he might lose the field. He was drinking to give himself some joy. *Rashi* explains: The verse stated “*veyayin yesamach*.” He was drinking the beer to feel joy because he was stressed through trying to put the funds together to repay his debt. *Gilyonei HaShas* noticed that *Rashi* applied “*veyayin yesamach*” to a man drinking beer. He therefore ruled that all alcoholic beverages create joy. On *Purim* we are obligated to feel joy; we can fulfill the mandate by getting drunk on beer or whiskey.

Rambam writes (*Hilchos Megillah* 2:15), “How do you fulfill your obligation of a meal on *Purim*? You are to eat meat...and drink wine until you are drunk and fall asleep in drunkenness.” *Rambam* specifies wine. He seems to be of the opinion that I would not fulfill my obligation with beer.

Da'as Kedoshim (*Butshash cheilek* 2, *Toldosav* 88) records that the *Gaon* of Butshash would have a lengthy *Purim* meal. It would stretch

long into the night—past midnight. At that point he would send his attendant out to see if the people in the hamlet were asleep. Once assured that all were sleeping and no one would come to ask halachic questions, he would be ready to drink. A sage who is drunk may not issue a halachic ruling. Prior to midnight he would not drink so as to be able to answer all the questions that might arise. Once satisfied that all was quiet, he would drink honey liquor to fulfill the *mitzvah* of “*Chayav inish levesumei bepuraya ad delo yada*”—“A person is obligated to drink on *Purim* until he does not know the difference..” The *Rav* of Butshash was very careful with Jewish law and yet he believed that honey liquor could be used to fulfill the obligations of *Purim* (*Mesivta*).

Bava Metzia 67**Are There Still Talmidei Chachamim?**

A Torah scholar—*talmid chacham*—must hold himself to a higher standard. He is to watch his actions. Behaviors that are technically permitted, yet might be interpreted negatively, are forbidden to the scholar. Our *Gemara* teaches that if a lender received a field as collateral for the loan and he had established that each year that he holds the field an amount would be reduced from the principal of the loan, he would be allowed to eat from the produce of the field. Such a transaction would not look like interest. Since the principal owed would be reduced regardless of whether the field produced fruit or not, there was a possibility of loss to the lender and so it would not look like interest. Nevertheless, this arrangement—called *nachyasa*—was not one that a Torah scholar should take advantage of. The *Gemara* relates that Ravina would eat from the collateral field that he had lent against when he arranged that each year an amount would be reduced from the principal. *Tosfos* were bothered by this. Did not our *Gemara* teach that such an arrangement was inappropriate for a scholar?

Tosfos answer that Ravina did not consider himself to be a *talmid chacham*. The *Gra* argued that if Ravina did not consider himself to be

a *talmid chacham*, certainly, in our day, no sage would be considered a *talmid chacham*.

Moznayim Lemishpat dealt with a man who had insulted all of the Torah authorities of his time. The man had publicly attacked the sages. He had publicly said, “All our rabbis are illegitimate individuals—*mamzeirim*.” *Moznayim Lemishpat* was asked what punishment the man deserved.

Rambam (Hilchos Choveil Umazik 3:5, Talmud Torah 6:2) rules that the punishment for a man who shames a Torah scholar is worse than the penalty for one who embarrasses another man. One who shames another man with words would not be made to pay. One who shames a scholar with words would incur a monetary fine. Furthermore, when a person shames his friend, the penalty is set in accordance with the one being embarrassed and the one doing the embarrassing. However, when embarrassing a *talmid chacham*, the one who shames must always pay a *litra* (60 shekels) of gold coins. In addition, one who mocks a *talmid chacham* deserves to be excommunicated.

Maharik rules that the law of paying a *litra* of gold coins does not apply to the scholars of our day. In regards to the gold coins, *Maharik* seems to agree with the *Gra* that if Ravina did not consider himself a *talmid chacham*, our scholars do not have the status of *talmidei chachamim*. *Maharik*, however, rules that one who shames a scholar, even in our days, deserves to be excommunicated; similarly, the rule that there is liability for shaming a *talmid chacham* even with mere words applies even in our times. *Moznayim Lemishpat* ruled that the insolent man who had harangued the sages should be treated harshly. Even our scholars deserve more respect than regular people. The brazen one had shamed the sages and called them illegitimate. *Gemara Kiddushin (28a)* teaches that if a person falsely accuses his

friend of being a *mamzer*, he deserves forty lashes. Therefore, even though *Gra* taught that our sages are not really *talmidei chachamim*, the man who had publicly shamed the rabbis deserved a harsh penalty (*Mesivta*).

Bava Metzia 68**Watch Your Words**

It is commonly said, “*Al tiftach peh laSatan*”—“Do not open your mouth for Satan.” Never say that a tragedy might happen. Merely predicting the possibility of misfortune makes bad things happen. Our *Gemara* is one of the sources for this adage.

Our *Gemara* relates a story. It was dealing with laws that govern certain transactions. Rava prohibited the *Mechoza* documents. In *Mechoza*, an owner of goods would give the items to a salesman, and the salesman would give the owner the funds for the goods once he sold the goods. If there were profits, the gains would be divided between the two. In *Mechoza* they would write into the document the expected gains and the expected funds that the salesman would give to the owner of the goods. Rava did not like this practice. The document did not stipulate that the gains were conditional. The documents implied that even if the salesman did not succeed in selling the goods for a profit, he would have to return the principal amount and a profit to the owner of the goods. It could be interpreted as obligating an interest payment.

Mar the son of Ameimar told Rav Ashi that his father would write consignment documents in a way that the Sages had taught should

not be written. Mar explained that his father trusted the salesman. If he reported that he had not succeeded in gaining a profit, he would not accept from him any monies in excess of the value of the goods that had been given to the salesperson. Rav Ashi was upset. He said, “Maybe your father will die. His children might abuse salesmen based on such a document.” The *Gemara* said Rav Ashi’s words were like the mistaken command of a ruler, and Ameimar passed away.

Shu”t Min Hashamayim (siman 22) ruled that when you dream a frightening dream you must give it a positive interpretation. An angel stands to your right. If the dream is given a positive meaning, this angel will seize the positive words and declare *Amein*. However, there is a destructive angel to your left. If the dream is given a nasty interpretation, the demon on the left will seize the ominous predictions and declare *Amein*.

Taamei Haminhagim quoted *Bnei Yissaschar*, who taught that when describing a Jew who is not well it is the practice to speak in Yiddish and say “*Ya’akov iz krank*.” However, about others it is the custom to say in the holy language, “*Hu choleh*”—“He is sick.” The holy tongue has great powers. Words expressed in Hebrew often come true. We do not wish to confirm the illnesses of our compatriots. Therefore, about Jews we speak in Yiddish, to reduce the possible impact of our words on their fate.

Agra Dekalah (Parashas Beshalach) writes in the name of *Seifer Chassidim*: Whatever a person expresses, even if it is an exaggeration, will certainly once come true for him; therefore, watch yourself to never express any negativity about yourself, because negative words might, God forbid, become reality for you if you express them (*Mesivta*).

Bava Metzia 69**Using Someone Else's Credit Card
for a Purchase**

Our *Gemara* permits Reuvein to give money to Shimon and instruct Shimon to give a loan to Leivi. Leivi will receive the loan and pay it back. Although Shimon is loaning money, getting his principal back, plus profiting from the venture, it is permitted. The Torah only prohibited interest paid by the borrower to the lender. A third person who gives money to the lender does not violate the laws against interest.

Tosfos write, however, that if Reuvein were to go to Leivi and ask Leivi to reimburse him for the money that he (Reuvein) gave to the lender, the transaction would become prohibited since it would now appear that Reuvein was acting as an agent of Leivi when he gave money to Shimon. *Ritva*, however, disagrees and asserts that as long as Leivi did not commit himself from the beginning to pay Reuvein the money it is permitted. *Chochmas Adam* adds that if Leivi did commit himself to reimburse Reuvein for the money he gave Shimon, the transaction is Rabbinically prohibited, even according to *Ritva*.

Shulchan Aruch (*Yoreh Dei'ah* 160:13) rules that I can give a lender a coin and ask him to lend money to my friend. Even though the

lender will end up profiting from the loan, it is not considered interest since he did not receive his profit from the borrower. However, I may not then turn around and ask my friend, the borrower, to pay me what I expended to get him a loan. It would then appear like interest.

In light of this law, *poskim* discuss the propriety of giving your credit card to someone else to make a purchase, with him then paying you back several months later. If you have a credit card from a Jewish bank, it may not be used for purchase of household items. Even if the bank signed a *heteir iska*, it only permits a loan for business activity. A purchase is not an *iska*. If you give the credit card to Shimon to buy things on credit, it is akin to you giving money to the bank—the interest payments—for the bank to give a loan to Shimon. If Shimon repays you the interest several months later, or if he gives the bank the interest, the equivalent of repaying you what you gave the bank, it would be prohibited. I, as a third party, cannot give the lender a gift to encourage him to lend if I will then get the cost of that gift back from the borrower (*Heichalei HaTorah, Daf Digest*).

Bava Metzia 70

**Giving a Lender a Dedication Page
in a Holy Book**

The Torah does not allow a lender to collect interest on the loan that he extended. In addition, a borrower may not express his thanks profusely to the lender. Such words are considered *ribbis devarim*. Our *Gemara* teaches that money of orphans can be utilized in transactions that normally would be prohibited as Rabbinic interest.

Normally, a man may not do an *iska* transaction that is *karov lesachar verachok lehefseid*. I may not give coins to an investment professional, have him promise to return the value of those coins to me regardless of what happens, and in addition promise that if he succeeds in turning a profit from the coins I will receive a share of the profit. Since he has guaranteed me the money back, he is basically a borrower from me. If he also has promised to possibly give me more money than what I gave him to use, it is a Rabbinic form of interest and prohibited. The court may enter into such an *iska* transaction with money of young orphans. Commentators explain that the *iska* of *karov lesachar verachok lehefseid* is merely a Rabbinic form of interest. It is a *mitzvah* to help the orphans and increase their wealth.

The Rabbinic prohibition against Rabbinic forms of interest was waived for the sake of the *mitzvah* of helping orphans.

Pis'chei Teshuvah (*Yoreh Dei'ah* 160:22) quoted the *Magein Avraham* (*Orach Chayim* 242), who expanded this waiver to all *mitzvos*. Therefore, he ruled that one may enter a transaction normally forbidden as Rabbinic interest in order to have the funds to purchase a Shabbos meal or a *mitzvah* meal.

Some authors of holy books do not have the funds to print their Torah compositions. They sometime borrow money to pay for the publication. They later have a page in their book thanking the lender. Some questioned the propriety of such actions. The lender will receive his money back. If in addition to his funds, he received honor and thanks in the pages of the book, it would be *ribbis devarim*. It should be prohibited. Some argued that based on our *Gemara* it would be allowed. Our *Gemara* permitted Rabbinic interest to fulfill the *mitzvah* of helping orphans. *Ribbis devarim* should also be allowed to enable the *mitzvah* of teaching Torah and spreading knowledge of God's word.

Erech Shai (*Yoreh Dei'ah Mahadura Basra* 160:12) writes that it is wrong to thank the lender in the pages of the book. While *halachah* allows for Rabbinic interest transactions to fulfill *mitzvos*, that is to enable the *mitzvah* performance. The loan had already been given. The *mitzvah* of printing the book had already happened. To still write thanks and publicly honor the lender would be *ribbis devarim*.

Igros Moshe (*Yoreh Dei'ah cheilek 1 siman* 80) was asked if a Torah author could thank his lender in the book that he was publishing due to the help of the lender. Rav Moshe answered that the author may not write a page of thanks to the lender. As per the ruling of *Erech Shai*, since the loan had already been given, the thanks would be considered *ribbis devarim*. However, it is important to publicize

the good deeds a person does. Telling others of a good deed inspires more to emulate the actions and to do good. Therefore, Rav Moshe told the author that instead of writing words of thanks to the lender, he should write that the lender helped provide the resources to publish the work and deserves a blessing from the Almighty. Such a text would not be *ribbis devarim*. It would merely inform others of the good deed that was done. Such a page would be in order and correct (*Mesivta*).

Bava Metzia 71**Family Does Not Always Come First**

Our *daf* teaches about prioritizing charitable giving. Give to your family before you give to the poor of your city. Give to the poor of your city before you give to the poor of another city. Help Jewish poor with charity before you lend to a gentile and charge interest.

Shulchan Aruch rules that there is a *mitzvah* to lend money, provide good counsel, and give emotional support even to wealthy people—when they are in need of funds. *Vilna Gaon* suggested that our *Gemara* is the source for this law. The *Gemara* taught that when forced to prioritize, one should lend money to the poor before lending to the rich. From this we can infer that although the poor person is prioritized ahead of the wealthy person, nevertheless, there is a *mitzvah* to loan money to the wealthy who are in need.

A man had a no-interest loan fund. He was approached for a loan by two people. One person was wealthy and a relative of the lender—he needed a loan to expand his business. The second person was in need of a loan to provide for his basic needs, but was not related to the lender. Who was to receive the loan? Since the fund would lend to the poor and the wealthy, should the relative come first?

Shu"t Mishneh Halachos taught that the loan should be given to

the poor man who was not a relative. The *gemach* lent to the poor and the wealthy. However, as a free loan society, it was primarily a way to give charity. Charity should be given to the person in greatest need. While I must help my relative, I should first help the person who needs basic necessities (*Mesivta, Daf Yomi Digest*).

Giving a Prescription for a Male Attendant

A doctor asked Rav Zilberstein an ethical question. An elderly woman had made a request of him. Her husband had recently passed away. She was alone and in need of help. While her husband had been alive there had been a male attendant in the house, paid for by insurance, who had helped them. Now that her husband had died, the attendant had left. She wanted him back to help her. She asked the doctor to write a prescription to the insurance company stating that she was in need of help. Then, with the note, she would get the attendant to move back in and help her. The doctor asked, “May I fulfill the request?” *Bava Metzia* 71 teaches that it is spiritually dangerous for an elderly woman to host a single *yeshivah* student in her home. Due to the fact that she reasons the student would hide any inappropriate liaisons, she and the student might have an affair. As a result, the doctor asked the *rav* if he could give the note. Perhaps such a note would be forbidden based on “Do not place a stumbling block in front of the blind”—*lifnei iveir lo sitein michshol*?

Rav Zilberstein ruled that the doctor may not write the note. Such a note would enable her to commit a sin of *yichud*—being alone with a man other than her husband. In addition, it would contribute to sinful behavior and would be a violation of *lifnei iveir lo sitein michshol*.

What would happen if the doctor could not refuse the request? Is there any way to mitigate the sin?

Rav Zilberstein suggested that hidden cameras be installed throughout the apartment. Family members of the elderly woman should be given the monitors to watch all that happens in the apartment. If a camera provides access to all that occurs within the home, then there would be no violation of the prohibition of *yichud*. *Noda BiYehudah* (*Kama Even Ha'ezzer siman 71*) ruled that if there is a window through which all the activity in the room can be seen, there would be no possibility of violating the law of *yichud* in the room. Cameras can fulfill the same role. However, if it was impossible to install the cameras, even though this would create difficulties for the woman, the doctor may not write the note and enable the sin of *yichud* (*Chashukei Chemed*).

Bava Metzia 72**Do You Collect Interest from a Convert That
Accrued After He Joined Our Faith?**

The Torah prohibits a Jew from lending to a fellow Jew and charging interest. However, it permits a Jew to lend to and borrow from a gentile with interest. Reuvein lent money with an interest rate to his gentile neighbor. The neighbor agreed at the time of the loan to add ten dollars each month to the principal amount he owed. After three months Reuvein asked for repayment. The neighbor did not have the cash to pay what he owed. The neighbor and Reuvein agreed to write a document that would state that he owed the principal plus thirty dollars. They wrote the document. Two months later, the neighbor informed Reuvein that he had converted to Judaism three months before. Was the convert required to pay the interest? Since a Jew may not charge his fellow Jew interest, perhaps the convert should not pay anything more than the principal amount he borrowed?

Rav Yosi taught that the convert should pay the interest. The reason is Rabbinic. Let it not be said that he converted to save himself money. He should pay the interest. *Rishonim* argue how much interest he should pay.

Rosh is of the opinion that the convert should pay the interest

that accrued while he was a gentile and the interest amount from the time he had the money as a Jew. *Rosh* also adds that this interest was prohibited from Torah law. Nevertheless, the Sages can uproot Torah law. This statement is difficult. The *Gemara* in *Yevamos* (91b) teaches that the Sages can only uproot a law when they tell the man to sit and not fulfill—*sheiv ve'al ta'aseh*. However, the Sages may not legislate an active desecration of the law—*kum ve'asei*. Here, by telling the lender to collect the interest from the convert, they are legislating an active violation of Torah law. They should not be able to do so.

Kehunas Olam answered that according to *Rosh*, laws about interest differ from other Torah laws. Laws about interest relate to monetary law. In monetary law, we have a principle that *hefkeir beis din hefkeir*—the court has the right to suspend ownership of property. The court has seized the property of the convert based on *hefkeir beis din hefkeir* and obligated it to the lender in order to prevent people from saying the man converted to save himself an interest obligation. The courts are able to seize assets.

Rambam (*Hilchos Malveh Veloveh* 5:6) disagrees with *Rosh*. He rules that if a man lent money with interest to a gentile, then the gentile converted, and then they turned the loan and interest accrued into a debt through a contract, and then more interest accrued—then the convert is only to pay the principal and the amount of interest that accrued prior to his conversion. It sounds from the *Rambam* that he does not need to pay the interest amounts from the time of his conversion until the collection.

Some struggle to understand this *Rambam*. *Rambam* disagrees with *Rosh*. *Rambam* is of the opinion that an interest obligation that begins after the initial loaning of the money is not Biblical interest. For example, if Reuvein borrowed a hundred dollars from Shimon, and after thirty days Shimon came and demanded repayment, if

Reuvein then asked for more time and offered to pay one hundred and ten in six months' time, *Rambam* is of the opinion that such an arrangement would only be Rabbinic interest. Only interest set at the time of the initial giving of the money is Biblical interest. If so, in our case of the convert, the interest from after the time of conversion is merely Rabbinically prohibited. The Sages should have legislated that it be collected to keep people from saying that he converted to avoid interest obligations. Why does *Rambam* hold that they didn't?

Sha'ar Dei'ah answered that *Rambam* drew a distinction between different types of Rabbinic interest. According to *Rambam*, interest that was imposed after the beginning of the loan is prohibited with a strong Rabbinic prohibition. According to *Rambam*, the logic of "let it not be said he converted to avoid monetary obligations" is not strong enough to waive standard Rabbinic prohibitions. The logic would be used to waive light prohibitions, but not weighty ones, even though the weighty prohibitions may be Rabbinic (*Gilyon Yomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 73**Is Rewarding a Child for Accepting Later
Delivery of Candy Interest?**

A man arranged for a group of children to come to *shul* each Shabbos and recite *Tehillim*—Psalms. Each child was rewarded for participating. The organizer would give each youth a candy. One Shabbos, many kids came. The organizer did not have enough candies for all the children. He announced, “Anyone who agrees to forfeit his candy this week will receive three candies next week.” The children were knowledgeable. One child asked, “If I accept the deal, won’t it be a violation of the rules against accepting interest? You owe me the candy today. I would allow you time to give what is owed to me. As a result, you intend to give me two extra candies. Isn’t that prohibited?”

Our *Gemara* seems to indicate that the child’s concerns were correct. Rava said to the guards watching the produce in the fields, “Go out and help with the threshing of the grains.” Rava knew that generally the watchmen were guarding the grain only while it was in the field. Once the grain left the field to go to the finishing facility, the guards were done. Yet they would wait to receive payment until the grain was threshed. As a reward for their waiting, they would receive more grain than what had initially been promised to them for

watching the grain in the field. This was Rabbinic interest. They had been owed grains once they completed their watching. Since they waited to receive what they had been promised, they got more. This seemed like receiving payment for leaving a debt uncollected from the owner of the grain. Therefore, Rava advised them to do more work. He told them to help out on the threshing floor. In this way they would still have a task to do—even after the grain left the field. The owner of the grains would not yet owe them anything when the watching in the fields was done because they were still going to help in the threshing floor. Their wages had not yet come due when the grain left the field to go to the threshing facility, because of the principle of *sechirus einah mishtalemes ela levasof*—the hired individual is only entitled to payment when he completes his job. Since the obligation would only come due when they finished helping with the threshing, the fact that they would get more than originally promised would not be a payment of interest for their waiting to receive payment. They would only deserve payment once they completed their work. After the threshing, their wages came due. When they got more than originally promised they would merely be receiving a gift of more grain than had originally been promised to them. *Shulchan Aruch* (*Yoreh Dei'ah* 173:12) rules like Rava. Watchmen may not accept added payment for waiting to get their wages until the grain is threshed unless they are working on the threshing floor in addition to their watching.

Rav Zilberstein suggested that the organizer of the *Tehillim* group could avoid the problem of appearance of *ribbis* even though he wished to give the child who accepted delayed delivery extra candy. Rava had solved the *ribbis* issues of the watchmen by telling them to do more work. The organizer could do the same. He could say, “If you accept not receiving a candy this week and in addition next

week you will say more chapters of *Tehillim* than anyone else—then you will receive three candies next week.” Then it would certainly not violate any interest prohibitions (*Chashukei Chemed*).

He Promised a Child a Reward for Finding an Answer Through Study. The Child Used Google. Did He Have to Pay?

A teacher in a *yeshivah* asked a class, “Who here knows how many times in *Shas Rashi* said, ‘*lo yadati*’—‘I do not know’? Any student who studies hard and finds all the times *Rashi* said he did not know will get a hundred dollars from me.” One of the students went to his computer and Googled it. He returned the next day with the correct answer. The teacher asked Rav Zilberstein if he had to give the child the reward he had promised.

Our *Gemara* mentions the rule of *asmachta*. Rav Ashi taught that if a man gave money to his friend to buy wine now, because the wine was cheap, and the friend was negligent and did not purchase the alcohol—even though at the time of giving the friend the money the friend had promised that if he did not buy the wine on time he would have to buy wine later at his own expense and give it to the one who sent him—the friend would not have to buy wine at the higher cost. The friend’s words did not create a commitment. It was an *asmachta* promise. The friend had been sure he would get around to buying the wine at the cheap price. He never truly thought that he might be liable to buy wine once it became expensive. The same should be true about our case. The teacher thought he had asked for an impossible task, children reviewing every *Rashi* in *Shas*. Therefore, when he

promised to give one hundred dollars to whoever came up with the correct answer, it was an empty promise. He was sure he would not have to pay up. Therefore, since it was an *asmachta*, no obligation was created.

However, a *Gemara* in *Sukkah* would indicate that children should be treated differently. In *Sukkah* (46b), Rabbi Zeira said, “One should not tell a child that he will give him an item and then not give it.” The verse in *Yirmiyahu* (chapter 9) decried the fact that they taught their tongues falsehood. Therefore, since the teacher had made a promise to the child, and the child would not understand the laws of *asmachta*, if the teacher did not give the child his reward the child might learn to lie—and as adults we have a responsibility to train the young to be honest and not encourage falsehood.

Ultimately, Rav Zilberstein ruled that the teacher did not need to give the hundred dollars. The teacher had offered the reward to encourage great study. He did not offer it so that a student would Google the answer. The student was somewhat deceitful in searching the internet and demanding a hundred dollars. He knew that the teacher had offered the payment to encourage study. Therefore, the teacher should explain to the student that it was wrong to search the internet when the purpose of the challenge was to learn many pages of Talmud by oneself and therefore, the teacher was not going to give him the hundred dollars (*Chashukei Chemed*).

Bava Metzia 74**“Mazal Uvrachah” in the Diamond Exchange**

Our *Gemara* mentions the concept of *situmta*. According to many commentators, *situmta* is a Rabbinic mode of acquisition. If in a particular industry a unique act, such as marking a barrel, is considered sufficient to transmit ownership, *halachah* recognizes that act as transferring ownership. Thus, if in a certain industry deals are closed with a handshake, *halachah* would recognize the handshake as well. If the two parties shook hands on the deal, the item would have been transferred even though *chalifin* were not yet done and a contract was not yet signed.

Teshuvos Vehanhagos (*cheilek 1 siman 803*) ruled that in the diamond trade merely saying “*Mazal Uvrachah*” would create a transfer of ownership on the goods. It had become the accepted practice in the diamond trade to transfer ownership and seal a deal with the words “*Mazal Uvrachah*.” Therefore, once the seller said “*Mazal Uvrachah*” to the buyer, the goods would legally belong to the buyer.

Maharshag (*cheilek 3 siman 113*) was of the opinion that words could not create a transfer of title. Even if in a particular industry it was the accepted practice that words could create an acquisition and

seal a deal, *Maharshag* believed that it was a bad custom. *Halachah* would not accept such a practice, because it was a mistake to allow that custom to become the norm. *Pis'chei Choshen* (*Kinyanim* 10:3) disagreed. If “*Mazal Uvrachah*” closes a deal in the diamond trade, *halachah* also accepts that once “*Mazal Uvrachah*” is said the deal is done.

Poskim discuss *situmta* in another common application. If I order an item on the phone or internet and give over my credit card number, the item should be considered mine based on the concept of *situmta*. It is the accepted business practice that an order and giving of credit card information is sufficient to complete a deal and therefore *halachah* would hold that the deal was done as well.

Ridbaz (*cheilek* 1 *siman* 278) also applied *situmta* to words. Reuvein promised Shimon that Shimon would be honored with the privilege of holding Reuvein's son during the son's circumcision. Reuvein then changed his mind. He decided to give the honor of *sandak* to someone else. Shimon was upset. He argued that he had believed Reuvein fully. He therefore had owned the right to hold the child. Reuvein renegeing on the promise was theft. Shimon approached his rabbi with his complaints. The rabbi sent the question to *Ridbaz*.

Ridbaz quoted our *Gemara*. A common practice becomes binding in matters of monetary law. It was the common practice that if a man told his friend that he would have one of the privileges of the *bris*, it was viewed by all that the friend owned that right. If the baby had been born, and Reuvein had then promised Shimon the right to serve as *sandak*, he was not allowed to renege on the offer, because Shimon had acquired the *sandak* honor through *situmta* (*Mesivta, Daf Digest*).

Bava Metzia 75**Moving from a Building
Where Neighbors Died**

Our *Gemara* teaches that there are three who call out and are ignored. *Rashi* explained that these individuals come to the earthly court with complaints—and the *beis din* ignores them. They caused their own misfortune. One who has money and lends it to a friend without witnesses being present, one who acquires a master for himself, and a person who allows his wife to rule over him. The *Gemara* has three suggestions for the meaning of one who acquires a master for himself. It might mean one who falsely claimed that his possessions belonged to a gentile to avoid giving charity. The gentile might hear and claim the items. The stingy Jew acquired the gentile as a master over himself and will only have himself to blame for his losses. Alternatively, it might mean a person who gives away all his possessions to his children in his lifetime. If the children subsequently do not respect him, or fritter away the wealth, he has only himself to blame. The last possibility the *Gemara* suggests is that it refers to a situation where misfortune befalls someone's town and he still does not move to another locale.

Chasam Sofeir explained why the man who did not move when

his fortune was unfavorable is called a person who acquired a master for himself. Each place has an angel who brings the divine influences to that city or state. For some, the divine influence results in blessings. For others, that divine influence results in misfortune and difficulties. If a person sees that he is having a hard time in a place, it means that his soul is not a match for the influence the angel brings to that place. If he stays there anyway he is choosing that angel to be a master over himself. He is wrong. He should move from the place. If he does not move and misfortunes continue, he has only himself to blame.

Shu”t Betzeil Hachochmah (*cheilek 1 siman 45*) was approached by a person who wished to move. In the building in which he lived, three people had died suddenly. He feared that the building had a bad *mazal*. He worried that he might be next. He wished to know if he could break his lease and move out to a building across the street. *Betzeil Hachochmah* pointed out that our *Gemara* does not say, “If he has misfortune in this house.” It says, “If he has misfortune in this place.” A place has a guardian angel bringing down a divine flow. Each building does not have its own angel. There would therefore be nothing to gain in moving from one building to another within the same town. Furthermore, the *Gemara* says if a person has misfortune he should move; it does not say that if others had misfortune he should move. However, he quotes *Seifer Chassidim*, who writes that if a person built a new home and three people died in it, the others should move out of the home because they also might die. *Shu”t Betzeil Hachochmah* therefore posits that if it was a new building and three people died in it, he should move out; however, in an old building the fate of others is irrelevant to him. A building’s divine influence might be bad for some but good for others (*Mesivta*).

Bava Metzia 76**May a Yeshivah Rebbe Strike or Quit?**

Our *daf* deals with employees and employers. It teaches that an employee can quit a job he has accepted if he has not yet started to work. If the employer can find alternate workers, the employer has no financial claims against him. The employer will only have the right to be upset. However, if the employee was hired for a matter which entails financial loss, then he may not quit. If a man hired a worker to remove flax from the waters in which it is soaking, the worker is not permitted to quit. If he quits, the employer will likely suffer a loss. If, despite this, the worker quits, the employer can deceive him into completing the job. Alternatively, the employer can hire other workers at a higher price and send the bill to the worker who quit on him.

Based on these principles, *poskim* discussed whether *yeshivah* teachers may strike to demand better wages. Perhaps *yeshivah* teachers are like workers hired to remove flax. If they would not teach it would cause a lasting loss.

Teshuvos Vehanghagos (cheilek 2 siman 461) was asked by teachers in a *cheder* about the possibility of a work action. The teachers felt that the school did not pay them fairly. Their living expenses were

high but their wages were very low. They had asked the leaders of the school for raises but had been told that no money was available. They asked the *rav* if they were allowed to strike. The teachers believed that the drastic action of not showing up and instructing would convey to the administration how dire the reality was and the school would find a way to pay them more.

Teshuvos Vehanghagos answered that our *Gemara* teaches that a worker may not quit when he was hired for a job that if not performed would cause the employer a loss. *Rama* (*Choshen Mishpat* 333:5) ruled that a teacher of Torah is engaged in an activity which if not performed causes a lasting loss. Time lost from Torah learning cannot be made up. Rav Sternbuch argued that the teachers had not initially negotiated a better wage. They had accepted the low wage. They now needed more funds. However, they were not allowed to strike and cause lasting damage. They could sue the administration and force the school to go to a *beis din* for a *din Torah*. They should not strike. He added that if they did strike, they would be included in the curse, “*Arur oseh meleches Hashem remiyah*”—“Cursed is the one who corrupts the work of the Divine.”

Teshuvos Rav Aharon Kotler (*cheilek 2 siman 71*) ruled that the secular studies teachers in a *yeshivah* were also not allowed to strike. He pointed out that if teachers do not show up, the children will have nothing to do and they would likely loiter on the streets and get into trouble. This would be a tremendous loss. It is spiritually very destructive for a child to do nothing. Such a loss could not be made up.

Shu”t Igros Moshe (*Choshen Mishpat cheilek 2 siman 59*) also dealt with this question. He pointed out that causing Jewish children not to study Torah is a great sin. It is not proper for a person to try and improve his financial condition through an act of sin. Rav Moshe

did concede that perhaps if a teacher is not being paid enough to live, the stress he feels causes his teaching of Torah to be inferior. The Torah conveyed by a harried, distracted man will not enter the hearts of his students. Therefore, if he knows that a single-day strike will make the school give him a living wage and enable him to live and teach well, he may strike for this short term as an expression of “*eis la’asos LaHashem heifeiru Torasecha*”—“when it is a time to act [for God’s sake], Hashem’s Torah may be violated.” However, experts must consider the question long and hard. They must weigh every aspect of the scenario before the drastic step of a strike by teachers is undertaken (*Mesivta*).

Bava Metzia 77**The Importance of Constant Learning to a Torah Scholar**

Rava said, “If he hired workers to work all day to do a job, and they finished it in half a day, if he has easier work or a task as difficult as the first he can make them do that work. However, if all he has is much more strenuous tasks, he cannot force his employees to do them. He must pay the employees for a full day of work, though. It was not the fault of the employees that they sat idle for half a day.” The *Gemara* finds this law difficult. The employee sat idle for half a day. Why should he get paid the wage of a man who does a full day of work? The law should have been that he should get a full wage for half of the day and a discounted wage for the other half. He should receive the wage a typical worker would accept in order to not have to do strenuous work.

The *Gemara* answers that Rava’s law applied to the porters of Mechoza. They were constantly carrying heavy loads. If they had a time of no strain their muscles would weaken. They did not want any time off. Since the employer did not have work for them for half the day, they were losing out on the exercise they needed. As a result, they were entitled to full pay for the entire day.

Rosh (*siman* 3) teaches an amazing law from *Rabbeinu Yo'eil* based on this *Gemara*. "If a man hired a Torah teacher to tutor his son and the student fell ill, if this was a usual occurrence for the child and the teacher was new to the town and did not know to expect it, the employer should bear the loss. He must pay the teacher the complete wage of teaching. He does not pay the teacher a discounted wage, because the teacher could remain idle. Those who study Torah are like the porters of Mechoza. Lack of study and instruction causes them to forget their Torah and weakens their limbs."

Shu"t Ridbaz (*cheilek* 2 750) quotes the lesson of *Rosh* in the name of the *Rashba*. He writes that if a father hired a *melamed* to teach his son Torah and then reneged on the deal, the father must pay the teacher his full wage. A Torah teacher is like the porter from Mechoza. When he does not work, he gets weaker. He wants to always toil in interpreting Torah and explaining it to others. *Ridbaz* challenged this ruling. The *Gemara* (*Sanhedrin* 26b) teaches that Torah weakens a person's strength. If so, every person would appreciate having an easier time and not getting exhausted. Shouldn't the father pay the teacher a discounted wage? *Ridbaz* answered that while Torah study weakens a person physically, it strengthens him mentally. The more one toils in Torah, the better one understands Torah. A Torah teacher wants to know Torah well. He knows that if he is engaged with rigorous study, challenging instruction, and good students, he will understand his learning best. For the employer to now deny him the chance to exercise his intellect is a loss. He is therefore entitled to the full wage like the porters of Mechoza. Torah is a function of the soul. The more pampered, comfortable, and materialistic one is, the less Torah he will grasp. Straining to understand and explain Torah weakens the body and strengthens the soul. Just as porters want their muscles to be strong, Torah

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personalities want their souls to be strong. To strengthen the soul constant study and intellectual strain is best (*Alon Yomi Lelomdei Daf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 78**May a Donor Renege on a Tzedakah Pledge?**

Our *Gemara* contains a dispute between Rabbi Meir and Rabban Shimon ben Gamliel. Rabbi Meir was of the opinion that money donated for the poor for *Purim* may not be used by the poor for anything else. However, Rabban Shimon ben Gamliel was of the opinion that a poor person who received charity for *Purim* was allowed to use those funds for other needs he might have. *Tosfos* (s.v. *magvas*) challenged this *Gemara*. *Arachin* (6b) teaches that charity funds raised for one cause may be used for a different need. Why then did Rabbi Meir say that *Purim* funds could not be used by the poor for non-*Purim* needs?

Tosfos answered that general charity donations can be diverted to other charitable needs. Only in regards to *Purim* funds did Rabbi Meir teach that what was raised for *Purim* cannot be used for any other purpose.

Shu"t Shevus Ya'akov (*cheilek 1 siman 77*) was asked by a Torah scholar if he could reallocate a gift. The scholar was very poor. He had to marry off his son. Someone had given him money to help with the wedding expenses. He also had an older daughter who needed to get married. He asked if he was allowed to use the funds

that had been given to him for his son's wedding to pay to marry off his daughter.

Shu"t Shevus Ya'akov permitted the change of use. He argued that our *Gemara* deals with a poor man who received funds from a charity collector. When receiving from a charity collector, some say the poor man cannot change the use of the money. If he changed the use from what it had been solicited for, the charity collector's credibility would be damaged. In the future people might not give to the collector. Many poor people will lose out. Therefore, if it was collected for one purpose, it must be used for that purpose. However, when a wealthy man gives funds to the poor, he knows that the poor man will use the funds for all his needs. The wealthy man should not be upset if the poor man chose to use funds given for a son for his daughter.

What about a donor changing his mind? If a donor made a pledge, can he renege? What about if a donor merely planned to make the pledge? He thought of an amount that he would give. He never verbalized his commitment. Could he renege?

Rama (358:13) quotes two points of view about a mental pledge: "Charity does not need a verbal promise. Once he thought in his heart to give an item or amount to charity he must fulfill his intention. Some say that if he did not express anything out of his mouth he is not obligated. The more correct approach is the first one." It is clear that *Rama's* opinion is that a mental commitment creates a binding obligation. *Mishnah Berurah* (694:6) also ruled that if a person had a thought to give an amount to charity, he must fulfill his mental pledge even though he did not express anything out loud.

Can a man who makes a pledge change his mind and renege on the pledge?

Machaneh Efrayim (Hilchos Tzedakah siman 8) rules that one may not renege on a charity pledge. He points out that in regards to giving gifts to the Temple we have the rule of *amiraso legavohah kemesiraso lehedyot*—his declaring it for the Temple is the same as his handing it over to another person. When I hand a gift over to a friend, I cannot later claim that I want it back. Once I gave it to him, it is his. Declaring an item holy passes the item to the Temple trust. Declaring a charitable contribution makes the charity own the amount as if it was given to them. Therefore, once one pledged he could not renege or change his mind.

Machaneh Efrayim then had a problem with the question of *Tosfos*. He believed that a verbal charity declaration already gave ownership to the poor; if so, how can *halachah* (*Tur* 259) also declare that one who said “this coin is going to charity” is allowed to change the purpose of the coin and use it to purchase an *esrog* or use it for another *mitzvah* instead of handing it to the poor?

Machaneh Efrayim suggests that the poor only acquire the monies pledged to them if the donor said, “This coin will be given to this poor person or to that charity collector.” If he specified a recipient for his pledge, his words transferred ownership of the coins to that man. The law enabling change of use of the coin applied when the man said generally, “This coin is for *tzedakah*.” Since he did not specify a recipient, he had merely pledged to use the coin for a heavenly purpose. All *mitzvos* would be included as heavenly purposes and he is allowed to repurpose the coin to another good deed (*Mesivta, Alon Yomi Lelomdei Daf Hayomi MiMidreshiyat Petach Tikvah*).

A Milchige Purim Meal?

Our *Gemara* discusses money solicited for *Purim*. In a *beraisa* it was taught that if money was raised for *Purim*, Rabbi Meir ruled it should be used for *Purim*. The coins should be spent generously. The coins should not be carefully apportioned. Rather the *gabbai* should take all the coins and buy calves with them. The calves should be slaughtered and the meat given to the poor.

Chasam Sofeir (*Chullin perek 2*) inferred from this that a *Purim* meal is supposed to be a meat meal. The *beraisa* did not give the option of using the funds to buy milk and dairy products. It said the coins should be used for calves that should be slaughtered and their meat consumed. Elsewhere, the *Gemara* (*Pesachim 109a*) declares, *ein simchah ela bevasar veyayin*—joy only comes when having meat and wine. The *Purim* meal should be an expression of joy and therefore perhaps it must be a meat meal. (See *Magein Avraham* on *Orach Chayim 696:15*.) *Rambam* also writes (*Hilchos Megillah 2:15*), “How does one fulfill his obligation of this meal? He should eat meat and prepare a generous meal as much as he can afford.” Since *Rambam* specified meat, perhaps a *Purim* meal must be a meat one (*Mesivta*).

Bava Metzia 79**May a Mother Bring Her Young Child
to Work?**

Our *Gemara* contains lessons about renting an animal. What does *halachah* say are the responsibilities of the renter and what are the responsibilities of the owner of the animal? From a law in this *daf*, *Oorah Shachar* (*Megillas Yuchsin* 23) derived a lesson about the propriety of a woman bringing her young child with her to work.

Oorah Shachar was asked to weigh in on a partnership dispute. Reuvein and Shimon were partners in a bar. Shimon did not spend hours behind the bar serving drinks. His wife was the one who would come to the store and serve the customers. Reuvein worked in the store. Shimon's wife had young children. Sometimes she brought them with her to the store. Reuvein felt that the children got in the way and distracted her. He protested. He claimed that Shimon was not fairly fulfilling his responsibilities as an equal partner. Was he right?

Our *Gemara* teaches that if a man rented a donkey for the express purpose of using it to transport his wife, his wife who is pregnant or nursing may ride on the donkey. The *Gemara* suggested that we should have just been told that a nursing mother can ride the donkey

with her young son. Then we could infer that certainly a pregnant woman could ride the donkey. Why was it necessary to explicitly mention that both a nursing mother and pregnant mother may ride the donkey? The *Gemara* answered that it is to teach us that even a woman who is pregnant and still nursing her child can ride the donkey. When a man rents a donkey for a woman it is understood that her young child might come along with the woman. This is true even if she is also pregnant.

The *Gemara* in *Kesubos* (60a) teaches that some children are still nursing at age four or five. It thus emerges that a man who rented a donkey for his wife may put his wife and her five-year-old son on the donkey. The young child is dependent on his mother. It is understood that dependent children accompany the mother.

Therefore, *Oorah Shachar* ruled that since Reuvein and Shimon had agreed from the beginning that Shimon's wife would be in the store instead of Shimon, she was allowed to periodically bring her children along with her. Reuvein knew from the beginning of the partnership that Shimon's wife would be in the store with him. In light of our *daf*, he therefore knew that sometimes her young children would be with her. He was not entitled to protest the arrangement (*Mesivta*).

Bava Metzia 80**Can *Mekach Ta'us* Dissolve A Marriage?**

Our *Gemara* discusses the concept of *mekach ta'us*—a sale that is invalidated because it had been based on a mistaken assumption. If a man purchased a field for planting and the seller did not inform the buyer that underneath a thin layer of dirt the entire field was solid rock and unsuitable for agriculture, once the buyer discovered the flaw he could return the field and demand his money back, because it was all a *mekach ta'us*.

The *Gemara* teaches that if a seller was selling an ox and he told the buyer that there were many flaws in the animal—it would gore, it was a biter, it was a kicker, and it would suddenly sit and stop walking—if the buyer examined some of the claims and found them false, but he later found that one of the flaws was true, he could return the animal because it was a *mekach ta'us*. The buyer—who found that when he waved a red flag in front of the ox it did not respond with goring, and that the ox did not kick—was correct in assuming that the animal did not have any of the flaws the seller had claimed it had. He believed that the seller merely listed flaws. In truth, the animal was perfect. If he later found that the ox was a biter, he could claim *mekach ta'us*. He had believed that the animal did not have that flaw. Had he known that it had such a deficiency he never would have purchased it.

The *Gemara* then teaches that the same law would apply to a man who purchases a female gentile slave. If the seller said, “She is a *shotah* (mentally insane), she is prone to seizures, she is *meshu’amemes* (behaves insanely),” and in fact she only had only one of the flaws, the buyer could claim *mekach ta’us*. He might have checked out the first few claims of the seller and found them not to be true. As a result, he believed they were all untrue. When he discovered that one of the flaws was true, he could annul the purchase.

In the *Tosefta* of Tractate *Kesubos* (7:9), this law is applied to marriage. If a man told a father, “I would like to marry your daughter Rachel because she has no blemishes,” and the father responded, “Rachel is sick, she is a *shotah*, she is prone to seizures, she is *meshu’amemes*,” if in fact only one of the blemishes is true about her, the marriage would be dissolved as a *mekach ta’us*.

Malbushei Yom Tov (*cheilek 1 Even Ha’èzer siman 4*) pointed out that our *Gemara* and the *Tosefta* listed the flaws of *shotah* and *meshu’amemes* separately. The *Gemara* (*Chagigah 3b*) teaches that there are three behaviors that characterize a *shotah*: going out alone at night, sleeping in the cemetery, and tearing one’s garments. If a woman did not exhibit these behaviors but she would act in ways that people consider insane, she would be a *meshu’amemes*. *Meshu’amemes* is grounds for dissolution of the marriage since it was a mistaken acquisition—a *mekach ta’us*.

Based on this, *Malbushei Yom Tov* ruled that if a man married a woman, and after living with her discovered that she would act insanely, even though she did not go out alone and night, sleep in the cemetery, or tear her clothes, the marriage could be annulled as a *mekach ta’us*.

Malbushei Yom Tov argued further that if a woman was depressed and as a result would sit at home and not function, she would be

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included in the category of *meshu'amemes*. A man who first finds out after the marriage that his wife has long been depressed and not functioning can annul the marriage without giving a *get* because it would be a *mekach ta'us*, based on the fact that *meshu'amemes* is grounds for a *mekach ta'us* claim.

Bava Metzia 81

A Visitor Asked, “Can You Watch My Suitcase?” The Yeshivah Student Answered, “I Can, But Only for Five Minutes.” After Five Minutes the Watchman Left and the Suitcase Was Stolen. Must the Student Pay?

A man came from Ben Gurion Airport to the *yeshivah* dormitory building with stuffed suitcases. He saw a *yeshivah* student. He asked, “Can you watch my bag for a few minutes while I bring the first bag into the dormitory?” The young man replied, “I have a *shiur* I must attend. I can watch your bag for five minutes only. After that, I must go to the class.” The new arrival said, “Fine.” He dragged the first piece of luggage into the dormitory. It took him fifteen minutes to put down his bag and return to the front of the building. When he came down, his bag was gone. After five minutes the student had left the bag and had run in to go to his *shiur*. The bag had been stolen. Was the student liable to pay?

Our *Gemara* discusses what responsibilities a watchman has when the term of his service ends. It talks about a *sho'eil*—a borrower. A borrower is usually responsible for all forms of loss. Even if the loss is due to an *ones*—an act of God that could not be avoided—the

sho'eil must pay. Our *Gemara* teaches that if a man borrowed an item for thirty days, even though he has not yet returned the item to the owner, after the thirtieth day he no longer has the responsibilities of a *sho'eil*. He has the responsibilities of a *shomeir sachar*—a paid watchman. Since he received a benefit from the owner—namely, that he was a borrower who had use of the item without having to pay—he therefore was now a *shomeir sachar* on the item. However, he was no longer a *sho'eil*. If the animal he had borrowed dropped dead after the thirty days of borrowing, he would not have to pay for it. What is the law for an unpaid watchman? If he had a time in which he was to watch and that time was now past, was he now completely absolved of any responsibility to watch the item?

Machaneh Efrayim (perek 19 of *Hilchos Sechirus*) dealt with this question. He ruled that if one is an unpaid watchman for a limited period of time, after that period of time he is not a watchman at all. According to this, perhaps we can suggest that the *yeshivah bochor* was exempt from any financial liability. He had said he would only be a watchman for five minutes. Once the five minutes were up he was allowed to leave the suitcase because he was not a watchman on it at all and he should bear no liability.

Rav Zilberstein pointed out that we would not consider the *yeshivah* student to be a *shomeir aveidah*—a watchman on a lost object. The man had left the object there. It was a willful losing—an *aveidah mida'as*. The *yeshivah* student would not be obligated to treat it as a lost object, especially since he had specified that he only intended to watch it for five minutes.

Rav Zilberstein did concede that perhaps leaving a suitcase in a public area, where it will attract the attention of thieves, is an act of damage and worse than merely not sufficiently protecting an item. Perhaps, in this case, there would be liability (*Chashukei Chemed*).

Bava Metzia 82**Why Involvement in a Mitzvah Exempts from the Obligation to Donate to Charity**

Our *Gemara* discusses how it would be possible that a lender who receives collateral would be considered a paid watchman. It quotes the argument between Rabbah and Rav Yosef about a man watching a lost object. Rabbah was of the opinion that a *shomeir aveidah*—a guardian of a lost object, has the status of an unpaid watchman—a *shomeir chinam*. Rav Yosef was of the opinion that a *shomeir aveidah* was receiving a benefit, and as a result he was a paid watchman and responsible to pay if the item was stolen or lost. Rav Yosef’s logic was creative. Rav Yosef pointed out that there is a rule, *oseik bemitzvah patur min hamitzvah*—one who is busy with a *mitzvah* is exempt from fulfilling any other *mitzvah*. It is a *mitzvah* to care for a lost object. If a poor man came collecting while the finder was busy with the lost object, the finder—busy doing the *mitzvah* of caring for the lost object—would not have to give charity. Therefore, in truth, his caring for the lost object created a financial gain. It saved him the cost of the charity. The *Gemara* suggests that the logic of Rav Yosef might apply to a loan. It is a *mitzvah* to give a loan. Therefore, according to some, the lender would be allowed to ignore the appeals of a poor

man if he came at the moment of lending. The lending would give him this benefit. The lender would therefore be a *shomeir sachar*—a paid watchman—on the collateral.

The idea of Rav Yosef is troubling. There is a positive command to give charity, but there is also a prohibition, a verse prohibiting ignoring the poor: *lo se'ameitz es levavcha*—do not stiffen your heart. Involvement in a *mitzvah* exempts the person from trying to fulfill another *mitzvah*. However, involvement in a *mitzvah* does not give anyone license to violate prohibitions. We would not say that while doing a good deed one can murder and ignore the prohibition not to kill. Since there is a prohibition against ignoring the poor, how can Rav Yosef teach that while being busy with a *mitzvah*, such as taking care of a lost object, one may ignore the pleas of the impoverished?

Kehilas Ya'akov, Or Samei'ach, Imrei Binah, and Koveitz He'aros all suggested a similar answer.

The prohibition in regards to charity differs from other prohibitions. It does not stand alone. It is dependent on the positive command. The prohibition is really a strengthening of the positive command. It is a demand that the positive command not be neglected. Since there is no positive obligation to give charity when busy with a lost object, due to *oseik bemitzvah patur min hamitzvah*, at that moment there was no prohibition against ignoring the poor. The prohibition never applied to situations that do not have the positive obligation.

Ramban suggested a similar understanding of the prohibition enjoining a homeowner not to leave his roof unguarded and unfenced: *lo sasim damim beveisecha*—do not put blood in your home. “It appears to me that building a fence around a roof is primarily obligated from a positive command—a *mitzvas aseih*. The prohibition is merely a demand that the positive command be

kept. Hashem first said, ‘*ve’asisa ma’akeh*’—‘build a fence,’ then He added, ‘*velo sasim damim beveisecha*.’ The intent was, ‘Do not avoid fulfilling the positive command.’ This prohibition is only a call to fulfill the positive *mitzvah*. This is why women would also have been exempt from this prohibition if they would have been exempt from this positive command.” It emerges from *Ramban* that there are two types of prohibitions. One is independently significant. The second is merely a reinforcement of a positive command. Charity is of the second variety. When there is no positive command due to *oseik bemitzvah patur min hamitzvah* there is also no prohibition.

Gilyonei HaShas (*Nedarim* 33b) suggested another answer. The Torah phrased the prohibition against neglecting to give charity with the words, “Do not stiffen your heart” and “Do not clench your fist.” These words imply that what Hashem prohibited was a feeling. One may not avoid giving charity out of a feeling of a hardened heart and lack of caring. If one is exempted from giving charity by Torah law, because he was busy with another *mitzvah*, for example, his not giving charity was not a display of a hardened heart and it was not prohibited at all.

Koveitz Shiurim (*Bava Basra* 48) gave another answer; he suggested that being busy with a *mitzvah* exempts a person from prohibitions that are violated by inaction. While doing a *mitzvah* one could not kill, because that would be an act of sin. However, to not give *tzedakah* is a sin created through lack of action—*sheiv ve’al ta’aseh*—when busy with a *mitzvah*, one is exempt from other positive commands and from prohibitions that are violated through lack of action.

Poor people sometimes solicit in synagogue while others pray. In the midst of prayer, one may ignore them and not give charity. *Ha’oseik bemitzvah patur min hamitzvah*—when busy with the good

deed of prayer one may neglect the good deed of giving charity. *Poskim* discuss the question whether there are any times when you should give to a poor man even though you are preoccupied with prayer.

Shulchan Aruch (*Orach Chayim* 92:10) teaches that it is good to give charity right before you begin to pray. *Kaf Hachayim* (232:3) taught that you should give charity before the morning and afternoon prayers; however, you do not need to give before the *Ma'ariv* prayer. *Mishnah Berurah* (92:36) writes that during the recital of *Pesukei Dezimrah*—the verses of praise of the morning service—some communities have the practice to give charity when reciting the words, “*Ve’atah mosheil bakol*”—“And You rule over all.” *Beis Baruch* on the *Chayei Adam* (21:27) teaches that it is not correct to give charity to a solicitor while reciting the first paragraph of the *Shema* prayer. It would be permissible to give charity while reciting the second paragraph of the *Shema*, however. *Halichos Shlomo* (*Tefillah* chapter 7 4:5) wrote that it is not correct to ask for charity while others pray. Such begging disturbs the person praying from saying his prayers and having intent—*kavanah*—while petitioning the Almighty. He even argued that it would be wrong to collect while the community was reciting the *Hallel*—even on *Rosh Chodesh*, when recital of *Hallel* is merely a custom. *Mishnah Berurah* (92:36) wrote that it is not correct to collect charity while the community is trying to listen to the reading of the Torah and respond to the *Barchu* declarations. However, during the recital of the *Mi Shebeirach* prayer one may solicit charity (*Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 83

Reporting Jewish Criminals to Gentile Authorities

The son of Rabbi Shimon bar Yochai served as an agent of the brutal Roman government. Our *Gemara* tells the story. Rabbi Elazar ben Rabbi Shimon once met a detective. He asked the man, “How can you perform such a job? Thieves are like wild animals. They are hard to catch. You are, likely, arresting innocents and getting them killed.”

He responded, “It is a government decree. What do you propose I do?”

Rabbi Elazar ben Rabbi Shimon answered, “Go to the diner when they serve breakfast at the fourth hour of the morning. Look around. See who is dozing while holding his drink. Ask about him. If you find out that he is a Torah scholar it is likely that he woke up very early in order to study. If he is a day laborer perhaps he woke up early to go to work. If he is a craftsman perhaps he was making things during the night. However, if he is none of these, then he is a thief and was up all night stealing.” When the government heard of Rabbi Elazar’s advice they decided he should be their detective. He became their officer and would report criminals to them. Rabbi Yehoshua ben Karcha criticized Rabbi Elazar. He called him “vinegar son of wine.”

He was upset that he was handing members of the divine nation to the wicked empire. Rabbi Elazar responded that he was “removing thorns from the vineyard.” Rabbi Yehoshua said, “Leave the removal of the thorns to the owner of the vineyard.”

Poskim struggle with this story. How could Rabbi Elazar hand Jewish criminals to the Romans? Roman justice is not like Jewish justice. Our law demands two witnesses to testify to establish a fact. Our law does not allow the death penalty for thieves. When Rabbi Elazar reported individuals as thieves to the Romans, they would convict based on circumstantial evidence and would punish a thief far more harshly than our law. How could he enable such acts?

Shu”t HaRashba (*cheilek* 3, *siman* 393) dealt with individuals who had been appointed to arbitrate a dispute about assault. He taught that if they thought justice demanded a particular action, they could fine the litigants or impose a physical penalty on them. They did not need to demand Torah standards of evidence, such as two witnesses, to impose a penalty. The *Gemara* says Jerusalem was destroyed because their laws were in accordance with Torah law. This means that sometimes justice demands a law different from requiring two witnesses to present the evidence. Many cases of assault do not have a warning and two witnesses. Judges are to impose penalties to help the community, just as Rabbi Elazar ben Rabbi Shimon carried out Roman standards of law because they were needed to keep justice within the community and to deter the thieves. He added that another reason why they could arbitrate based on how they saw fit was the fact that they were appointed by the government and the authorities had empowered them.

Tashbetz (3:168) dealt with a dispute between Reuvein and Shimon. Reuvein was blind and had a few precious stones sewn into his garment. Shimon came to town. Reuvein invited him to stay with

him as his guest. After a few days, Reuvein discovered that his jewels were gone. He accused Shimon. The people asked the *Tashbetz* what they should do.

Tashbetz answered that if the courts would wait for the Torah's evidence of two witnesses, no thieves would ever be caught. Thieves hide their activity. The Almighty expects judges to make rulings and enactments as they see fit to keep the community safe. Therefore, the court should interrogate Shimon. They should threaten him with dire threats if he did not confess to his actions. They did so. Shimon admitted his crime and returned the funds.

Rosh also once jailed a Jew when his Egyptian guest claimed that he had stolen from him, because the claim seemed correct.

It emerges that *Rosh*, *Tashbetz*, and *Rashba* all derived from our *Gemara* that at times Jewish leaders are to levy fines and punishments for the good of the community even though Torah law would not have accepted such evidence or punished as harshly.

If this is the case, why did Rabbi Yehoshua ben Korcha criticize Rabbi Elazar?

Perhaps Rabbi Yehoshua ben Korcha was arguing that while the law was with Rabbi Elazar, as the son of Rabbi Shimon bar Yochai it was not fitting for him to act this way. Rabbi Shimon bar Yochai was very kind and pious. He was a *chassid*. Rabbi Elazar, as a *chassid*, should not have accepted the job the Romans had for him.

In the days of the *Maharam Schick* a man died suddenly. Rumors circulated that the man had been poisoned by his wife. There was circumstantial evidence against her. The question was raised: Could the community hand her over to the police? The gentile courts would not demand two witnesses. They would convict on the basis of circumstantial evidence. They might put her to death. Perhaps we

may not participate in activities that would lead to a judicial result that our system of law would not have arrived at.

Maharam Schick ruled that in light of the views of *Rashba*, *Rosh*, and *Tashbetz*, the community should hand her over to the authorities. However, the Torah leaders should not do it themselves. Rather, individuals should do the reporting (*Otzros Daf Hayomi*, *Hamevaser Torani*, *Me'oros Daf Hayomi*).

Bava Metzia 84**When Are Heavenly Messages Relevant to Halachah?**

Our *Gemara* relates that at least eighteen years passed between the time of Rabbi Elazar ben Rabbi Shimon's death and his burial. During that period, people who were in need of judgment would still visit Rabbi Elazar ben Shimon's home to resolve the matter. Each litigant would present his claim and a voice would emerge and declare which person was guilty and who was innocent. In *Seifer Devarim*, Moshe declared that Torah was no longer in heaven. This teaches that since Moshe's time, no prophecy can teach a law. If a prophet after Moshe could reveal a law from prophecy, then that would mean that in the days of Moshe there was still some Torah in heaven. Torah is not in heaven (*Bava Metzia* 59b), so how did people resolve their disputes from the heavenly voice that emerged from the room of the deceased Rabbi Elazar ben Rabbi Shimon?

A similar question was asked about the ruling of many authorities that gentile corpses do not transmit impurity through a common roof—via means of *tumas ohel*. In *Bava Metzia* (114b) Rabbah bar Avuha questioned Eliyahu Hanavi about why he was standing in a gentile cemetery (under the assumption that Eliyahu was actually

Pinchas, grandson of Aharon, and therefore a *Kohein*). Eliyahu Hanavi answered that the *halachah* follows Rabbi Shimon ben Yochai, who held that the graves of gentiles do not transmit *tumah*. How could *poskim* cite this as proof? A prophet cannot dictate *halachah*. Torah is not in heaven!

Birkei Yosef suggested that a prophet is permitted to issue a halachic ruling based on his Torah scholarship. A prophet cannot issue a ruling based on prophecy. Therefore, when Eliyahu Hanavi taught that the *halachah* of the graves of gentiles follows the opinion of Rabbi Shimon ben Yochai, it was his scholarship that was speaking, not his prophecy.

Birkei Yosef also suggested a principle that could provide an answer for our *Gemara*. Although a prophet may not reach a halachic conclusion based on prophecy he may use prophecy to determine facts (לברר ספק במציאות). One example of this principle is found in the *Gemara Shabbos* (108), which discusses whether it is acceptable to write *tefillin* on the skin of a fish. The *Gemara* relates that Eliyahu Hanavi will have to come and inform us whether the *zuhamah*—spiritual filth—was removed from fish or not. It is not a halachic matter that he will decide; rather he will clarify a simple fact of whether the *zuhamah* was removed or not, and that is within the domain of a prophet. Accordingly, one could suggest that in our *Gemara*, the two litigants came to Rabbi Elazar ben Shimon to determine a fact rather than issue a halachic ruling, and that is the reason it was acceptable.

Maharitz Chayus gave another answer. The litigants who were coming to Rabbi Elazar ben Rabbi Shimon were arguing about monetary matters. One can always forgive money to his friend. For this reason, they had accepted following a heavenly voice. “It is not in heaven” applies to ritual law. However, in regards to a monetary

dispute—like our case here—both litigants may agree that they will resolve their dispute by any means. In our case they had both agreed to a resolution based on a voice of heaven. A voice from heaven would be no worse than rolling dice. They can drop claims based on dice. Here, they dropped claims based on the heavenly voice in Rabbi Elazar ben Rabbi Shimon's home.

Rav Zilberstein suggested another answer based on the comment of Rabbi Akiva Eiger. *Gemara Kesubos* (103a) teaches about the passing of Rebbe Hakadosh. Rabbi Akiva Eiger writes there in *Gilyonei HaShas* in the name of the *Seifer Chassidim* (*siman* 1129) that after his passing Rebbe would appear dressed in his Shabbos clothing every Friday night and fulfill the obligation of *Kiddush* for those assembled, since Rebbe was unlike other deceased individuals. Others, when dead, are exempt from *mitzvos*. However, a *tzadik* like Rebbe is alive forever. As a result, he could still fulfill obligations for others. Perhaps Rabbi Elazar ben Rabbi Shimon as a *tzadik* was considered alive even after his soul left his body. As a result, he could issue rulings and they were not an attempt to resolve *halachah* from heaven because he was considered alive.

This principle would explain the story recorded in *Oheiv Yisrael* and *Or Halevanah* about Ezra Hasofeir. A wealthy man, in the days of Rav Sherira Gaon, owned a Torah scroll written by Ezra Hasofeir. When he died, his two sons fought fiercely over who would inherit the scroll. They went to a *din Torah*. The conclusion was that lots should be drawn. One son would receive all the wealth, the other the scroll.

A wicked man heard of the story. He thought it insane that someone wanted an ancient scroll more than wealth. He decided to do mischief. He went into the *shul* and ruined the scroll. In the word ועבדתם—and you shall serve, he erased the *ayin* and replaced

it with an *aleph*, rendering it וַאֲבַדְתֶּם—and you shall destroy. When the community discovered the error, all were upset. The father of the man who would inherit the scroll came to his son in a dream. He told him that because the wicked person had taken out the *ayin*, God was going to punish his eye and make him blind. He also told his son not to be upset, because Ezra Hasofeir was going to repair the scroll. The next morning, the wicked man was blind and the scroll had the right word. Would such a scroll be kosher? A scribe must write the letters in a scroll. A soul is no longer obligated in *mitzvos* after it dies; how could it write a letter and make the scroll kosher again? Perhaps in light of our *Gemara* and the *Gemara* in *Kesubos*, we have an answer.

Ezra Hasofeir was a *tzadik*. *Halachah* treats him as alive forever. When his spirit filled in the letter, the scroll was kosher (*Daf Yomi Digest, Chashukei Chemed*).

The Rebbe-Talmid Bond

Our *Gemara* relates details about the relationship between Rabbi Yochanan and Reish Lakish. Reish Lakish was a very close and important student of Rabbi Yochanan. After Reish Lakish died, Rabbi Yochanan went mad. The Sages prayed for him and he passed away.

Rav Chaim Schmuelevitz derived a great lesson from this *Gemara*. A Rebbe needs his students and the students need the Rebbe. The Rebbe lives through his bond with his *talmid*. A Rebbe cannot survive without his *talmid*. If a student needs to enter exile in a city of refuge, the Rebbe must come with him. If a Rebbe must flee to a city of refuge, the student must go with him.

The *Gemara* (in *Berachos*) relates that Rabbi Yochanan lost ten of

his children in his lifetime. He would carry a bone from his youngest child to comfort people who were in mourning. Rabbi Yochanan was able to overcome the loss of his children, yet he could not overcome the loss of his student Reish Lakish. A Rebbe needs his student. The Sages did not pray that Rabbi Yochanan overcome his madness. They knew that even were he to recover, he would become mad again once he realized that Reish Lakish was no longer alive. A Torah teacher needs his disciples, because only through them and with them does he live (*Daf al Hadaf*).

Bava Metzia 85**Burial Next To a Righteous Father**

Our *Gemara* teaches that when Rabbi Yosi the son of Rabbi Elazar ben Rabbi Shimon passed away, the Sages attempted to bury him in the burial cave of his father and grandfather. When they arrived at the cave there was a snake in their way surrounding the burial spot. They told the snake, “Open up and allow a son to be buried next to his father.” The snake did not move away. The people thought the reason the snake was preventing Rabbi Yosi from entering the cave was that he was not as righteous as his father. A voice emerged from heaven and declared: “It is not that this one is greater than this one. Rather this one (Rabbi Elazar) experienced the pain of exile in the cave (for thirteen years when hiding from the Romans). This one never experienced the suffering of the cave.”

Rav Moshe Feinstein (*Igros Moshe, Yoreh Dei'ah cheilek 3 siman 145*) was asked to weigh in about a family dispute. The questioner was the son of a great scholar. His father had passed away and been buried. Now the sons were arguing who should merit the privilege of being buried next to their great father. Was there any halachic guidance for the dispute?

Rav Moshe pointed out that from our *Gemara* we learn that even

a son must be deserving in order to be buried next to a *tzadik*. When the people saw that the snake was not allowing Rabbi Yosi to be interred next to Rabbi Elazar ben Rabbi Shimon and Rabbi Shimon bar Yochai, they figured that Rabbi Yosi was not on the same level as his father. Apparently, even when there is only one child, that child can only be buried next to his righteous father if he is holy and great like his father.

Rav Moshe thought that this did not mean that the child had to reach the same level as the father. It is usually not possible for a son to be as great as his father. Only Rabbi Yehudah Hanasi was called *Rabbeinu Hakadosh*. His children did not merit to have that name. Yet his children were considered individuals who filled his place. They reached the heights of their potential. Anyone who realizes all his abilities is worthy of being buried next to his father who was a great man.

Rav Moshe therefore told the questioner that the spot next to the father was not to be given to the eldest child. Rather, an assessment was to be made. Which child was wisest? Who had worked the hardest to realize his potential? That was the child who should merit to be buried in the grave next to his great father (*Daf al Hadaf*).

Always Pray for Redemption

Rav Aharon Leib Steinman derived a powerful lesson from our *daf*. Our *Gemara* tells a story about Rebbe. Eliyahu the prophet would come to his *yeshivah*. One *Rosh Chodesh*—the first day of the month—he came late. Rebbe asked him why he was late. He answered that he had been busy with our patriarchs. He had awakened Avraham

Avinu, bathed him, helped him pray, and then laid him down again. He did the same for Yitzchak, and then for Ya'akov. Rebbe asked, "Why didn't you wake them all at once and have them pray together?" Eliyahu answered, "Their prayers would have been so powerful that Mashiach would have come, and perhaps now is too early for the final redemption." Rebbe then asked, "Is there anyone alive whose powers of prayer are so strong?" Eliyahu answered, "Rav Chiya and his sons." Rebbe then declared a fast day and had Rav Chiya and his sons lead the services.

Rav Steinman asked, if Eliyahu had already told Rebbe that it was premature to petition for redemption, why did Rebbe declare a fast day and have Rav Chiya and his sons pray and ask for, among other things, the revival of the dead and the ultimate redemption?

Answered Rav Steinman, our patriarchs are deceased and are not obligated in prayer. Angels and Eliyahu are not obligated in prayer. Their pleas are effective but they have no obligation currently to pray. Therefore, since it was not the time for redemption, Eliyahu would not gather all of the patriarchs and have them petition the Almighty. However, as human beings we are obligated to pray. Rebbe and Rav Chiya were alive at the same time. As human beings, we should never avoid prayer due to the heavenly plans; on the contrary, we are obligated to continually appeal and beg Hashem to send the ultimate redemption (*Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 86**Welcoming Guests During the Nine Days
and Eating Meat**

It is Ashkenazic *halachah* not to eat meat during the nine days from *Rosh Chodesh Av* until the ninth of *Av*. Sefardim may eat meat then. They do not eat meat during the week that has the ninth of *Av* in it—*shavu'a shechal bo*. Our *Gemara* teaches about the greatness of welcoming guests. It teaches that welcoming guests is even greater than conversing with God. Avraham Avinu asked God to wait when he went out to welcome guests, even those he thought were earth worshippers, into his home.

Siddur Beis Ya'akov derived from this lesson a novel idea. If you merit having a Torah scholar come to your home, it is a holiday. You are greeting a guest, and that is even more special than conversing with Hashem. Communing with Hashem is a cause for celebration, and so is welcoming a guest. Therefore, if you are Ashkenazic and a Sefardic sage visits you during the nine days, you should serve him meat, because he is allowed to eat meat then. Since it is a celebration for you to fulfill the *mitzvah* of *hachnasas orchin*, you may eat meat with him at the meal. If an Ashkenazic scholar is the visitor, and he needs meat for his health, you may eat the meat with him as

well. You may even invite all the scholars of the town to come and participate in the meal. Just as a *bris* and a *siyum maseches* are causes for celebration for many, and permit the eating of meat during the nine days, welcoming a Torah scholar guest is cause for celebration and thus the eating of meat for many would be permitted (*Chashukei Chemed*).

Must the Host Escort the Guest?

Our *Gemara* teaches that whatever Avraham did himself for his guests, Hashem did Himself for Avraham's children. Avraham served them food himself, Hashem sent the *mann* from the heaven Himself. Avraham had others bring them water, so Hashem sent Moshe to hit the rock to give the Jews water while we were in the desert. Avraham escorted the guests himself, and Hashem Himself accompanied the Jews while we traveled through the desert.

Torah Temimah (*Bereishis* 12 *he'arah* 20) argued that by the letter of the law, a host does not need to escort his guests out himself. Had the law been that the host himself should personally escort the guests, of course Avraham would have done so, and there would be no basis for added reward because he escorted his guests himself. Based on this *Gemara* that teaches how the Jews received a special reward—Hashem Himself accompanying us through the desert—*Torah Temimah* suggested that a host can have a member of the household escort the guest out and in that way fulfill the obligation of *levayah*.

Ahaleich Be'amitecha (chapter 7 *he'arah* 13) quotes Rav Chaim Palagi (*Kaf Hachayim* 7:3), who taught that there is no difference

between personally escorting the guest out or having a representative walk him out. *Sheluchō shel adam kemoso*—one's emissary is like himself. However, if the host was more honored than his representative, the host should personally escort the guest out (*Mesivta*).

Bava Metzia 87**Is There Ever an Obligation to Lie?**

Our *Gemara* discusses verses in *Parashas Vayeira*. When the angels came to visit Avraham, one of them declared that in a year's time Sarah will bear a son. When Sarah heard, she laughed: "After I have withered, will I become young again? And my master is old!" Hashem told Avraham that Sarah had doubted the angel. Hashem reported that Sarah said, "After I have withered, will I become young again? And I have aged!" Why did Hashem not accurately report Sarah's words? The *Gemara* teaches that even Hashem will change the truth for the sake of peace.

Commentators ask: When facing a conflict between peace and truth, may a person choose to say the truth and create a dispute, or is he obligated to lie and promote peace?

Rav Elchanan Peretz suggested that if Hashem Himself lied to keep the peace between Avraham and Sarah, it is the ideal to do so. A man therefore would be obligated to lie in order to keep the peace. He would not have the option of saying the truth and allowing a dispute to fester. *Rif* in *Perek Eilu Metzios* writes that a person is obligated *leshanos mipnei darchei shalom*—to lie for the ways of peace.

What about a halachic question? A man comes to you. He is not observant. He asks, "Is my wine unkosher?" If you tell him the law,

he will be deeply offended. A fight might break out. Are you allowed to lie and misrepresent Torah to preserve peace? Rav Peretz thought that you would have to say the truth. For the sake of peace you can lie to a person. Hashem told Avraham that Sarah had doubted her own abilities—instead of the truth that Sarah had doubted Avraham's abilities. However, to misrepresent Torah is to lie to Hashem. *Yam Shel Shlomo (Bava Kama 4:9)* argues that it is a severe sin to misrepresent what the Torah says. Rav Peretz ruled that you would be obligated to tell the man that unfortunately his wine is not kosher.

Should one lie when there is a doubt as to whether the lie will succeed in preserving the peace? Is a doubtful peacemaking—*safeik darchei shalom*—also grounds to mandate lying?

Rav Peretz argued that one would have to lie. This should be analogous to the law about working on *Chol Hamo'eid*—the intermediate days of a holiday. Only work that is for *davar he'aveid*—saving from loss—is permitted on *Chol Hamo'eid*. What about a case of doubt? May one work if there is a chance that the work will save from loss? Is *safeik davar he'aveid* work permitted on *Chol Hamo'eid*?

Chazon Ish (Orach Chayim 138:14) dealt with this issue. *Poskim* argue about the matter.

Those who permit argued that *davar he'aveid* is subjective. If lack of something upsets a person, that too would be considered a *davar he'aveid* scenario. The fact that lack of a particular activity on *Chol Hamo'eid* might result in a loss causes one to be upset. His being upset is a loss. To prevent that loss he may work! The reason for the *halachah* of lying for peace is that Hashem wants us to invest strenuous efforts for peace. We must take on a lot in order to maintain peace. If there is a fear that a dispute might arise, you should lie, because that lying is an effort one is taking to maintain *shalom (Portal Daf Hayomi, Misaviv Lashulchan)*.

Bava Metzia 88**Must a Bus Driver Quit to Avoid Driving His Bus That Has Immodest Pictures on Its Sides?**

A religious man was a driver in the national bus company in Israel. He noticed that new advertisements had been glued to the sides of his vehicle. They contained immodest images. A Jew may not gaze at inappropriate photos. We each have an obligation not to cause each other to sin. He asked Rav Zilberstein, “Do I need to quit my job? Am I obligated to incur financial loss to avoid violating *‘lifnei iver lo sitein michshol’*— ‘do not place a stumbling block before a blind man?’”

Rav Zilberstein suggested that perhaps an insight of *Maharil Diskin* would allow the driver to continue at his job. *Maharil Diskin* (*Kuntres Acharon siman 145*) writes that you need not suffer financial loss to save your friend from sin. Our *Gemara* discusses the right of a worker to eat from the field of his employer while finishing up the job. The *Gemara* derives from the word “*kenafshecha*” that if the employer would muzzle his employee and not allow him to eat, the employer would not get lashes. Asked Rav Diskin: Why do we need a verse for such a law? Even without the special word “*kenafshecha*” we would know that if an employer would muzzle the employee and prevent

him from eating, there would be no grounds for lashing. According to Jewish law, for corporal punishment to be inflicted witnesses must first warn the violator with a direct threat. If they issue a conditional warning—*hasra'as safeik*—no punishment can be meted out. If the employer were to muzzle his employee, the witnesses could only give the boss a conditional warning. They would say, “If the employee does not forgive the wages you owe him, and he remains your employee, you will sin when he works and cannot snack at the end of the job.” However, he might forgive his wage, or stop working; if he forgives the wage the employer will not be violating anything for muzzling him, because he will not be his employee. As someone who would only be warned conditionally, there would be no possibility of lashes; why, then, the need for a verse to exempt from lashes? Rav Diskin argued that based on this question, a principle emerges. Jewish law does not demand that I lose money to prevent you from sin. The employee would not be asked to waive his wage or stop working to prevent his employer from violating a commandment. Since Jewish law does not ever ask for a person to lose money to save someone else from sin, there would be no reason to think that the employee might waive his wage. The witnesses could level a direct threat to the employer who muzzles his worker. They would tell him, “If you muzzle your worker as he finishes up his work for you, you will violate Torah law and deserve lashes.” There would be no reason to think that the worker might waive his wage and therefore no reason to include that possibility in the warning. As a direct warning, it could invoke punishment. The verse was needed. It taught that regardless of the nature of the warning, the act of muzzling a human employee does not trigger a punishment of lashes.

Rav Zilberstein argued that we can draw a distinction between the cases. In the scenario of Rav Diskin, a worker need not lose money

to save his employer from sin when the employer was trying to sin. In our case, the sinners are not people trying to sin. It is innocent passersby who are bombarded with inappropriate images. Perhaps the driver must lose money to save the righteous pedestrians from sinning inadvertently with their eyes.

Rav Zilberstein brought the question to his brother-in-law, Rav Chaim Kanievski *shlit"á*. Rav Chaim Kanievski suggested that the driver could keep his job. He argued that the sin of gazing at inappropriate images does not occur immediately. The first glance is no sin. The sin is in the delving into the picture and seeking to look at what is immodest. The bus driver is not responsible for that. He was driving his bus. People who see the pictures initially and do not want to see them do not sin; only those who choose to take a second look sin, but those people are at fault for choosing to gaze. The bus driver is not the reason they are sinning. Their urges are the reason for the sin. He would not have to quit his job because they have evil urges and are not looking away after the first glimpse (*Chashukei Chemed*).

Bava Metzia 89**Grapes Before Wine?**

A *poseik* must have a broad grasp of *Talmud*. You cannot be confident, even about the laws of blessings, if you only study one tractate. Sometimes a law in *Bava Metzia* might shed light on a matter of blessings. To issue definitive rulings, a broad grasp of Torah is needed.

There is a practice of making an “*Amein* party.” At “*Amein* parties,” many foods are served. The goal is that everyone recite blessings aloud and all say “*Amein*” multiple times to bring divine help to those in need. A person organized an *Amein* party. She prepared many food items. She put out grapes as well as cups of wine. She asked Rav Zilberstein, which food should we make a blessing on first, the grapes or the wine? Presumably, halachah would say bless the wine and then the grapes. Wine receives a particular blessing, thanking the Almighty for being the *borei pri hagafen*—He who creates the fruit of the vine. Grapes merely receive a general blessing thanking Hashem for being the *borei pri ha'etz*—He who creates fruit from the tree.

In light of our *Gemara*, Rav Zilberstein suggested that the wine should be drunk second and first they should eat the grapes. Our *Gemara* discusses the law that an employer must allow his employee

to snack on the grapes in the field when he is involved in the final-stage activities (harvesting until piling up the completed grapes indoors) of the produce. Our *Gemara* teaches that an employer may give his worker wine before he sends him out into the field to harvest and collect the grapes. *Ri MiLunil* explained that after the worker drinks the wine, the grapes will not taste sweet. The novel insight of our *Gemara* is that even though the employer is reducing the appetite the worker will have for the grapes, he may serve him wine. In light of this lesson, perhaps the guests at the *Amein* party should have the grapes before the wine. While wine has a more particular blessing, if they drink wine first the grapes will not taste sweet in their mouths. One should do those things that ensure the food has the best taste so that the blessing thanking Hashem for the food is more heartfelt and sincere (*Chashukei Chemed*).

A Field Worker Found Himself Suddenly Seized with Life-Threatening Hunger. What Should He Do?

A Jew was working in his friend's field. He was doing early-stage work. He was pulling out underdeveloped onion bulbs to allow more room for the larger onion plants. He found himself overcome by a ravenous hunger—*achazo bulmos*. His life was in danger. He needed food soon. When a life is in danger, Torah law may be violated. However, the person should choose the lesser violations before the more severe sins. What was the worker to do? Should he take some of the small onions and eat them? Perhaps he should leave the onions and run to the home of his employer and steal some food and eat it?

Our *Gemara* teaches that while the Torah allows a worker to eat from the produce in the field while he is working on late-stage activities (all the labors from harvesting until the completion of the pile of wheat—*miru'ach*), he is not allowed to eat food while he is doing early-stage work—such as pulling out early-stage onions to enable larger onions to have more room in which to expand. *Kiryas Melech* (*Hilchos Sechirus* 12:3) is of the opinion that a worker who takes food and eats it when he is not allowed to, such as when doing early-stage work, or if he takes more than what he needs to fill himself, violates two prohibitions: *vechermeish lo sanif* and *lo sigzol*—the prohibition of theft. *Minchas Chinuch* (*mitzvah* 577) argues that a worker who eats when the Torah did not allow him to only violates the prohibition of *vechermeich lo sanif*, and does not violate the law against theft, *lo sigzol*.

According to *Kiryas Melech*, the worker in our scenario should run to the employer's home and steal some food. That would merely be one sin. If he eats the premature onions that he pulled out, he will violate two sins. However, according to *Minchas Chinuch* he should eat the onions. The onions are prohibited with a mere prohibition between man and God, *vechermeich lo sanif*. This sin is less than theft, which is a sin between man and man and carries a requirement of repayment.

In conclusion, Rav Zilberstein argued that the worker should go to the home of the employer and steal food with the intent to repay. *Shulchan Aruch* (*Choshen Mishpat* 359:4) rules that if someone's life is in danger and he can only save himself by stealing, he should steal with the intent to repay. Such theft is a light sin. It is preferable to eating the onions that according to *Kiryas Melech* and others might actually be two sins, theft and *vechermeich lo sanif* (*Chashukei Chemed*).

Bava Metzia 90**May a Child Hide the Reality of Dad's Medical Condition from His Father?**

A man was deathly ill. He told his son, “Talk to the doctors, and then please tell me everything, even if it is bad news. I want to know the truth about my condition.” The doctors told the son they had no hope. Was the son obligated based on *kibbud av* to tell his father the truth?

Rav Zilberstein pointed out that our *Gemara* teaches that if generosity is not helpful, one should not give. The Torah commands the farmer not to muzzle his ox while the animal is stepping on grains on the threshing floor. However, our *Gemara* teaches that if the ox has an upset stomach and is suffering from diarrhea, then the farmer should muzzle the ox. Hashem gave the ox the right to snack to help the ox. If it would hurt the ox to ingest food, for he would then have diarrhea, the farmer may muzzle him. Based on this principle, Rav Zilberstein pointed out that if a poor man was addicted to drugs and asked you for a donation, you should not give him any cash. Giving money to an addict will enable him to continue his horrid habit. He might die from the drugs. Hashem wants us to help the poor by giving them charity. He does not want us to enable abuse.

Therefore, if it will hurt the father to hear dispiriting information, the son should not tell the news to the father.

Shu”t Betzeil Hachochmah (cheilek 2 siman 55) argues that prayer can change nature (see *Rabbeinu Bechaye Devarim 11:13*). If a man loses hope, because he hears that the doctors are very pessimistic, he might stop beseeching Heaven. He then will not have the blessing of prayer improving his reality. Some might argue that the son should tell his father the truth about his condition to encourage the father to repent before his end and to prepare a proper last will and testament. Rav Zilberstein thought that those rationales should only be used if the son is confident that the news will not dispirit his father at all. However, if there is doubt and a possibility that hearing the bad news will dismay the father, causing him not to pray, or damage him in another way, the son should be quiet and not tell his father. Our *Gemara* teaches that when the giving is not helpful, you do not give. The same is true in regards to a son with his father. There is no *mitzvah* of *kibbud av* if it will hasten, *chas veshalom*, the passing of a father (*Chashukei Chemed*).

Why Is Mar’is Ayin Prohibited?

Our *Gemara* mentions the concept of *mar’is ayin*. The *Gemara* was teaching about the prohibition to muzzle an ox while it threshes. The Torah stated, “*Lo sachsom shor bedisho*”—“Do not muzzle an ox in its threshing.” The Torah stated “*bedisho*,” meaning in its threshing, because it only dealt with food that was permissible to the animal. If someone was using his animal to step on *terumah* or *ma’aser* grains, there is no Biblical prohibition to muzzle the ox. *Terumah* grains are

not “its threshing.” However, a farmer should not muzzle his ox, even while it steps on *terumah* grains, due to appearance—*mar’is ayin*. An observer will not know that the grains are *terumah*. It will appear to the onlooker that the farmer is violating the Torah’s command of *lo sachsom shor bedisho*. To resolve the challenge of *mar’is ayin*, the *Gemara* said the farmer is to bring a handful of grains and hang them around the neck of the animal so the animal can snack even while it is muzzled from the *terumah* produce.

What is the logic of this law? Why should a farmer need to hang grains around the neck of his animal that is threshing *terumah* kernels? The Torah allows for muzzling a beast threshing something that is not “*disho*.” Why does the farmer need to care about appearance?

Ran in *Beitzah* (*daf* 5 in the old *Dapei HaRif*) suggested two possibilities for the rationale of *mar’is ayin*. One, people might learn the wrong lesson. Onlookers will not know that he is muzzling his cow when it threshes *terumah*. They will think he is muzzling it when it is threshing permissible grain. They will possibly muzzle their animals while the beasts thresh permissible food. Second, the farmer might make a mistake himself. If he performs an action that resembles a sin, he might think that the sin is permitted. In the future he might muzzle his cow even when it is threshing non-sacred produce.

Nesiv Binah suggests that both rationales are true. The *halachah* teaches that a person who wishes to drink fish blood must have fish scales in the cup. It also teaches that a person who is eating a meat meal and wishes to drink almond milk should place almonds on his plate. These are both situations of *mar’is ayin*. Why in regards to fish blood did he need the scales in his cup, while in regards to almond milk the almonds on the plate were enough?

Nesiv Binah explained that blood is a forbidden item. Animal blood is prohibited by the Torah. Blood forbidden due to *mar’is ayin*,

such as fish blood, is a prohibition for the sake of the eating person. The person eating might forget that he is consuming fish blood. He might think, in the future, that he can drink regular blood. He needs fish scales in his cup to remind him that it is fish blood. However, almond milk is essentially a permitted item. It is like apple juice and orange juice. It is a fruit juice. A man who drinks almond milk with his meat meal only has a problem of *mar'is ayin* due to others who see and think that he is consuming cow milk with meat, and they may make a mistake. For others, it is sufficient to leave almonds on his plate. He does not need to put the almonds into his cup (*Portal Daf Hayomi, Alon Yomi Lelomdei Daf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 91**Is Dairy Bread Treif?**

Our *Gemara* teaches that one may not knead milk into dough and bake dairy bread. Someone might forget the bread is dairy. He might eat it with hot meat. He will violate the law of *basar bechalav*—mixing milk and meat together. Our *Gemara* teaches that dairy bread is prohibited even when the eater wishes to eat it with salt and is not intending to eat it with meat. *Shulchan Aruch* (*Yoreh Dei'ah* 97:1), based on a *Gemara* in *Pesachim* (36a), rules that if the bread was baked in an unusual shape to mark it as dairy, or if only a small amount of dairy bread was prepared (*Aruch Hashulchan*, in *se'if* 4, defines a small amount as enough bread for a family for a day), then it is permitted.

Bakers in Baghdad once baked many loaves of bread with dairy butter. There was nothing unique about the shape of the bread. They asked their *rav* what they should do. He told them they were not allowed to eat the bread; however, they could sell the bread to gentiles. They asked if there was any way they could use some of the bread. They wanted to make a rice dish. The rabbi told them they could take the bread, break it into small strips, and cook it in a dairy pot together with rice. He felt that once the bread was cooked it was

no longer bread and no longer included in the Rabbinic prohibition against dairy bread. When others heard of this ruling they disagreed. The question came to the *Ben Ish Chai* (*Shu"t Rav Pe'alim cheilek 2 Yoreh De'iah siman 11*).

Shulchan Aruch rules that dairy bread is prohibited unless only a small amount was prepared or it was baked in a unique shape. What would happen if a large amount of dairy bread was baked and the loaves were in the normal shape? Could someone take the loaves, break them into small pieces, and thereby permit them? Now there would only be a small quantity of dairy bread.

Rav Yehonosan Eibschutz (*Kereisi Upleisi* 97:3) quoted his grandfather as permitting the breaking up of large amounts of dairy bread. Rav Avraham Danziger, author of *Chayei Adam*, disagreed. He was of the opinion that dairy bread, baked in large quantities and in the same shape as regular bread, is Rabbinically *treif*. It is like a *neveilah*. Just as one cannot make a non-kosher animal kosher, *treif* bread cannot be made kosher. He pointed out that our *Gemara* states that if a person mixed milk into the dough, the bread cannot be eaten at all, even with salt. If the grandfather of the *Kereisi Upleisi* was correct, why didn't the *Gemara* mention the possibility of permitting the bread by breaking it up into small pieces? *Ben Ish Chai* therefore concluded that since later authorities define dairy bread as *treif*, cooking it in a pot would not make it permitted. He disagreed with the ruling of the rabbi. He told the bakers they could not bake it with rice. Prohibited bread does not magically become permitted by being cooked in a pot. However, he did permit the bakers to sell the bread to gentiles. Some might argue that maybe the gentiles will in turn sell it to Jews, who might eat it with meat. *Ben Ish Chai* rejected this fear. Perhaps the gentile will not sell the bread to a Jew; furthermore, even if he does, the Jew might not eat

it with meat. Therefore, since it is a *sfeik sfeikah*—a doubt upon a doubt—there was no reason to prohibit the sale.

During the first few years of Israel’s existence, there was a shortage of food. Some suggested adding milk powder to the bread so it would be more nutritious for children. They proposed putting stickers on the bread declaring that it is dairy to try and solve the halachic problem of dairy bread. *Shu”t Kol Mevaser (cheilek 1 siman 10)* rejected the proposal. He pointed out that once the bread is baked it is prohibited. Just as *Ben Ish Chai* taught that after it was baked cooking the bread could not permit it, adding two stickers could not permit it after it was baked either. Furthermore, stickers could help if people looked at the stickers while eating the entire loaf. However, if someone cut a slice from the middle, no one would know that it was dairy bread. People might eat that slice with meat and the fears of our Sages would be realized.

Today, the Israeli Rabbinat demands that all cheese bourekas be baked in the triangular shape. They do this because of the issue of dairy bread. Potato bourekas are frequently eaten with meat. If the cheese-filled dough is square like the potato ones, a person might mistakenly end up eating cheese bourekas with meat. Just as the dairy bread has to be in a unique shape, the Rabbinat insists that the dairy bourekas be in a unique shape (*Hamevaser Torani, Me’oros Daf Hayomi*).

Can a Worker Answer the Phone for His Wife’s Business While Working for His Boss?

Ya’akov works in Shimon’s store. He is a loyal employee. He tries to fulfill Jewish law as *Rambam (Hilchos Sechirus 13:7)* defined it: “Just

as the owner of the establishment is enjoined not to steal from the poor worker by withholding pay, the worker may not steal from the boss. He may not take a small break here and relax a bit there and end up fooling the employer all day. A worker must be careful to give all his time to the boss. Our Sages ruled that a worker need not recite the fourth blessing in the Grace After Meals in order to avoid stealing time from the employer. In a similar vein, the worker must toil with all of his energy. Our father Ya'akov declared to Lavan's sons, 'With all of my strength I worked for your father.' That was why our patriarch Ya'akov received reward in this world, as the verse declares, 'And the man's wealth increased more and more.'" Ya'akov's wife has a business. Ya'akov tries to help her with it. She often likes to consult with him. May he answer her calls for brief consultations while he is on the job in Shimon's store?

Our *Gemara* discusses the law that mandates that the employer allow his employee to snack on grapes when he is in the field doing late-stage work with the grapes. Our *Gemara* teaches that the employee may not interrupt his work and take a break to eat. The Torah allowed the employee to eat while working. However, he is not allowed to stop his work to eat.

The *Gemara* (*Ta'anis* 23b) records a story about Aba Chilkiyah. He was working in the field. When the Sages came he would not even say hello because he felt that such an interruption would be theft from his employer. *Mesilas Yesharim* (chapter 1) writes: "Our Sages exempted workers at the home of a boss from blessings, and therefore certainly the same is true about optional matters. Anyone hired for a day cannot take time for optional pursuits. He owes his time to his boss. If he does not work for his employer he is a thief.... The rule is that if he hired himself out to an employer for a day for a particular job, he must give that entire day to the employer. It has

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been said that ‘rental is purchase for a day.’ He rented himself out. His labor and time belong to his employer. If he takes some of the time for his own benefit he is a thief.” Rav Zilberstein ruled that Ya’akov was not allowed to take the calls from his wife while on the job for Shimon (*Chashukei Chemed*).

Bava Metzia 92**What Should You Plant in the Condominium Garden: Flowers or Fruit Trees?**

A man owned an apartment in a condo complex. All of the apartments were owned by Jews. There was a common garden. Someone proposed planting flowers and shady trees. Another person wanted to plant fruit trees. The dispute came to Rav Zilberstein. Who was right?

Rav Zilberstein ruled that they should plant a pomegranate tree for several reasons. First, *Da'as Zekeinim* quotes Rabbeinu Moshe on the verse (*Shemos* 23:10) וּשְׁשׁ שָׁנִים תִּזְרַע אֶת אֲרֶצְךָ—“And six years you shall plant your land”; Rabbeinu Moshe held that Scripture was mandating that the Jew plant fruit and grain in the Land of Israel during the first six years of the *shemittah* cycle so that he will fulfill the *mitzvah* of donating *terumah* and *ma'aser* from produce. By planting pomegranates instead of flowers, the apartment owners will fulfill the mandate of Rabbeinu Moshe. They will fulfill the command to fill the land with the *mitzvos* of *terumah* and *ma'aser*. Secondly, the *Gemara* in *Pesachim* teaches that a branch of pomegranate wood was used on *Erev Pesach* to roast the paschal lamb. The branches of the pomegranate tree are unique. Even when heated over a roasting pit, they do not release liquids. Planting a pomegranate tree is a display

of faith in the coming of Mashiach and the imminent restoration of the Temple. Planting flowers or shady trees would not express faith in imminent redemption. Finally, it is rare to fulfill the *mitzvah* of allowing a worker to eat from the fruit he is picking. City dwellers do not have workers working for them in the field. However, if the apartment owners plant a fruit tree in their garden, they will likely hire a gardener to take care of the tree; they can then allow him to eat from the fruits and all will fulfill this *mitzvah*. *Seifer Hachinuch* explains that the purpose of the *mitzvah* to allow the employee to eat is to train us to be generous individuals. When we display a giving heart and allow our employees to eat from the produce in the field, it invokes divine blessings.

This final rationale would apply to a condo complex outside of Israel as well. City dwellers rarely get to fulfill the *mitzvah* of allowing their employees to eat from the fruit they pick. Our *Gemara* taught that the law to allow an employee to eat applies even when the employee is only working on a single cluster of grapes. He may eat those grapes. If apartment owners plant a fruit tree, their gardener will be the employee whom they can allow to snack from the fruits. In this way, they will fulfill a special *mitzvah* and bring blessings to themselves. Planting flowers will not enable such a spiritual achievement (*Chashukei Chemed*).

Could a Worker Fulfill His Mitzvah of Matzah with Grain of His Employer That He Was Allowed to Eat?

Our *Gemara* continues to discuss the employer's *mitzvah* to allow his

employee to snack on the fruit and grain he is gathering in the field. The *Gemara* tries to define the nature of the law. Is it a gift of Heaven or is it a right of the employee? *Rashi* explains the two possibilities. If the fruit is a right of the employee, the meaning of the law is that Hashem added to the wages the employee receives. In addition to money he is entitled to produce. Since the produce is owed to him, he has the right to gift it to his wife. He could tell the employer, “I won’t eat, but my wife will come and eat the fruit I was entitled to.” His wife could then come and eat. Just as he could transfer his wage to his wife, he could gift the grain to her. However, if his eating the fruit was a gift from Heaven he would not be able to gift it to his wife. Hashem gave him the gift and he would not have the rights to give it to another person. *Rashi* writes that if the employee already lifted the fruit, even according to the point of view that the fruit was a gift from Heaven, he could give the fruit to others. *Tosfos* disagree with *Rashi*. *Tosfos* rule that if the grain was part of the wage then he could gift it to others. However, if it was a gift from Heaven, Hashem only gave the worker the fruit once he was chewing it in his mouth. Therefore, even if he picked it up, he could not give it to his wife or kids.

Rav Yosef Dov Soloveitchik ז”ל defined the differing points of view. *Rashi* is of the opinion that the idea of a gift from Heaven is that Hashem tells the farmer to gift the grain to the employee. Once the employee lifts up the grain, it is fully his. However, according to *Tosfos*, the idea of a gift from Heaven is that the fruit belongs to Hashem and the Almighty allows the worker to eat it. The fruit never belonged to the worker.

A difference between these points of view would be in regards to *matzah*. To fulfill the *mitzvah* of *matzah*, the one who eats the *matzah* needs to own the *matzah* he eats. What would the law be regarding a worker who took grains and made them into *matzah*?

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According to *Rashi*, the *matzah* is his and he can fulfill the *mitzvah*. According to *Tosfos*, the *matzah* is the property of Heaven and he could not fulfill the *mitzvah* with it, because he would not be the owner (*Reshimos Shiurei HaGrid Soloveitchik Bava Metzia*).

Bava Metzia 93**Must a Community Pay to Replace a Torah Scroll They Borrowed If It Was Lost in a Fire?**

Our *daf* has an important lesson about the four types of watchmen. An unpaid watchman—a *shomeir chinam*—must pay for the object if it was lost due to negligence. However, if the item was lost by theft, being misplaced, or *oness*—an act no human could prevent—the volunteer guard is exempt from paying. A paid watchman is responsible to reimburse the owner of the object if the item was stolen or lost. He is only exempt in the case of *oness*. A renter has the same law as the paid watchman. A borrower has to pay even in the case of loss due to *oness*.

Ran (*teshuvah* 19-20) argued that if a person borrows a Torah scroll, he would be exempt from paying if there was damage due to an *oness*. When someone lends a Torah scroll he is doing a *mitzvah*. He is enabling another Jew to use the Torah scroll. When doing a *mitzvah* we have the rule of *oseik bemitzvah patur min hamitzvah*—one who is busy with a *mitzvah* is exempt from other *mitzvos*. This “*perutah deRav Yosef*” is worth money. The lender is therefore receiving a financial benefit in lending out the Torah scroll. He is therefore a lessor and not a lender. He is getting value in return for

his letting someone else borrow his scroll. The borrower of the scroll is responsible for loss and theft, like a renter, but he would be exempt in cases of loss due to *oness*. *Shach* (*Choshen Mishpat* 72:29) quotes the *Ran* and accepts his view as halachically decisive.

Miktzo'a BeTorah rejected the *Ran* and the *Shach* due to the ruling of *Rosh*. *Rosh* (*Sukkah* chapter 3 *siman* 30) rules that if one borrows an *esrog* for use on *Sukkos*, he must pay for any loss, even loss due to an act of Hashem. A lender of an *esrog* on *Sukkos* is fulfilling a *mitzvah*. He is enabling his friend to perform a *mitzvah*. The lender would therefore have a financial gain. If a poor man approached him at the moment of the lending, he would not have to give charity because he would be busy with another *mitzvah*. Nevertheless, *Rosh* ruled that he had the status of a regular borrower, not a renter, and he was obligated to reimburse in the case of loss. *Miktzo'a BeTorah* ruled that a borrower of a Torah scroll would also be obligated in a case of loss due to an *oness*.

A synagogue borrowed a Torah scroll. There was a fire. No one could have prevented it. It was an *oness*. The scroll was ruined. Did the community have to pay for the scroll? According to *Ran* and *Shach*, they would be exempt. According to *Rosh* and *Miktzo'a BeTorah*, they would be obligated to pay. *Nesivos Hamishpat* (*Choshen Mishpat Biurim siman* 17) argues that *Ran* would not consider a momentary gain of *oseik bemitzvah* enough to make the owner of the scroll a lessor and not a lender. He argued that the case of the *Ran* referred to when the borrower gave an animal as collateral to the owner of the scroll. Whenever the owner of the scroll took care of the animal, he would be exempt from giving charity. This would happen often. As a result, he would not be considered a lender. He would be considered someone who received benefit from his action. However, someone who lends out an *esrog* or a Torah scroll without collateral is receiving

minimal benefit. He is only exempt from charity at the moment he lends the object. As a result, the transaction would be considered *she'eilah*—borrowing—and the borrower would be responsible for all damages, even those caused by *ones* (*Heichalei HaTorah*).

Bava Metzia 94**Was the Husband Allowed to Deduct
from the Kesubah Because His Wife
Had Lost Some of His Jewelry?**

Three hundred years ago, a painful dispute was argued before the leading rabbi in Egypt, Rav Avraham ben Mordechai HaLeivi, author of the work *Ginas Veradim*. The lead disputant was a husband who was a jewelry merchant. He would make necklaces, bracelets, and rings, and he would sell them. His wife loved jewelry. She would often borrow the pieces and wear them. She often lost them. The husband controlled himself for many years. He kept asking nicely that she be more careful. Eventually he lost his patience. He was very upset for all the precious items she had lost. The frustration of years emerged. He decided to divorce her. He demanded the right to deduct the value of all the jewelry pieces she had lost from her *kesubah*.

Our *Gemara* teaches that a borrower—a *sho'eil*—is responsible for loss due to negligence, theft, misplacing, and even an act of God such the animal suddenly breaking a leg, getting captured, or dying. She had been a borrower of his jewelry. She had negligently lost the items. He therefore demanded reimbursement. She argued that based on our *daf* she was not responsible for any losses. Our

Gemara teaches that while a borrower is usually highly liable, if the owner of the borrowed item was hired by the borrower (at the time of the borrowing), the borrower would not have to pay if the item was damaged or lost. This is called the law of *be'alav imo*. *Be'alav imo* means that when I approach Jake and say, "Please let me borrow your car and please help me out by bringing me a cup of coffee," if he agrees to both requests and brings me the drink, then I would not have to pay even if the car was later stolen. Since the owner of the object was hired by me (even asking for a favor counts as "hiring") at the time of the borrowing of his object, all future monetary obligations due to the need to guard the object were abrogated. The wife argued that the husband had to work for her. While they were married, he had been "hired" by her. Therefore, while she had borrowed his jewelry, at the time of the borrowing it was a scenario of *be'alav imo* and therefore she had no liability and was exempt from financial responsibility for the loss of jewelry. The author of *Ginas Veradim* was asked to adjudicate the dispute.

Initially he tried to convince the husband to forgive the financial loss and to reconcile with his wife. The husband refused and demanded that Torah law be applied.

Rambam writes (*Hilchos Ishus* 21:9): "A wife who broke utensils while doing her work in her home is exempt from paying. This is not based on original Torah law. Rather, this was a Rabbinic enactment. If you did not exempt her from paying there would never be peace in the home. She would avoid doing most activities for fear of financial cost and there would be fights between the two of them." *Ra'avad* disagrees with these words of *Rambam*. He writes: "This is not correct. The reason she is exempt is *shemirah beba'alim*—watching with the owner of the object being in the employ of the watchman, because the husband is 'hired' by his wife to do work for her at all times."

Ra'avad says that a husband is hired by his wife. He is of the opinion that she would have no financial liabilities due to not watching his stuff, because he was her employee. According to *Ra'avad*, the wife would not owe money to the husband in the case brought to the *Ginas Veradim*. The husband was working for her when she borrowed his jewelry. However, according to *Rambam*, a husband is not considered an employee of his wife. Apparently, since, unlike an employee, a husband can choose when to fulfill his obligations to his wife, and he is not automatically at her beck and call, he is not considered hers for the law of *be'alav imo*. There was a Rabbinic enactment exempting her from liability when she was doing her work for him. However, in our case, he had not wanted her to wear the jewelry. She was not working for him in wearing it. The Rabbinic enactment was not made for her to wear jewelry; it was made for her to cook and do the tasks enumerated in Tractate *Kesubos*. Therefore, she had been a borrower of the jewelry, his responsibilities as a husband did not create the status of *be'alav imo*, and she owed him for having lost his jewels; and therefore, according to *Rambam*, he was entitled to subtract the value from the *kesubah* (*Me'oros Daf Hayomi*).

Bava Metzia 95**When Borrowing Tables and Chairs for a Bar Mitzvah from a Table Gemach, Can the Gemach Take a Check as a Deposit to Make the Borrower Cover Damages?**

Our *Gemara* continues to discuss the concept of a borrower—a *sho'eil*, and *be'alav imo*—the concept that the borrower has no liability if the owner of the object is in the employ of the borrower. Rav Elchanan Peretz discussed the usual practices of a *gemach* dedicated to lending tables and chairs for *bar mitzvah* parties.

In an Israeli town there is a *gemach* for supplying tables and chairs when needed for a party. Anyone can approach the *gemach* and ask to borrow the tables and chairs. They will give him the items for his party. Before he gets them, he has to give the *gemach* a check. They hold the check as a deposit. If there is damage to the tables, they will take the value of what was lost from the check.

Normally, a borrower must pay for theft, loss, and even breaking or death of the borrowed item. However, a borrower is exempt from paying if the item he borrowed died because of the work he borrowed it for—*meisah machamas melachah* (*Bava Metzia* 96b). When a table is damaged through normal use at a party, it is “dying” because of the

work it was borrowed for. Usually, a borrower is not responsible for such loss. In monetary matters, conditions can be imposed in excess of Torah law. The Torah exempts the borrower if *meisah machamas melachah* occurred. The *gemach* is stipulating that they are lending on condition that the borrower will pay even if there is *meisah machamas melachah*. They can make such a stipulation. Perhaps it would be even better if, instead of merely taking a check, they would have the borrower lift a handkerchief as a *chalifin* acquisition—imposing upon himself the obligation to reimburse the *gemach* even if the item was damaged due to its use for the borrowed purpose.

A question can be raised. If I borrow an item from a man who is working for me, I would not be responsible to pay him if any damage happened to the object. This is the law of *be'alav imo*.

Seifer Hachinuch (mitzvah 60) writes that the reason for the Torah's law of *be'alav imo* is that since the owner of the object was with the borrower at the moment of the borrowing, the Torah expected him to watch the object. *Shu"t Sho'eil Umeishiv (Mahadura Kama cheilek 1 siman 265)* added that since the owner was there at the time of the borrowing, the borrower did not obligate himself to truly watch the item that entered his domain. The borrower of the tables and chairs first gave his check to the people at the *gemach*. When he did so, they became workers for him. They were watching his check. He later got tables from them. This should be a loan of *be'alav imo*. He should have no responsibility to pay for any loss to the borrowed items. He was borrowing from a *gemach* while the *gemach* was already helping him because they had to watch his check to make sure that it not get lost. In light of these principles, when the *gemach* asked him for a deposit they were creating a set-up that would exempt him from paying for damage to the items.

Rav Peretz suggested an interesting answer. It is not clear how

halachah views a check. Rav Shimon Klein was told by Rav Elyashiv *zt"l* to ask Rav Benzion Abba Shaul what the meaning of a check was. Unfortunately, he was unable to ask before the *Rosh Yeshivah* of Porat Yosef passed away. A check can be viewed as an IOU. It is a *shtar chov*. It is a piece of paper on which the check writer promises to later pay the recipient. Alternatively, it can be defined as an item of value. It is instructions to a bank. These instructions are valuable. People would pay for them. If a check is money, then perhaps the question has standing. The *gemach*, in taking the check as a deposit, became workers for the depositor, as they were now watching his money for him. However, if a check is defined as an IOU, there would be no grounds for the question. It is impossible to become a *shomeir* on a *shtar*. The *gemach* had a loan document in their possession. They were not halachically watchmen for the borrower. As a result, he could be obligated to pay for the damage to the tables and it was not a borrowing of *be'alav imo* (*Misaviv Lashulchan*).

Bava Metzia 96**A Fundraiser Misrepresented a Check to Solicit a Donation. Did He Need to Return the Funds?**

A collector traveled to the US to collect funds. The cause he was collecting for was unknown in America. He went to a well-known Torah sage. He told the man, “I have ten thousand dollars cash that I have collected for my *yeshivah*. I am afraid someone might steal the cash from me. It is not safe to walk around with so much loose cash. Can you give me a check, made out to my *yeshivah*, for ten thousand dollars? I will then give you the cash.” The rabbi gave him the check. He gave the rabbi the cash. He then went to wealthy admirers of the rabbi. He told them that he was collecting for his *yeshivah* and without saying anything placed the check from the rabbi to his *yeshivah* for ten thousand dollars on their tables. The philanthropists were impressed and donated generously. The fundraiser now felt guilty. He asked Rav Yitzchok Zilberstein, “Do I need to return the money? They gave thinking the rabbi had given me a generous donation. They did not realize the rabbi merely gave me a check for cash I gave him. He had never truly endorsed my institution.”

Rav Zilberstein initially suggested that *Rashi* on our *Gemara* might be a source exempting the fundraiser from having to return what he solicited. Our *Gemara* deals with questions Rami bar Chama had about laws of borrowing. A borrower has great liability because he receives a great benefit—he has use of the item without having

to pay. Asked Rami bar Chama, what about a person who borrowed a cow to appear wealthy? He did not get any benefit directly from the cow. He did not plow with it. He did not milk it. He had it so that others would think it was his, and would think he was wealthy. Is he considered someone who received a benefit and a borrower? *Rashi* explains, “He borrowed the cow so that he would appear to be a wealthy and prominent individual. If he appeared wealthy, others would not avoid him. He would get loans and credit.” *Rashi* seems to say that it is permissible for a person to borrow objects to appear wealthier than he truly is. If so, perhaps the fundraiser also was allowed to create the impression that the *yeshivah* was more widely supported than it truly was.

However, Rav Zilberstein later rejected the comparison. On our *daf*, the person was borrowing a cow so that a lender would lend to him. Perhaps a lender is supposed to realize that sometimes people borrow cows. If he did not investigate further, he was willfully deciding to forgive and lend anyway. However, the donors truly thought that the famous rabbi had given generously. It is not reasonable to suspect that the rabbi’s check was merely a check to pay for cash. Perhaps, as a result, the fundraiser was guilty of *geneivas da’as*—theft through deception—and he should return the funds.

Rav Zilberstein brought the question to Rav Elyashiv. He answered: “We must do an investigation. If the donors give what they should to charity, this was deceptive, and they should be reimbursed. However, if you find that one of the donors does not give ten percent of his income to charity, the Jewish court was entitled to coerce him to pay his fair share to charity. The fundraiser was wrong in what he did. However, now it is after the fact. People want to give charity and fulfill their obligations. It should be viewed as the court forcing a wealthy man to give the ten percent that he

is anyway supposed to give. To such a man there would be no need to return his donation.”

Rav Herschel Schachter *shlit”a* disagreed with this conclusion. He was of the opinion that the donated funds were an example of *hekdeish beta’us*, mistaken consecration. The fundraiser would have to go back to the donors and offer to refund the funds to them. They had only given generously because they thought the great rabbi was a donor. The great rabbi was not a donor. Had they known the truth they would have given less. The solicitor needs to speak with them and offer them the chance to only donate what they normally would have given (*Chashukei Chemed*; see also the article on *Bava Metzia* 60 “Coloring Hair and Permissible Deception”).

The Head of the Co-op Board Borrowed a Ladder. It Was Stolen. Did He Have to Pay?

Reuvein was the head of the co-op board in the building in which he lived. A light bulb in the building entrance went out. He wanted to repair it. He asked Shimon if he could borrow his ladder. Shimon graciously gave him the ladder. When climbing the ladder he realized that he needed another piece for the repair. He left to go to the store to get the piece. When he returned, the ladder was gone. It had been stolen. Did he need to give Shimon a ladder since as a borrower he was responsible for theft?

Our *Gemara* deals with partners who borrow and partners who lend. What is the status of the co-op board president?

Rav Zilberstein ruled that the man was not a borrower. A *sho’eil* has great liability because he gets all the benefit and the owner of the

item has no gain. However, in our case, Shimon has a gain. When the light will be repaired, he too will gain. Therefore, the co-op board president was not a *sho'eil*. However, he was a paid watchman. He gained from the ladder that he was watching. Therefore, he was responsible for an incidence of theft. However, he was representing all the residents when he borrowed the ladder. If he was not negligent, they were all responsible for the theft. He therefore could take co-op funds and use them to purchase the replacement ladder for Shimon (*Chashukei Chemed*).

Bava Metzia 97**A Scholar Refused to Teach a Student.
Did He Need to Ask the Student to
Forgive Him on Erev Yom Kippur?**

A Torah teacher was once approached by a student who asked him for help. The student was trying to understand a paragraph in the Code of Jewish Law. He asked the teacher to explain it to him. The teacher said, “Work at it. Try hard to figure it out yourself. That is the best way to learn.” The student was upset and walked off. The eve of *Yom Kippur* arrived. *Shulchan Aruch* rules that sins between man and man are not forgiven by *Yom Kippur*. The offender must mollify the person he hurt. He must apologize to gain forgiveness. The teacher approached Rav Zilberstein. Did he need to apologize to the student? Had he committed a sin between man and man when he had refused to teach? He regretted his actions. He had apologized to the Almighty. Was that insufficient? Did he still have to apologize to the man he had turned down?

Rav Elyashiv ruled that a conversation in our *Gemara* resolved this question.

Our *Gemara* discusses the law of *be'alav imo*. If I borrow an item, but before that or simultaneously with the borrowing I had

the owner of the item in my employ, then I would have no liability if the item was stolen or ruined. Rava's students told him, "You are in our employ. You are teaching us. If we borrowed an item from you, the law of *be'alav imo* would be triggered. We would not have to pay if it was stolen." Rava responded with fury: "Are you trying to deny me my financial rights?! You are wrong. I do not work for you. You are the ones working for me! You cannot force me to teach a particular subject. I, though, can choose to switch our topic to a different tractate so that the lesson will help me remember. You are performing a service for me. If I borrowed from you and a theft occurred, I would be the one gaining financially. I would not have to pay you." The *Gemara* concludes that both were wrong. During the *kallah*—a large communal time of learning such as the thirty days of preparing for a festival—Rava and Torah teachers would be obligated to the students. They would have to teach the laws of the forthcoming festival. However, during the rest of the year, the students were the "employees" of the teacher because he could switch the subject matter he taught as per his wishes.

Rav Elyashiv explained that the dispute between Rava and his students was about the definition of the obligation to teach Torah. It is a *mitzvah* to teach Torah. Does a service performed because of a *mitzvah* create a status of *be'alav imo*? Our *Gemara* is teaching that it depends on the nature of the *mitzvah*. An act obligated because of a *mitzvah* between man and God would not create a *be'alav imo* status. An act obligated by a *mitzvah* between man and man would render the person obligated to his friend and include him in the *be'alav imo* category.

Rava's students thought that Rava their teacher was fulfilling a *mitzvah* between man and man when he taught them. They therefore believed he was obligated to them and *be'alav imo* was applicable.

Rava was upset by them. He believed that the teacher had a *mitzvah* to Heaven, not to the students, to teach. He thought the teacher was not obligated to teach a particular subject to the student. Therefore, if the teacher would lend to the student, then *be'alav imo* would not be triggered. The *Gemara* concluded that during the *kallah*, when a particular set of laws had to be conveyed, the teacher was obligated to the students. During the rest of the year, the teacher's teaching of Torah to his students was a *mitzvah* between man and God.

In light of this we can understand, in our case, that if the student had asked the scholar to teach him a paragraph in the laws of *kashrus* or *tefillin*, it was a man-to-God obligation. The teacher had not committed a crime to the student. On *Erev Yom Kippur*, he did not need to apologize to the student. However, if the student had asked him for help with a law about *Pesach* during the month before Passover and he had refused, he had denied the student what he owed the disciple. He would have to apologize to him before *Yom Kippur* to gain forgiveness (*Chashukei Chemed*).

Bava Metzia 98

**A Child Left His Bedding with
His Teacher. The Father Owed the
Teacher Money. The Sheets Were
Stolen. Was the Teacher Liable?**

A poor man wished to hire a *melamed* for his young son. He could not afford the cost. He heard that in the next town there was a skilled Torah teacher. He sent the teacher a letter: "I deeply desire to teach my son Torah. I understand you are a gifted teacher. I will pay you money. Can my son live in your home and learn from you?" The teacher responded that he would gladly host and teach the young boy. However, he too was very poor. He did not have an extra set of bedding for the boy. The lad could stay with him but he would have to bring his own sheets, pillows, and blankets. The father agreed to the arrangement.

The young man stayed with his teacher. At the end of the term he traveled back to his village. He forgot to bring his sheets, pillows, and blankets back. His father was very upset. They needed the sheets. Furthermore, the father had not paid the tutor all he had promised and owed him. He was now embarrassed to ask for the sheets back. Besides shame, he worried that if he demanded the bedding back,

the *melamed* would refuse to return it. He would claim that he was seizing the sheets, pillows, and blankets as the pay that he was owed.

A few weeks later there was a theft from the home of the teacher. Among the items stolen were the sheets, pillows, and blankets of his young student. The teacher informed the father of the unfortunate news. The father argued that the teacher was a paid watchman—a *shomeir sachar*. Holding the bedding was a benefit. As a recipient of a benefit, the *melamed* was a paid watchman who should have full liability for the theft.

The question came before the *Maharsham* (*cheilek 7 siman 2*). *Maharsham* ruled that the teacher did not need to pay. The teacher was an unpaid watchman. He had not asked the student to leave his bedding with him. The student had left the items there and he was doing the student's family a favor when watching the items. As an unpaid watchman he was not liable in the incidence of theft. *Maharsham* proved his ruling from the words of the *Ritva* to our *daf*.

Our *Gemara* discusses the laws of *be'alav imo*—if the owner of the object is employed by the borrower of the item. It asks what the law would be if Reuvein borrowed Shimon's cow when Shimon was working for him, but two months later, restructured the borrowing to be a rental and at that point Shimon was not working for him. Perhaps *halachah* would view each act in isolation. The borrowing had been a case of *be'alav imo*. The rental had not been *be'alav imo*. If each act were to be viewed separately, the renter would have to pay if the rented cow was stolen from the renter. Alternatively, perhaps *halachah* views the rental as an extension of the borrowing. A borrower is liable in the case of theft. A renter is also liable for theft. The responsibility of the renter is merely a continuation of his obligations as a borrower. Since, the owner of the cow was working for him when he borrowed, and the exemption of *be'alav imo* was

triggered, perhaps that exemption continued. If the cow would be stolen from the renter, perhaps he would be exempt from paying. *Ritva* explains that the *Gemara's* question applied only when the renter turned the borrowing into a rental in the middle of the term of the borrowing. However, if he borrowed the cow for a month and the month had passed, if two weeks after that he rented the cow—even though the cow was in his domain for the entire six weeks—the rental would certainly be viewed as a new situation and judged on its own. If the owner of the cow was not working for him at the time of the rental he would not be subject to the leniency of *be'alav imo*.

In our case, the teacher had the student in his home for a period of time, the semester. That time had ended. Stuff had been left in the home of the teacher. As per *Ritva*, the status of those items was independent of what had happened before. The teacher was merely a volunteer watchman on the bedding. He was therefore not responsible for theft. The loss caused by the theft was to be borne by the father of the child (*Daf Yomi Digest*).

Bava Metzia 99**When the Borrower and Lender Argue
About the Value of the Single Lost
Borrowed Earring, Who Is Right?**

A man had a set of gold earrings. Together they were worth one hundred shekels. Each was worth fifty shekels. If one got lost, the set would be ruined. The remaining earring would only be worth thirty shekel. The man lent the earrings to his friend. His friend lost one of the earrings. He demanded that the friend give him seventy shekel. He pointed out that what he now had was only worth thirty. Before the borrowing, he had possessed earrings worth a hundred; the borrower had caused a loss of seventy and therefore should pay him seventy shekel. The borrower argued that he only owed fifty shekel. He pointed out that each earring was worth fifty shekel when he had borrowed the pair. He had lost one of the pair. He should pay for the one he lost.

Divrei Ge'onim dealt with this question. He quoted the *Kol Eliyahu* who wrote that the borrower must pay seventy. *Divrei Ge'onim* agreed that the borrower must pay seventy. He argued that in a case of damage, we would say that the damage was to an item worth fifty and that the damager need only pay fifty. The fact that the owner

of the set suffered a loss of seventy was a *gerama*—indirect damage. A damager need not pay for indirect damage. However, a borrower must pay for the full loss. A borrower is responsible even for losses caused by an indirect act—*gerama*. The borrower should pay seventy when he lost one of the earrings.

Rav Yosef Shaul Natansohn in his work *Sho'eil Umeishiv* agreed with the *Kol Eliyahu*. He ruled that the borrower must pay seventy to the lender. He brought support to his position from the lesson of our *Gemara*. In our *Gemara* we are taught that if a man stole a package of dates, that when sold together are sold for forty-nine and when sold individually go for fifty, he must pay his victim forty-nine. If he stole the package from *hekdeish*—the Temple trust—he would owe the Temple fifty plus a fifth. The *Gemara* explains that *me'ilah* is valued at an expensive rate. There is a special law that teaches that we evaluate damage in a most inexpensive manner. Theft from a fellow Jew is damage. Therefore, it is reckoned cheaply. It emerges from the *Gemara* that damage gets evaluated in a way that benefits the damager; while for a borrower—as a watchman—the courts set a more expensive valuation. In our case, the man was a borrower. The earring therefore was to be evaluated in the more expensive manner. He was to pay seventy for the loss of the single earring from the set (*Hamevaser, Mesivta, Chashukei Chemed*).

Bava Metzia 100**Do Long Fingernails Constitute a Chatzitzah?**

Our *Gemara* deals with oaths. Yet, *poskim* derive a lesson from it about the laws of barriers and immersion—*chatzitzah*.

The *Gemara* mentions the principle that produce that stands to be harvested is considered already detached from the ground. Therefore, while one is only obligated to swear about a dispute concerning movables, a dispute about produce that was about to be harvested also requires an oath.

Shach (*Yoreh Dei'ah* 198:25) quotes the opinion of *Ra'avan*, who ruled that long fingernails are considered a barrier between the waters and the person when immersing in a *mikvah*. His reasoning is that long nails stand to be cut; therefore, following the principle in our *Gemara*, they are considered as though they are already cut. Thus, their presence, by definition, constitutes a foreign detached item separating the water from the one immersing.

Authorities disagree about the exact intent of *Ra'avan*. According to some opinions, every long nail itself is a *chatzitzah*, because it will be cut, and is therefore currently considered detached. According to others, just because the nails will eventually be cut does not make them presently a barrier. Rather, since there is a requirement to cut

one's nails before immersing (out of concern for dirt trapped beneath the nails), it is considered as though the nails stand to be removed before the immersion. According to these views, only something that stands to be removed before immersion is an interposition, but something that would be removed some time after the immersion would not constitute an interposition.

Teshuvos Mishpetei Uziel (cheilek 2 Yoreh Dei'ah siman 32) was asked whether long fingernails are considered a *chatzitzah* nowadays. Since there are many women who grow their fingernails long, as they consider long nails to be more beautiful, the rationale behind considering long nails a *chatzitzah* might no longer apply. Perhaps, so long as the nails are clean, a woman may immerse even with her long nails.

He responded that since women who grow their nails long, generally, have their nails cut by a beautician, we do not consider those nails as though they stand to be cut. Accordingly, he permitted a woman to immerse with long nails.

From the wording of *Ra'avan*, it is evident that he maintains that toenails must also be cut before immersion for the same rationale—namely, that they stand to be cut. *Pis'chei Teshuvah (Yoreh Dei'ah 198:10)*, however, cites *Chamudei Daniel*, who is lenient regarding toenails because people are not generally particular to cut long toenails (*Daf Yomi Digest*).

Must a Rescuer Pay for Damage to a Shirt He Tore When Trying to Rescue?

Our *Gemara* discusses a man who is demanding a large shirt and his friend concedes that he owes him a small shirt. Rav Yitzchok Zilberstein was once asked a question about a shirt claim. It had been a period when many attacks occurred in Israel. A man came into a store with a bulge under his shirt. Others in the store suspected that perhaps he had a bomb under the garment. They asked him to quickly remove his shirt. He refused. A rescuer stepped forward and tore the garment, to see what was making it bulge. He found a wallet under the garment. The man had not been carrying a bomb. The man whose shirt was torn demanded that the other person pay for the damage. The rescuer claimed he should not have to pay. Who was right? Was there liability?

Shulchan Aruch (Choshen Mishpat 380:3) rules that if a rescuer breaks utensils while rushing to save his friend, he need not pay. The Sages made a law exempting rescuers from paying for damage created while trying to rescue. Our Sages did not want rescuers to hesitate and avoid rescuing due to possible financial concerns. One might question the applicability of this law to our case. Here, in fact, there was no danger. Rav Zilberstein ruled that since to most people it appeared that there was a danger, the actions of the man who tore the shirt are defined as rescue. Furthermore, people were deathly afraid. His actions alleviated their concern. Relieving intense fear is also considered an act of rescue. Finally, the man should have taken off his shirt when he was asked to. His refusal was his own fault. He caused his shirt to be torn and the rescuer would not have to pay at all (*Chashukei Chemed*).

Bava Metzia 101**What Is the Best Way to Settle Israel:
Fruit Trees or Houses?**

A wealthy man from the United States was not sure what to do. He wished to invest money in the Land of Israel to fulfill the *mitzvah* of *yishuv ha'aretz*—settling the land. He had two options. He could purchase fruit groves or he could build a neighborhood for needy scholars, who could not afford to purchase homes, and then rent the apartments to them. Which was better?

According to *Rosh* (*Bava Metzia perek 9 siman 33*), our *Gemara* sheds light on this question. Our *Gemara* discusses a man who entered his friend's property without permission and did work. It teaches that if a man came into my land and repaired a ruined structure by building it into a home, he could then come back to my field and take back the wood and the stones. However, if he came into my field and planted saplings in the field without my permission, he is not allowed to come back and pull out the young trees. The *Gemara* explains the rationale for this distinction. As Jews, we have a *mitzvah* of *yishuv ha'aretz*. We have to ensure that the land is settled. Pulling out trees harms the settlement of the land more than tearing down a home.

Rosh finds this difficult. On *daf* 108, the *Gemara* discusses the

concept of *bar mitzra*. *Bar mitzra* is a mandate to be nice to your neighbor. If you are selling a field, you must allow your immediate neighbor to have the first right to purchase it. It is more valuable for him to have two fields adjacent to each other. Others could not possibly gain as much as he could by having the field. He therefore has the first right of purchase. The *Gemara* teaches that if the neighbor wishes to own the field to plant seeds in it, and someone else would like to own the field to build homes on it, the owner of the field should sell it to the home developer. There is no law of *bar mitzra* when the non-neighbor is offering to build houses. The reason for this law is also *yishuv ha'aretz*—it is better to settle the land with homes than to plant vegetables and grains. *Rosh* asked: What about our *Gemara*? Here we learn that a sapling is better than a home?

Rosh answered that there is a difference between trees and plants. The *Gemara* on *daf* 108 is teaching that homes are a greater settling of the land than plants and vegetables, and our *Gemara* is teaching that fruit trees are an even greater settling of the land than homes.

It would seem to emerge that, according to *Rosh*, we should tell the investor to purchase the fruit grove. *Rosh* seems to indicate that the best way to settle the land is with fruit trees.

Rav Yitzchok Zilberstein argued that according to some *poskim*, there are authorities who disagree with the *Rosh*. According to *Ben Ish Chai*, *Rambam* and *Shulchan Aruch* are of the opinion that the two *Gemaras* are arguing with each other. Our *daf* states that trees are better than homes but *daf* 108 is teaching that homes are better than plants—and it means to say better than trees and saplings as well. *Rambam* rules like that *Gemara*. Therefore, according to *Rambam* and *Shulchan Aruch* it would be better to build the neighborhood than to purchase the fruit orchard. Furthermore, perhaps a distinction can be made. Our *Gemara* deals with an empty field and it then gets

settled with a home or fruit-bearing trees. Perhaps in that scenario the trees are the highest form of settling the land. The trees make the wilderness bloom and enable the fulfillment of the agricultural *mitzvos*. However, in the scenario presented to Rav Zilberstein, the trees had already been planted and were growing. The man in the US wanted to know what to purchase. Even if he did not purchase the orchard, the fruit trees therein would continue to produce fruit and the agricultural *mitzvos* would be fulfilled with them. Perhaps, in such a reality, all would agree that it would be better to build a neighborhood. Building homes would be a great kindness. Many cannot afford homes. They risk their lives by entering into debts they will likely not be able to repay in order to have a place to live. To build a neighborhood and alleviate the worry of poor scholars would be a greater *mitzvah* than buying an orchard that already had been planted. Our *Gemara* would not be relevant to the discussion because in our *Gemara* it was discussing planting saplings in an empty field, not merely buying a pre-existing fruit grove (*Chashukei Chemed*).

Bava Metzia 102

If a Jew Rented an Apartment for Two Weeks in Amman, Jordan, Would He Have to Put Up a Mezuzah?

There is a peace treaty between Jordan and Israel. Israeli Jews travel to Jordan for short stays. What is the law if a Jew rented an apartment in Jordan for two weeks? Would he have to put a *mezuzah* on the doorway?

Shulchan Aruch (Yoreh Dei'ah 286:22) rules: “One who rents a home outside of Israel is exempt from affixing a *mezuzah* for the first thirty days. After he has been in the apartment for thirty days, he must attach a *mezuzah* to the doorposts. However, in the Land of Israel, a renter of a home must immediately attach a *mezuzah* because of *yishuv Eretz Yisrael*.” *Chashukei Chemed* asked, what about Jordan in our era? It is part of the Biblical boundaries of the Land of Israel. On the other hand, no Jews live there. It is all Arab. If a Jew rented an apartment there for two weeks, must he immediately put up a *mezuzah*?

There are two primary reasons suggested for the law that in Israel a renter must immediately attach a *mezuzah*. *Rashi* in *Menachos* (44a) explained this law based on our *Gemara*. *Bava Metzia 102* teaches

that a renter from a Jew may not remove the *mezuzos* he put up when he moves out of the home. *Rashi* suggests that by demanding that a renter in Israel put up a *mezuzah* right away, the Sages wanted to encourage the settlement of the Land of Israel. Even the short-term renter will now not want to move out, because he knows that if he left he would have to leave his *mezuzos* and thereby incur a financial cost. If, despite the financial loss, he decides to move out, the apartment owner will have an easy time finding a new tenant because the apartment will already have *mezuzos*. The law of a renter having to leave *mezuzos* will therefore help keep the apartment full and settle the land. Accordingly, in our case, the renter would not have to put up a *mezuzah*. Our *Gemara* teaches that a renter from a gentile may take his *mezuzos* with him when he exits. The reason for this is that we assume the gentile will likely not treat the *mezuzos* with respect. This would certainly be the case today in Jordan. Any renter there is renting from a gentile. Leaving the *mezuzos* will run the risk of their being disgraced.

Beis HaLeivi (*Al HaTorah, Be'inyanei Mezuzah al Menachos 44a*) provides the second possible rationale for why a short-term renter in the Land of Israel is to affix a *mezuzah* immediately. Normally, only a permanent dwelling needs a *mezuzah*. Outside of Israel, only after the renter has been in the home for thirty days is he considered to be dwelling there permanently—*be'ofen kavu'a*. However, living in the Land of Israel is special. Even a short-term living arrangement is considered meaningful and permanent. Therefore, in Israel, even a short-term rental requires an immediate placement of a *mezuzah*. A *mezuzah* is similar to how Shabbos affects food in regards to *terumos* and *ma'asros*. Normally, one who snacks on food does not need to first separate the tithes before he can eat. However, if a person is snacking on Shabbos, he cannot eat from the food if *terumos* and

ma'asros were not first separated from the food. Shabbos makes the eating permanent. So too, the Land of Israel makes the residence permanent. *Shu"t Yeshuos Malko (Yoreh Dei'ah siman 67)* ruled that in our days there is a Biblical *mitzvah* to settle the other side of the Jordan River. Therefore, perhaps according to the *Beis HaLeivi*, a short-term rental in Jordan requires a *mezuzah*. As a residence in the holy land, it is innately permanent and a *mezuzah* might be in order immediately (*Chashukei Chemed*).

May One Publicize the Names of Tenants Who Defraud Landlords?

Our *Gemara* discusses disputes between landlords and tenants. If the tenant claimed he paid the rent, and the landlord claimed he did not receive the rent, who is believed? Who must prove his point? Whom do we more easily trust?

The *Gemara* teaches that if the term of the lease had ended, the tenant would be believed that he had paid. If the term had not yet finished, the landlord would be believed that the tenant had not yet paid. If it was the last day of the month—the day when the obligation became due—and the tenant claimed he paid that morning, and the landlord claimed the tenant had not paid, the tenant would be believed.

Rav Zilberstein was asked about difficult tenants. They did not have a lot of money. They would rent apartments and pay for the first three or four months. Then, they would stop paying the rent. The landlord would fight to evict them. They would end up staying in the apartments for several years until the court got them out. They would

do this multiple times, to landlord after landlord. The landlords were enraged about the losses they incurred. They asked Rav Zilberstein about issuing a public warning. Were they allowed to publish a list of the names of these tenants and tell all about their *modus operandi*? They felt it would be a *mitzvah* to warn property owners so that others not get hurt the way they had been.

Initially, Rav Zilberstein thought that they would be allowed to publicize the list. *Chafetz Chayim* writes that if you see a Jew harming another man, such as stealing from him, you may tell people about what he did in order to help the victim, to prevent other people from being victimized, and to discourage such behavior in the future. The person who tells, though, must fulfill seven conditions:

1. Be sure the behavior truly happened.
2. Figure out if the behavior was really halachically forbidden.
3. First attempt to get the sinner to change by confronting him about his actions.
4. Do not exaggerate the misdeed.
5. Intend to help through the disclosure and not enjoy shaming another.
6. Make sure this was the only way to get the positive result. If the result could be achieved without negative speech, it would have to be pursued in that way.
7. The discloser would have to be sure that because of his talk, the wrongdoer would not end up getting more hurt than *halachah* would allow for such misbehavior.

A tenant who does not pay seems to be a person who causes damage, and there is a *mitzvah* to prevent such behavior. Perhaps, if the seven conditions were met, the landlords could publish the list of such thieving tenants.

Rav Zilberstein brought this question to his father-in-law, Rav Elyashiv. He disagreed with the logic of Rav Zilberstein. He ruled that the landlords were not allowed to publish the list. These fraudsters were to an extent forced to do their misdeeds. They would like to pay rent, but they could not afford to. Therefore, the landlords should not publicly shame them (*Chashukei Chemed*).

Bava Metzia 103**When Can Someone Claim That a Loss Was Unexpected and He Does Not Have to Pay?**

Our *Gemara* deals with a renter of a field which was watered by a river, who contracted to give the landlord a set amount of produce each year from the field. If the river suddenly went dry he would still have to pay the amount of rent. The *Gemara* asks: If the big river went dry, why would he have to pay the rent? He should be able to claim that there was *makkas medinah*—a plague that afflicted the country. He should therefore be exempt from paying the rent. The *Gemara* answers that the *Mishnah* meant that if the small tributary of the river dried, he would still have to pay the rent. The landlord could tell him, “You should have schlepped water in buckets to keep things growing in the field. You, therefore, still owe me the rent.”

An elderly woman donated her apartment to a *yeshivah*. She and the *yeshivah* agreed that in return for the real estate, the *yeshivah* would give her food and cover her medical bills. She, unfortunately, came down with a very rare illness. The medical bills became very high. They were more expensive than the value of her apartment. The *yeshivah* did not want to pay the costs. Its board members approached Rav Yitzchok Zilberstein. Were they exempt from paying

because such a medical condition was an unusual happenstance? They had never anticipated that it might happen. As a result, they should be exempt from paying, just as a renter need not pay the rent he had promised if the main river dries—because, as it was a most unusual happening, he was exempt from paying because he had never intended to obligate himself in the event of such circumstances.

Rav Zilberstein concluded that the *yeshivah* had to pay the medical bills. *Shu"t Maharshag (cheilek 2 siman 226)* read our *Gemara* carefully. It did not state that the main river drying suddenly was a great *oness*—an unanticipated act of Heaven. It said it would be a country-wide affliction—a *makkas medinah*. The *Gemara* was teaching that when something happens to the entire region, the renter does not have to pay. If an event is widespread it was clearly not because of the *mazal*—the unique fate—of the renter. However, if it was only the small tributary that went dry, it was the *mazal* of the renter that caused the difficulty, and he would therefore still owe the money to the landlord. In light of this distinction, in our case it was only the woman who had gotten sick. Her ailment was not a widespread plague afflicting the region. As a result, it was due to the *mazal* of the *yeshivah* leaders that they now had a greater expense that they needed to meet. The fact that they had not anticipated the illness was not sufficient to exempt them from paying. It was like the case of a renter who discovers that the small river went dry. He still needs to pay. Furthermore, it can be argued that the *yeshivah* had made a purchase. It had received the apartment. As compensation, it owed her food and medical bills. The deal had been done. The board members could not renege just because the bills were high. They had taken the risk. They were therefore obligated to pay the health bills of the woman (*Chashukei Chemed*).

Bava Metzia 104

**If One of the Tenants Did Not Water
the Garden and the Plants Died,
Does He Have to Pay?**

Our *Gemara* mentions that if a man is a sharecropper in a field and then leaves it fallow, the court assesses how much produce the field would have yielded had it been cultivated, and the sharecropper must give a percentage of that amount to the landowner. This is because it is common practice to write in the deed of sharecropping, “If I leave the field fallow, I will still pay you as if the field produced in the best way.” Therefore, even if this line was not actually written in the deed, the agreement between a sharecropper and a landlord includes such a commitment.

An apartment building in Israel had a garden owned jointly by the residents. They divided the care of the garden among themselves. Each week a different resident would have to water the garden. One week, the family on duty neglected to water the garden. The plants in the garden died. Did the man who had neglected to water owe everyone else money for having caused the death of the garden?

Shulchan Aruch (*Choshen Mishpat* 328:2) rules like our *Gemara*. If someone entered into a sharecropping arrangement and then did

not work the field, we assess how much it would have produced and he must pay accordingly to the landlord. *Sma* writes that even if the contract between the two did not have the words, “If I leave the field fallow, I will still pay you as if the field produced in the best way,” the sharecropper must pay. Since the norm is to include such a line, even if it was not included, it was as if it was written. What about in an apartment building? They usually do not write up contracts about the watering of the garden. Would the man be liable for not watering?

Rav Yitzchok Zilberstein quoted the *Ritva* on *Bava Metzia* 73b. The *Ritva* discussed the *Gemara*’s lesson that if someone gave money to his friend to buy him wine—because the wine price was low—and the emissary did not do so, and the prices rose, the emissary must pay for the loss he caused. Why would the emissary be liable? He had neglected to act. Damage from lack of action should be defined as a *gerama*. We are usually exempt from paying for damage caused by *gerama*. *Ritva* answered that an emissary enjoys the fact that his friend entrusted money to him. The friend could have used his money to buy the wine himself. He did not do so. He trusted him. Knowing that others trust you is innately pleasurable. In return for the pleasure of being trusted, the emissary obligates himself. A guarantor to a loan obligates himself because the lender trusted him; the same is true when someone trusted someone else to purchase for him. *Nesivos Hamishpat* (*siman* 176:31) argues that partners must pay each other when their neglect causes a lack of profit. Partners are like guarantors to each other. They deeply enjoy the fact that their partner entrusted funds to them and relied on them.

Therefore, Rav Zilberstein ruled that in our case, since all the apartment dwellers were partners, the man who did not water the garden was responsible to pay for the resulting damage his inaction caused (*Chashukei Chemed*).

Bava Metzia 105**Can a Renter of a Clothing Store Choose to Sell Food from It Instead?**

Reuvein had a successful clothing store. Many customers came and he made good profits. Shimon was looking for a business. He knew that Reuvein would love to spend more time learning Torah. He offered to rent the store from Reuvein. Reuvein agreed. Shimon paid the rent. Shimon started to run the store. He decided he did not like the clothing business. Instead he wished to sell food. Reuvein protested: “People know my store for its clothes. If it will become a food store, they will no longer come for clothes. When I get the store back from you I will not have a successful store. You are causing me damage. I agreed to rent a clothing store to you. I never agreed for you to use the space for another purpose.” Was Reuvein right? Should the *beis din* stop Shimon?

Teshuvos Maharsham (cheilek 2 siman 198) dealt with this scenario. Based on our *Gemara*, he ruled that Shimon was a damager and had to be stopped. Our *Gemara* discusses a man who leased a field as a *chocheir*—one who had promised to pay a certain amount of grain regardless of how successful he was with the field. The tenant did not want to pull out the weeds. The landlord wanted him to pull

out the weeds from the field. The *Gemara* says that if the tenant offered to the landlord, “I will pull out the weeds from the part of the field producing wheat for you; the part that produces wheat for me does not affect you, and there I will leave the weeds,” the landlord would be entitled to refuse the offer and force the tenant to pull out the weeds. The landlord could argue, “You are creating a bad name for my field.” People will see the wheat of the tenant. They will notice that it is weakened. They will not know that its poor quality is because the tenant was lazy and did not want to pull out weeds. They will think that the field is inferior and produces poor produce. If the landlord wishes to sell the field he will have a hard time finding a buyer. People will think that the field produces bad wheat. To avoid this, the landlord can insist that the tenant pull out the weeds from the entire field. *Maharsham* held that similar arguments would be true in our case. The actions of the tenant would ruin the future possibilities of the landlord. The landlord could therefore protest and prevent him from selling food instead of clothes.

Orchos Hamishpatim (*Dinei Gerama Vegarmi kelal* 15:4) disagreed. In our *Gemara*, the renter does not lose out by pulling out weeds. The landlord can argue, “It is normal for a renter to pull out the weeds. I leased it to you assuming you would treat the field in the normal way. You do not lose by pulling out weeds and having better produce.” However, in our case the renter prefers to sell food. When he rented the store, he was leasing it for his benefit. If he feels it is to his benefit to sell food, and he would lose by selling clothes, he need not be concerned about the landlord. As the tenant, he is the owner of the space for a period of time and is entitled to use it in the ways that he thinks will benefit himself. He does not need to lose out because of the concerns of the landlord about what will happen after the term of the lease expires (*Mesivta*).

Bava Metzia 106**May One Rely on a Small Miracle?**

Rav Shlomo Kluger (*Ha'elef Lecha Shlomo, Even Ha'ezzer 9*) was asked by a widower about a forthcoming wedding. The man had only been blessed with a daughter. He had not yet fulfilled his obligation of *pru urvu*—to be fruitful and to multiply through fathering a son and a daughter. His wife had passed away. He became engaged to a woman who had never married and who was forty years old. People approached him and told him to break the engagement. The *Gemara* in *Bava Basra* (119b) teaches that if a woman marries before the age of twenty she can have children until she turns sixty. If she married at twenty, she can have children until forty. However, if she first marries at forty, then she is unlikely to have children. The protestors argued that since he had not yet fulfilled his children obligation, he was wrong to marry a woman who would likely no longer be able to have children. He asked Rabbi Shlomo Kluger what he should do.

Rabbi Kluger ruled that he may not break the engagement. His source was our *Gemara*. Our *Gemara* teaches that if a person rented a field and then a plague of locusts came and devastated all the fields in the area, the renter could subtract from the rent according to the damage that had plagued the region. Shmuel argued that this law was

only true if the renter had actually planted his field and locusts ate the produce. However, if the renter had decided not to plant his field, because he saw locusts consuming other fields, then the landlord would be entitled to receive rent. The landlord could claim, “Had you planted, perhaps a small miracle would have occurred. Perhaps my field would have produced food for you and me even though no one around us is succeeding.” We see from this *Gemara* that one can presume that a small miracle will occur.

The *Gemara* in *Bava Basra* is actually a proof that the man should get married. The *Gemara*’s lesson is in the context of teaching about the daughters of Tzelofchad. These women mentioned in the Bible only married for the first time at age forty. The *Gemara* states that a forty-year-old who first marries usually has a hard time conceiving. The daughters of Tzelofchad had children because they were righteous. Their husbands married them with the assumption that since they were righteous women, a small miracle would occur for them and they would successfully have children. Therefore, he ruled that the groom should rely on a small miracle. Were the groom to break the engagement, it would shame the woman and cause pain. There is an ancient *cheirem* against breaking engagements. The merits of keeping her from shame, and observing the *cheirem* of old, were sufficient to enable him to rely on the small miracle of her having children even though she was first marrying at age forty. In addition, the groom—by upholding the engagement—was displaying faith in his rabbi and following his advice. Listening to the sages is also a sufficient merit to deserve a small miracle (*Mesivta*).

Bava Metzia 107**Which Shul Should You Walk to,
the Closer or the Farther?**

Our *Gemara* contains a discussion about the verses of blessing. The Torah promised that if we keep Hashem's commands, then *baruch atah ba'ir*—you will be blessed in the city. Rav explained the verse to mean that you will live near a *shul*. Rav Yochanan did not agree with this explanation. He felt it was not a blessing to live near a *shul*. Rav Yochanan thought it would be better to live far from a *shul*. He believed that the more steps one took to get to *shul*, the greater the merit. *Magein Avraham* (90:22, quoted in *Mishnah Berurah* 90:37) rules like Rav Yochanan. He writes that if there are two *shuls*, a closer one and a farther one, you should walk to the farther one to maximize your merit of walking to *shul*. *Shulchan Aruch Harav* also rules that one should walk to the farther *shul*.

Sedei Chemed (*Kelalim Ma'areches Alef* os 189) argued that the rule of *Magein Avraham* is not always applicable. There is a principle in Jewish law that *ein ma'avirin al hamitzvos*—we may not pass by a *mitzvah*. If to get to the farther *shul* you walk past the closer *shul*, it would be a sin to walk past the closer *shul*. He therefore limited the ruling of *Magein Avraham* to a scenario where the person can choose

two paths, one short and leading to a near *shul*, and one long and leading to a far *shul*. In that case, you should choose to walk to the far *shul*. However, if to get to the far *shul* you walk by the nearer one, you are obligated to enter the nearer one and pray there based on *ein ma'avirin al hamitzvos*.

Shu"t Betzeil Hachochmah (cheilek 4 siman 19) discussed this issue. He ruled that one does not violate the law prohibiting passing by a *mitzvah* if you walk by to fulfill a *mitzvah* in a better way. Therefore, if the close *shul* is riven by fights and the farther *shul* is filled with peace, you should walk past one *shul* to get to the other. However, if both offer an equal prayer experience, then the rule of *ein ma'avirin al hamitzvos* would apply.

Maharal points out that the *Gemara* never says you get greater reward for a longer walk to a *sukkah*. It only mentions this concept in regards to *shul*. *Shul* is a place with the presence of Hashem. It is a mini-sanctuary. All effort to get to it is effort to get closer to Hashem. Therefore, the more steps one takes, the more effort you invest, the greater the *mitzvah* (*Mesivta*).

Does Judaism Believe in Reincarnation?

Rashash argues that our *Gemara* is proof that Judaism does not accept the idea of souls living, dying, and then being sent down to earth to live another life here. Rav Yochanan explained that the verses of blessing, “*Baruch atah bevo'echa uvaruch atah betzeisecha*”—“Blessed will you be in your coming and blessed will you will be in your going,” refer to birth and death. A blessed person merits leaving this world the way he came. Just as one comes into the world pure and with no sin, a blessed person merits to leave the world pure and with no sin.

Rashash argues, if Judaism would accept the idea of reincarnation, could it be said that all enter the world pure? The reincarnated souls come into this world already sullied with the sins of their past lives.

Divrei Yo'eil (Parashas Bamidbar) argued that the *Gemara* did not disprove the concept of soul reincarnation. He pointed out that *Ramban* teaches that these verses refer to the nation and individual who are perfect. It has never happened that the Jewish nation or a Jewish individual reached this perfection. If a Jew reached perfection, he would enter and exit the world pure and with no sin. Since almost all of us have been imperfect, we enter the world with the sins of past lives.

Hadar Ya'akov (cheilek 1 siman 39) offered two other explanations. Perhaps, when Rav Yochanan said that a soul enters the world pure and without sin, he meant the very first time the soul comes to the world. A soul enters pure. A meritorious person will also leave just as pure. However, reincarnation is true in regards to the subsequent times the soul is born. He also offered a second answer: perhaps our *Gemara* refers to the nature of the soul. The soul is always pure. Even a reincarnated soul enters pure. It is not sinful. It was sent down because of sins in the past. However, when it comes to this world, it enters as a pure soul. It was in the sense that a baby enters the world with a pure soul that the *Gemara* says that a righteous person merits that just as he entered the world pure, he merits to exit the world pure.

Shu"t Noda BiYehudah (Mahadura Tinyana Yoreh Dei'ah siman 164) utilized the concept of reincarnation in regards to a halachic question. A child had died before reaching the age of eight days. He was quickly buried. The community forgot to circumcise the body. They now asked the *Noda BiYehudah* if they were allowed to open up the grave, exhume the body, and cut off the foreskin. *Noda*

BiYehudah first explained that a baby who is only a few days old has no sins and does not face any judgment in heaven. Nevertheless, the Kabbalists taught that there is reincarnation. A reincarnated soul will be brought back to life at the time of the revival of the dead and made to stand judgment for sins committed in an earlier life. This child may have been a reincarnated soul. He is destined to stand to judgment at the time of the revival of the dead. He will be shamed if when he stands he still has a foreskin. On the other hand, it is also embarrassing to open the grave and see the decomposed remains of a person. *Noda BiYehudah*'s conclusion was that if the child had died recently, and been buried recently, they could assume that the body had not decomposed much; they should then open the grave, take him out, cut off his foreskin, and rebury him. However, if he had been buried for a long time, they should not exhume him, as it would be an affront to him to reveal his decomposed remains (*Mesivta*).

Bava Metzia 108**Must Torah Scholars Pay for a School Crossing Guard?**

Our *Gemara* teaches that you must participate in the costs of communal expenses that provide you benefit. If a person owns a field at the bottom of a river, and the river was clogged upstream so water cannot get both to the fields higher up on the mountain and to his field, he must contribute to the cost when the people who live higher on the mountain spend money to remove the obstacle. The man who lived lower on the mountain benefited from their actions. He therefore had to bear some of the cost. The *Gemara* adds that if people in the city were demanding fees from the members of the community for the construction of a wall and doors to protect the city, almost all the residents of the city would have to pay. Even the property of orphans would be taken to help pay for the costs. All benefit from security; therefore, all need to pay for it. However, Torah scholars do not benefit from a wall. In *Mishlei* we were taught about Torah, “*Beshochbechah tishmor alecha*” — “When you lie down it will protect you.” As the scholars receive no gain from the wall, because the Torah protects them, they do not need to help pay for it.

In a town in Israel there was a busy crossing. Many cars passed

there. There were also many children who had to cross that street to get to school. It was unsafe. The families in the neighborhood decided to hire a retired police officer to serve as a school crossing guard. They approached all the families in the area and asked them to help pay for the guard. Did Torah scholars have to pitch in?

Rav Zilberstein pointed out that the guard was hired to provide safety and security. Our *daf* teaches that a Torah scholar does not need any outside help staying safe since the Torah protects him. Perhaps the scholars were not benefiting from the guard and did not have to contribute.

Ultimately, Rav Zilberstein argued that the Torah scholars should have to contribute to the cost of the school crossing guard. While the scholar is protected by Torah, in our case it was not the scholar who faced danger, it was his child. Perhaps Torah does not create protection for the family of the Torah scholar, it only protects him. Furthermore, a busy street crossing is a place of great hazard and likely danger. Cars are moving in the area and children are running about. It seems clear that even the children of the scholars are in danger there. Therefore, logic dictates that the scholar should have to contribute to the cost of the crossing guard (*Chashukei Chemed*).

The Neighbor Wants the Land, But the Buyer Is Willing to Keep the Factory Open; Is There a Law of Bar Mitzra?

Hashem commanded each of us to do the right and the good. The Sages therefore ruled that if a man is selling his field, the neighbor who owns the adjoining field should be given the first chance to buy

it. It is most helpful to a man to own two fields adjacent to each other. It is easier for him to work two adjoining fields than to work two fields that are far from each other. If a non-neighbor were to purchase the field, he must offer it to the neighbor. As long as the neighbor is willing to give him the money he spent, since he must be gracious and do the right and the good, he has to walk away from the field and surrender it to the neighbor who would benefit from it greatly. Our *Gemara* lists exceptions to the rule of *bar mitzra*. If the buyer is buying all the fields of the seller while the neighbor only wishes to buy one field, if the buyer offered heavier coins than offered by the neighbor, or if the buyer was planning to put up houses on the field while the neighbor intended to use it for agriculture, the rule of *bar mitzra* does not apply and the buyer would not need to vacate the field to benefit the neighbor.

A man in Israel had a factory. He owned many machines. He had many employees. He wanted to sell his business. A man came and bought everything—the machines, the inventory—and he promised to keep the business going. The neighbor protested. He said, “I am the *bar mitzra*. I own a factory next door. My business needs more space. I want this factory building to use it as a warehouse to store the goods I am making in my place. As the neighbor, I should be entitled to purchase the space. Please vacate for me.” Did the buyer need to give up what he bought and allow the neighbor to get the factory?

Rav Zilberstein ruled that this scenario would be like the cases of our *Gemara* and it would be an exception to the rule of *bar mitzra*. The non-neighbor buyer had purchased the factory and all that was in it. This is similar to a man who sold many fields to the buyer. Our *Gemara* teaches that doing right by a neighbor does not obligate us to do a disservice to the seller. Since the seller had a buyer for

all his fields, it would be a disservice to him to lose that deal and only unload the field that adjoined a neighbor's. When buying all the fields, the buyer does not need to vacate any purchase for a neighbor; therefore, since in our instance the buyer bought the machinery and inventory in addition to the real estate, he would not have to vacate his deal to enable the neighbor to purchase merely the real estate. Furthermore, our *Gemara* teaches that maximizing the settling of Israel takes priority over helping out a neighbor. If a man had a field and one person wished to buy it to build homes on it, while a neighbor wanted it for agriculture, the building developer should get the field. We are to maximize *yishuv Eretz Yisrael*. Here too, the buyer of the factory would enable the maximum settlement of the land. He would keep jobs in place. The neighbor was intending to fire the workers and use the building as a warehouse. *Avnei Nezer* (*Yoreh Dei'ah siman 454*) ruled that settlement of the Land of Israel entails earning a living from and within the land. A man who lives in Israel but receives his livelihood through donations from America, according to the *Avnei Nezer*, is not fulfilling the *mitzvah* of *yishuv ha'aretz*. His livelihood is coming through the guardian angel who serves as the channel for funds for those who live in America. True settling of the land entails living in, and being supported by, the Land of Israel. The factory owner, by paying a wage to workers in Israel, was enabling them to fulfill the *mitzvah* of *yishuv ha'aretz* as per the definition of the *Avnei Nezer*. The buyer was interested in keeping the factory going. He was planning to continue to enable the workers to fulfill the *mitzvah* of settling Israel in the best way. Since the *mitzvah* of settling Israel should take precedence over *bar mitzra*, the neighbor could not coerce the buyer to vacate his purchase (*Chashukei Chemed*).

Bava Metzia 109**May a Yeshivah Fire a Rebbe for No Cause?**

Rava taught that a teacher of children, a man who plants saplings for landlords, a ritual slaughterer, a bloodletter, and the scribe who writes documents for the courts can be fired without a prior warning. These individuals are engaged in high-stakes work. If they make a mistake it cannot be repaired. Therefore, they are considered warned to be careful and not make mistakes. If they make a mistake they can be fired.

According to *Rashi*, the teacher's mistake that cannot be repaired refers to a case when the teacher gave the wrong information to the student. Through teaching the student the wrong meaning of a passage, damage has been wrought. It will be very hard for the student to get the right definitions in his head. *Shabeshta keivan de'al al*—once a mistake creeps in, it is stuck inside. However, *Tosfos* argue that a mistaken explanation is not permanent damage. With time, people realize what was mistaken and correct their points of view. The permanent damage is the fact that while the teacher was teaching the wrong information to the student, the student was not learning true Torah. Wasted hours can never be reclaimed. *Shulchan Aruch* (*Choshen Mishpat* 306:8) rules that both a teacher who teaches

the wrong interpretations and a teacher who wastes the time of the students and thereby denies them the chance to learn for those moments can be fired without warning.

The *Gemara* implies that a Torah teacher is only fired if he made a mistake, teaching the wrong way, or causing *bittul Torah*. What about when there was no mistake? Can a *yeshivah* fire a teacher for no cause?

Rav Moshe Feinstein (*Igros Moshe Choshen Mishpat cheilek 1 siman 76*) ruled that a *yeshivah* may not fire a teacher for no cause. Rav Moshe went very far. He argued that if a factory owner hired an employee, according to Judaism, that worker was hired for as long as the owner needs the work. The owner was not entitled to fire the employee for no cause. Only if he made mistakes despite warnings could he be fired. For the professions of Torah instruction, ritual slaughter, etc., he could be fired without a warning, but every termination must have a cause.

Rav Mordechai Pinchas Teitz of Elizabeth appealed to Rav Moshe about this matter. A teacher had been fired from the *yeshivah* in Elizabeth. He summoned the *yeshivah* to a *din Torah*. The rabbinical court ruled that his employment had been unfairly terminated and as a compromise the school should pay him a settlement amount. Rav Teitz appealed to Rav Moshe. He argued that since in public schools one can fire without cause, the *yeshivah* could also fire without cause. Every teacher was agreeing to work based on the common practice. Further, he mentioned that each year the teacher would receive a new contract in his school. The contract was only for a year. As a result, the *yeshivah* was allowed to tell a teacher that they would not renew his employment for the next year. The teacher had been hired initially only for a year. Rav Moshe rejected these arguments.

He ruled that a teacher in a *yeshivah* is right to assume that a

yeshivah will follow the practice of *yeshivos* and not the practice of public schools. In *yeshivos*, *halachah* is usually followed. According to Rabbi Feinstein, an employer cannot fire an employee for no cause according to *halachah*. In addition, Rav Moshe questioned Rav Teitz's assumptions about public schools. Even in the public school system teachers cannot be fired without cause. Therefore, even if the teacher thought the *yeshivah* would follow the practices of public schools, he was correct to think that he would not be fired without cause—because in the public schools teachers are protected by their union and contract and they are not fired without cause. The one-year contract the Rebbe had signed did not mean that he was surrendering his right to only be fired if he had done wrong. The *yeshivah* that had terminated the Rebbe's employment had not been right. At the very least they owed him the settlement that the court had awarded him.

Chazon Ish (*Bava Kama siman 23 se'if 2*) disagreed with Rav Moshe Feinstein. *Chazon Ish* ruled that if an employer hired the worker for a year, at the end of the year he did not need to renew the contract. By hiring for a year, he was clearly indicating that he was only asking the worker to work for one year. If the school did not want to renew the teacher's employment, since they had only given him a one-year contract, they were entitled to terminate.

Me'oros Daf Hayomi argues that the disagreement between Rav Moshe and the *Chazon Ish* was limited to places that did not have a common *minhag*. From the nature of the discussion between Rav Feinstein and Rav Teitz, it seemed that there was no established practice yet for the conduct of *yeshivos*. In places where the custom of the place allows for termination without cause, an employer may terminate without cause. *Minhag okeir halachah*—custom uproots law, according to the *Talmud Yerushalmi*. Therefore, if it became the practice in certain areas that *yeshivos* terminate without cause, a

school could terminate staff's employment without reason and would not have to pay anything (*Me'oros Daf Hayomi*).

Why Did the Rabbis of the Talmud Speak Harshly to Each Other?

Our *Gemara* contains a record of a seemingly harsh conversation between Sages. Rav Bibi bar Abaye leased a field that had raised borders. Trees grew in the borders during the term of the lease. When Rav Bibi gave the field back to the landlord, he asked the field owner to assess the value of the trees and to give that amount of money to him. Rav Papi said to him, "Is it right that since you come from a weak family you can utter weak ideas? Since you would not have planted the area of the border, you suffered no loss from the trees that grew there. No one would say you were entitled to the gain of those trees that had sprouted in the hedgerows."

Our Sages were geniuses who were pious holy men. The words of Rav Papi seem insulting. Why would he invoke the fact that Rav Bibi was a descendant of Eli the priest and therefore from a family that was weak, whose members usually died young? Was that an appropriate point to make in the midst of a halachic discussion? It seems to have been a hurtful comment, which should be prohibited based on the rule against *ona'as devarim*. Why did the *Gemara* record this comment for posterity?

The *Shelah Hakadosh* explained that Rav Papi was trying to help Rav Bibi. The descendants of Eli the priest usually died young. Those who distinguished themselves with great Torah scholarship and acts of kindness merited to break the curse and live longer. Rav

Papi invoked Rav Bibi's lineage to inspire him. He was telling him, "You cannot afford to be lazy in your study and intellectual rigor. You come from a family that is weak. If your study is weak and your logic inferior, then you might not live." His words were an expression of love and inspiration to goad Rav Bibi to greater levels of Torah achievement, because only through Torah achievement and good deeds would he merit a long life.

Shu"t Chavos Ya'ir (siman 152) offered a similar answer to another *Gemara*. In *Yevamos (9a)*, Rebbe tells Leivi, "You do not have a brain in your head." This is seemingly insulting. However, Rebbe was Leivi's teacher. A teacher can speak harshly to prod the student to greater effort and achievement. Rebbe knew that Leivi was capable. He felt that at times he did not apply himself fully. He said harsh words to inspire him to learn better so that he would reach his potential (*Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 110**Is the Prohibition of Bal Talin —Do Not Delay in Paying an Employee— Triggered When Calling a Doctor in a Medical Emergency?**

A story: One of the great Torah giants did not feel well. One of his attendants called his doctor to come urgently to treat him. The doctor came and ordered an ambulance to rush the sage to the hospital for emergency care in the ICU. After two hours of medical treatment, the doctor saw that the rabbi was trying mightily to speak. The attendants came close to him. He told them in a whisper, “You must pay the doctor. Pay him now. The sun is about to set, and I do not wish to violate the prohibition of *bal talin*.”

The Torah in *Parashas Kedoshim* (*Vayikra* 19:13) teaches that a man must pay his employee in a timely manner. If the worker was hired to work for a day, once the sun sets, the employer has the night to pay him. He may not allow the sun to rise on an unpaid wage to his employee. This great Torah sage was always thinking about Torah. He knew the doctor deserved to be paid. He feared that in the maelstrom of concern for his welfare, all would forget to pay the

doctor—hence his supreme effort to beg all to remember to pay the doctor right away.

Was the rabbi correct? Would this scenario be a case where there was the possibility of violating *bal talin*?

Our *Gemara* teaches that if a man asked someone else to hire workers on his behalf, there was no possibility of violating *bal talin*. In our case, the sage had not hired the doctor himself. His attendant had called. As a result, there should have been no possibility of *bal talin*. Furthermore, according to Jewish thought, a doctor is merely to be reimbursed for the fact that he is not earning money from a different activity. Healing is a *mitzvah* and it should be offered for free. Perhaps *demei batalah* are not considered a wage and are not included in the prohibition of *bal talin*.

Chashukei Chemed addressed these issues.

Our *daf* teaches that if an employer had another person hire the workers to work for him, he could not violate *bal talin*. *Ritva* found this law difficult. In all areas of Jewish law there is a rule that *sheluch shel adam kemoso*—a representative is like the person who sent him. If I sent someone to hire it is as if I hired; why, then, would I not be liable for *bal talin*? *Tosfos Rid* answers *Ritva*'s question. He taught that when the worker never interacts with the boss, he never assumed that the boss would pay immediately. In our case, the boss was the sage. He interacted with the doctor directly. The doctor treated him. Therefore, the doctor would assume that he would be reimbursed. The rule of our *daf* was not applicable and the fact that the attendants called the doctor did not exempt the sage from the laws of *bal talin*.

A Torah teacher, like a doctor, is only entitled to *demei batalah*. He is to be paid compensation for the fact that he is not busy with something else. *Kaf Hachayim* ruled that one must pay the *melamed* who teaches his children on time. The rule of “*Beyomo titein*

secharo—“Give him his wage on his day” (*Devarim* 24:15) applies to Torah teachers. Therefore, the sage was right to be concerned about the immediate payment to the doctor who came to heal him, since even those merely getting reimbursed for their time and inability to do something else are included in the mandates of *bal talin* (*Chashukei Chemed*).

Bava Metzia 111**Paying a Worker on Time Or Honoring Shabbos?**

Our *daf* continues to teach about the importance of paying an employee immediately when the obligation comes due. The *Gemara* teaches that many verses in the Torah demand that the employer pay shortly after the work is finished: “*Lo sa’ashok es rei’acha*”—“Do not cheat your friend”; “*Lo sigzol*”—“Do not steal” (*Vayikra* 19:13); “*Lo sa’ashok sachir ani ve’evyon*”—“You shall not cheat a poor or destitute person” (*Devarim* 24:14); “*Lo salin pe’ulas sachir it’cha ad boker*”—“A worker’s wage shall not stay with you overnight until morning” (*Vayikra* 19:13); “*Beyomo titein secharo*”—“Give him his wage on his day”; and “*Velo savo alav hashemesh*”—“The sun shall not set upon him” (*Devarim* 24:15). *Biur Halachah* (*siman* 242 s.v. *lechabeid*) addressed the question of what a man with minimal funds is to do. If it is Friday and the man has not yet purchased anything for Shabbos, what should he do? Should he pay his employee that day to fulfill the mandates of these verses, or should he spend the money to make Shabbos special?

Biur Halachah ruled that paying an employee on time takes precedence over honoring Shabbos. The *mitzvah* to honor Shabbos

is an obligation mentioned in the prophetic works. It is a *mitzvah midivrei kabbalah*. *Bal talin* is a prohibition and *beyomo titein secharo* is a positive obligation—a *mitzvas asei*—demanding that the employer pay immediately. The Biblical obligation is stronger than a merely prophetic mandate. He should pay his worker.

Sedei Chemed (cheilek 1 Kelalim siman 26) quotes Rav Chaim Vital about the mystical power of the *mitzvah* of immediately paying workers. One who fulfills the *mitzvah* of paying a worker right when the obligation comes due merits receiving at that moment the added soul, which usually only enters a person on Shabbos. A hint to this comes from Adam Harishon, the first person. He was created on Friday. He was given a *mitzvah* to plant and tend to the Garden of Eden. He did so. He then received an added soul on Shabbos. Hashem gave him his added soul as a fulfillment of the mandate to immediately pay an employee for his work. Every employer who pays immediately merits connecting to Hashem's immediate payment and therefore merits receiving the added soul of Shabbos. The Torah phrase demanding immediate repayment is *בְּיוֹמוֹ תִּתֵּן שְׂכָרוֹ*; the first letters of this phrase, when reorganized, spell the word Shabbos.

It is related about the *Chafetz Chayim* that he would seek out the opportunity to fulfill this *mitzvah*. When he would hire a wagon to take him to the *mikvah* on Fridays he would not pay the driver when he entered the wagon. *Ein sechirus mishtalemes ela levasof*—the obligation to pay a hired hand begins when the work is done; he would therefore wait until he got to the destination, when the monetary obligation would commence, and then he would immediately pay to fulfill the great *mitzvah* of *beyomo titein secharo*. Rav Zilberstein was asked by residents of Bnei Brak how they could fulfill the practice of the *Chafetz Chayim* when they entered *sheirut* cabs from Bnei Brak to Jerusalem if the driver wanted payment right upon entry.

He recommended that they wait until the cab gets past the last bus stop in Bnei Brak, at which point the monetary obligation of paying the full fare would have taken effect, because even if they got off immediately they would need to pay the full amount since the driver would not be able to bring in another passenger. They should pay at that point and in doing so would fulfill *beyomo titein secharo* and merit to get an added soul (*Chashukei Chemed*).

Bava Metzia 112**Is Playing Pro Ball a Kosher Profession?**

As Jews, we acknowledge that God owns our bodies and souls. We may not inflict harm on our body for it is not ours. “*Venishmartem me’od lenafshoseichem*”—“And you are to greatly protect your souls” is a mandate not to do dangerous things. *Rambam (Hilchos Rotzei’ach Ushmiras Nefesh 12:6)* ruled, “It is forbidden for a man to walk under a tilting wall,” because a person may not perform dangerous acts that might injure his limbs or endanger his life. Based on these rules, Rav Moshe Feinstein (*Igros Moshe, Choshen Mishpat cheilek 1 siman 104*) was asked by a Jew if he could work as a professional ball player. Ball playing has dangers. Many players suffer concussion and other injuries. May a Jew take such a job?

Based on our *Gemara*, Rav Moshe ruled that professional ball playing is a kosher profession. Our *Gemara* is discussing the *mitzvah* to pay a worker on time. The Torah states, “*ve’eilav hu nosei es nafsho*”—“and to it he directs his life” (*Devarim 24:15*). Our *Gemara* explains that the verse was providing inspiration to an employer to pay in a timely manner: “Why did this employee climb a tree to pick a fruit? Why did he climb a rickety ladder and risk his life to possible death? Only for the sake of his wage!” Since the worker risks his life

for his wage, the employer should be appreciative and pay the wage immediately when it comes due. The *Gemara* clearly indicates that for the sake of earning a wage a worker may climb a tree or a rickety ladder; therefore, one can play pro ball, even tackle football, for pay as well. Pro football is dangerous. However, our Torah allows a man to do somewhat dangerous work in order to earn a wage.

Some might ask: While it is permissible to endanger oneself for pay, in professional football the player is also at risk of harming others, so perhaps it should be forbidden? Rav Moshe argued that just as *halachah* permits the employee to take on a job that has some risk to his own health, he may do a job that will put the health of others at a slight risk, since they too are willing to assume that risk. If it was prohibited to put others at a slight risk, how could the tree owner in the scenario of our *daf* hire a worker to climb his tree? He is endangering another person. “*Ve’eilav hu nosei es nafsho*” permits the employee and employer to create situations of danger for the sake of profit.

Shu”t Noda BiYehudah (Mahadura Tinyana Yoreh Dei’ah siman 10) also quotes our *Gemara*. *Noda BiYehudah* dealt there with the question: May a Jew hunt? He concludes that a Jew should not hunt for leisure. Hunting creates cruelty within the personality. It is also innately dangerous. Eisav was a hunter. When he came back from his hunting he told Ya’akov that he feared he would die. Hunting in a forest with beasts of prey is innately a danger to a person. A Jew may not engage in activity that is risky to his health. However, if a Jew needs to hunt to earn a living, he may do so. Our *Gemara* teaches that one may climb a tree and incur danger to earn a wage. Therefore, hunting for livelihood would be permitted (*Mesivta*).

Bava Metzia 113**May One Exercise After Eating?**

The great sage Shmuel was a doctor. In our *daf* he says that he could heal all medical ailments except for three: a person who eats a bitter date when he has an empty heart because he has not yet eaten his meal, a person who wears a wet rope of flax around his hips, and a person who eats and does not walk four *amos* (about six feet) right after the meal. Shmuel seems to say that it is healthy to get up and exercise right after eating. One who does not do so will likely get sick and Shmuel would not be able to heal him. *Rambam* was a great doctor. He was the physician of the Muslim King, Sultan Saladin. *Rambam* (*Hilchos Dei'os* 4:3) discourages exercise after a meal: “When eating, a person should sit still in his place or recline on his left. He should not walk, ride, exert himself, strain his body, or wander about until the food in his intestines has been digested. Anyone who walks around or exercises after eating brings upon himself difficult and bad medical conditions.” *Rambam* seems to teach that a person should eat, wait until the food is all digested, and only then get up and walk or exercise. This seems to directly contradict Shmuel, who taught that eating that is not followed by some walking is dangerous to good health.

Pri Chadash and *Or Samei'ach* suggest that *Rambam* was only

discouraging strenuous walking. To eat and then walk far, or to engage in vigorous exercise, is not healthy. First the food should settle and get digested. However, our *Gemara* was referring to a leisure walk. After eating, one should take a small and leisurely paced walk. As our *Gemara* teaches, it is good for one's health to walk four *amos* right after eating.

Kitzur Shulchan Aruch (32:6) also seems to distinguish between types of exercise. He writes: "Before eating, you should exercise vigorously through brisk walking or physical work, heat up your body, and then eat. This is the meaning of the verses, 'Bezei'as apecha tochal lechem'—'By the sweat of your brow you shall eat bread,' meaning work up a sweat and then you can eat bread, and 'Velechেম atzlus lo socheil'—'And she would not eat the bread of laziness.' You should loosen your belt before eating. While eating, sit in your place or recline on your left. After eating, do not move around a lot because that will cause damage to your health. Rather, walk a bit and then rest. Do not strain yourself or wander about after eating." He seemed to suggest that strenuous activity is not healthy right after a meal; however, a little stretching of the legs and leisure walking is healthy, as Shmuel taught in our *Gemara*.

The *Maharsha* (*Gittin* 68) was troubled by *Gemaros* such as ours. *Berachos* (10b) teaches that King Chizkiyahu put away the book of remedies. He was concerned that people would trust the physicians and forget to appeal to Hashem for help and healing. God is the source of all life and we really should be always addressing Him. Why, then, did our *Gemara* tell us about Shmuel's medical directives? These insights might reduce our reliance on the Almighty.

Maharsha answers that God gave permission to physicians to heal. As a result, the Sages of the Talmud knew much medical knowledge. Initially, they did not write it down to encourage all to

remember Hashem. However, with time there was a danger that the knowledge would be forgotten. Just as there was a danger that the Oral Torah would be lost, there was fear that medical insights would be forgotten. To keep Torah, Rebbe wrote it down. The Sages of the Talmud also recorded some of their medical insights to prevent these insights from being forgotten. Knowing that our Sages had medical knowledge is inspirational. It shows that our Talmud is not missing anything. A person who has an illness can try the remedies of our Sages and he will be healed. This increases the regard people have for the Talmud and for those who study Torah. *Maharsha* seems to believe that these remedies do work. Only some of them have been preserved so as to keep Jews directing their hopes and prayers to Hashem. The *Gemara* included these medical lessons to inspire all about the greatness of Torah and its scholars.

Rabbi Akiva Eiger (*Shulchan Aruch Yoreh Dei'ah* 336:2) quoted *Maharil*, who ruled that we should not attempt to follow the Talmud's medical advice. He feels that human nature has changed. Our bodies are not like theirs. If someone were to attempt to follow the advice and not get healed, he might doubt the veracity of our Sages in matters of religion and law. Similarly, *Yam Shel Shlomo* (*Chullin* 12:12) writes that there is an ancient ban—a *cheirem kadmonim*—against using the remedies of the Talmud, lest they not work on a person and he then doubts the lessons of the Talmud on *halachah* and belief (*Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 114**What Is the Status of a Person Who Died and Came Back to Life?**

The Gaon Rabbi Avraham David Rabinowitz Teomim, the *Aderet*, was of the opinion that if a *Kohein* were to die and then come back to life, he would no longer be a *Kohein*. He proved this contention from a *Gemara* in *Berachos*. *Berachos* 46a has a story about Rabbi Zeira. Rabbi Zeira had fallen ill. Rabbi Avahu came to visit him. Rabbi Avahu made a vow that if Rabbi Zeira recovered, he would host a celebratory meal for the scholars. Rabbi Zeira got better. Rabbi Avahu made his party. At the celebration he asked Rabbi Zeira to recite the opening blessing on the bread. Rabbi Zeira refused, saying that it is the role of the owner of the house to bless and open the loaf of bread. He then asked Rabbi Zeira to lead the final blessing. Rabbi Zeira refused, teaching that the one who makes the opening blessing should also lead the grace after the meal. The *Aderet* asked: *Yerushalmi* (*Berachos perek 3 halachah 1*) states that Rabbi Zeira was a *Kohein*. *Vekidashto* is a Biblical *mitzvah* to have the *Kohein* lead the *bentching*. Why didn't Rabbi Avahu insist that Rabbi Zeira lead the final blessing based on this Biblical *mitzvah*? *Aderet* answered that the *Gemara* (*Megillah 7b*) teaches that Rabbah once killed Rabbi

Zeira on a *Purim* and then brought him back to life. The story in *Berachos* happened after Rabbi Zeira had been brought back to life and therefore he was no longer a *Kohein*.

Our *Gemara* relates a story about Elijah the prophet. Rabbah bar Avuha met Eliyahu in a cemetery of gentiles and he asked him, “Aren’t you a *Kohein*? How can you be in the cemetery?” Eliyahu answered that the deceased gentiles do not transmit *tumah*. Elijah died and whenever he reappears on earth, he has come back to life. The fact that the *Gemara* thought that he would have the status of a *Kohein* seems to disprove the idea of the *Aderet*. If the *Aderet* was correct, then there was no room to question why Elijah was in the cemetery, because as a reborn *Kohein* he was starting afresh without the status of priesthood.

The *Shu”t Chasam Sofeir* (*cheilek 6 siman 98*) also taught that whenever Eliyahu appears on earth, he has the status of a *Kohein*. *Chasam Sofeir* explains that Eliyahu had a very pure body. His body never went up to heaven. It ascended a little and then Elijah’s soul left him. The soul of Eliyahu went up to the heavenly realm and it serves in heaven among the ministering angels. When the time for redemption will arrive, this soul will clothe itself anew in its holy body. Then he will be like any sage and prophet. He will be his old self—the man who studied with Achiyah Hashiloni and received his rabbinic ordination from Moshe Rabbeinu. This is how the chain of rabbinic ordination will be restarted in the Messianic era—Elijah will anoint a man and in that way the unbroken chain from Moshe will be reborn. Whenever Elijah appeared to the Sages in his body, he had the status of a living sage. He could issue halachic rulings and they would not be violations of the rule that Torah is no longer in heaven. At a circumcision or a *Seder*, Elijah’s holy soul appears. Sometimes this soul reveals itself to Kabbalists and teaches them insights. When

his soul appears it is like an angel appearing. Then it could not issue halachic rulings. However, when he reenters his holy body he is the great sage and it will be in such a state that he will fulfill the mandate of *Tishbi yetaretz kushyos ve'iba'ayos*—Tishbi (Eliyahu) will resolve the challenges and the quandaries. Then we will accept his rulings, because who can learn Torah like him? In our *Gemara*, Rabbah bar Avuha saw Elijah in his body. That is why he asked him what he was doing in a cemetery. Because when Elijah reanimates his holy body, he has the status of a living *Kohein* who is one of the greatest of our Sages (*Chashukei Chemed*).

Bava Metzia 115**How Obligated Is the Guarantor of a Loan?**

Our *Gemara* discusses the prohibition on the lender not to enter the home of the borrower and seize an item as a guarantee for the repayment of a debt. Some borrow with guarantors. Our *daf* teaches that the lender is allowed to enter the home of the guarantor to seize a security or repayment. The Torah only prohibited him from seizing something from the borrower. Rav Zilberstein was asked about the degree of obligation on a guarantor.

A man sought to borrow five thousand shekel from a neighbor. The neighbor was hesitant to lend the amount. He insisted on three guarantors—*areivim*. The borrower found three friends. Each signed a personal letter of guarantee. When the loan came due, the borrower did not come to the lender to repay. The lender appealed to him to repay. He eventually came with three post-dated checks. The lender refused to accept them. “I lent you cash. You need to repay me cash.” The borrower protested, “I do not have so much cash available. The checks are all good. You know they will be covered. Please accept them as repayment.” The lender refused. The borrower left. A few days later the lender went to the first guarantor and demanded that he pay the amount of the loan. The guarantor did some research. He found out that the lender had been offered checks. He was now upset.

“Why didn’t you tell me? The checks were good. I would have laid out the cash and taken the checks. Now the option of checks is not available. You have harmed yourself. I am no longer willing to be the guarantor. I should not be responsible to pay.” Who was right?

Rav Zilberstein ruled that the guarantor was right. He did not have to pay. A borrower who does not have cash can repay the loan with any item of value, even soft silks (*Shulchan Aruch Choshen Mishpat* 101:2). Consider, if a borrower paid back a loan of thousands of dollars with thousands of clothing items, would the lender receive his cash back right away? Certainly not. Initially, the lender would have the items that were worth money. It would take him time to turn those items back into the cash that he had laid out. A check has value. A post-dated check will eventually become cash. If a borrower was willing to repay and the lender refused the repayment, he cannot then go and collect from the guarantor. The guarantor is not responsible if the lender refused the borrower’s attempt at repayment. Even if one claims that in our day it is the common practice not to accept goods as repayment of a loan, it is also the common practice to accept checks as repayment of the loan. The borrower should have accepted the checks. He has no right to come with a claim against the guarantor.

Jewish philosophy also should play a role here. According to Jewish thought, a person does not always own his funds. The money that a man lent to a needy Jew really belonged to Hashem. Hashem entrusted the money into the hands of the lender because He trusted him to lend it to the borrower. If the borrower was in a financial crisis and unable to repay immediately, but he had offered post-dated checks, the right thing would be for the lender to continue to perform acts of kindness and graciously accept the checks. The lender was wrong to refuse the checks; the guarantor was therefore now exempt (*Chashukei Chemed*).

Bava Metzia 116**A Donor Would Like to Give Seforim
to the Shul Library. Should He Donate
Books of Aggadah or Books of Halachah?**

The language of *Tosfos* on our page might shed light on what books a person should ideally give to the community. If a person would like to purchase holy texts for the synagogue library, should he buy books that deal with popular themes like works about the stories of the Talmud or should he get books of Jewish law? Books of *halachah* are usually less popular. Only the learned use them.

Our *Gemara* deals with the claim of *migo*. It teaches that a man who seized goats would be believed if he said that the goats had eaten his produce and he took them as compensation for the damage to his field. The reason his claim would be credible is *migo*. If he was a liar, he would have put forward a better claim—namely, “I purchased the goats.” Since he could have won with a more powerful argument, his statement that he suffered damage and that he took the goats as repayment would be accepted. Our *Gemara* suggests that with items that are often lent and borrowed, one could not claim, “I bought them.” The *migo* argument could not be used regarding an item that was often lent out and borrowed. The *Gemara* says that a scroll of

aggadata would be an example of an item that is frequently borrowed and lent. What about books of *halachah*?

Tosfos (s.v. *veha Rava*) write that if our *Gemara* states that it is usual to lend out books of *aggadata*, it is certainly usual to lend out books of *halachah*. The *Gemara* (*Kesubos* 50a) interpreted the verse, “*Vetzikaso omedes la’ad*”—“And his righteousness will stand forever,” to refer to a man who writes scrolls and lends them out. Such a person is a *tzadik*. *Tosfos* apply this verse to books of Jewish law. It thus seems that books of Jewish law are the most preferred. In light of the words of *Tosfos*, Rav Zilberstein suggested that the man who wishes to donate books to the *shul* should donate books of *halachah*. While they might be used less often than books of *aggadata*, the verse only declared that the man who lent out books of *halachah* was a righteous person with lasting merits. Rav Elyashiv ruled this way as well. He felt that the main *mitzvah* of learning Torah is fulfilled in the study of *Gemara* and *halachah*. If someone wishes to donate books to the community he should donate books of law.

Why did the *Gemara* apply the verse of “*Vetzikaso omedes la’ad*” to one who writes books of Torah and lends them out?

Seifer Hachinuch (*mitzvah* 613) explains that the *mitzvah* to write a Torah scroll is part of the *mitzvah* to encourage study of Torah. Hashem commanded that each Jew write a scroll so that he will have a book in his home from which to learn Torah. Hashem did not want people to have to go to their neighbors’ homes in order to learn. Each home should have the tools for study. While the Biblical *mitzvah* applied only to a Torah scroll, every work of Torah fulfills the purpose of the *mitzvah*. Therefore it has always been the practice of righteous Jews to write many books of Torah to encourage the study of Torah. *Rosh* (quoted in *Tur* 270) writes that in our days, when each synagogue has a Torah scroll, the *mitzvah* to write a Torah

scroll now means to write books of Torah and to share them with as many people as possible. Since writing books of *halachah* and sharing them fulfills the last of the 613 *mitzvos*—to write Torah—it is the act that makes a person a *tzadik* with a lasting merit. A person who purchases books of *halachah* for the community is doing this great *mitzvah* of “*ve’ata kisvu lachem es hashirah hazos velamdah es Bnei Yisrael*” (*Chashukei Chemed, Alon Yomi Lelomdei Hadaf Hayomi MiMidreshiyat Petach Tikvah*).

Bava Metzia 117**An Unusual Wind Knocked Off a Roof.
It Caused Damage. Must the Owner Pay?**

One winter there was an unusually severe storm. There had not been such a storm in Israel in decades. The winds lifted up a roof from a porch. The roof caused much damage to the neighbors' properties. The neighbors came to the man who owned the roof and demanded that he pay them for the damage that they had suffered. The man argued, "It was a most unusual wind. I never expected to face such gales. I should be exempt from paying." Who was right?

Our *Gemara* indicates that the owner of the roof was correct. He had built his roof in the normal way. He did not have to make it so sturdy as to withstand hurricane-force gales. He was exempt from paying for the damage. Our *daf* teaches that if a wall or a tree fall into the public domain and cause damage, the owner of the wall or tree would be exempt from liability. *Shulchan Aruch* rules like our *daf*: "If a wall or tree fall into the public domain he is exempt from paying... they are not like a pit because they did not start off as damagers." *Rama* adds: "This is only true when they were initially built correctly. However, if initially the wall was not built correctly, and that is why it collapsed into the public domain, the owner of the wall would have to pay."

Gra quotes a *Tosefta* on our *daf* and a *Yerushalmi* in *Bava Kama* (6:1): “If the wall fell because of an earthquake, winds, or rain, if the wall had been built correctly he would be exempt. If it was not built properly, he would have to pay.” In our case, the roof on the porch was built correctly. Like in the case of a wall that was built correctly and then fell due to the wind, there is no liability. The wind was an unusual one. The owner of the roof can claim *oness*. The damage was something he could not prevent. *Anus rachamana patrei*—God exempts the one who was stuck in circumstances he could not control (*Chashukei Chemed*).

When Must the Damaged Move Away?

Our *Gemara* teaches that in certain situations of damage, the responsibility to move away falls on the party that might be damaged, and the damager is not responsible. Therefore, if a man lived in an upstairs apartment, and beneath him lived a man in a downstairs apartment, and the mud on the floor of the upstairs apartment was becoming thinned—if the man upstairs was washing his hands with small amounts of water that would fall to the floor, mostly get absorbed, and then only a little trickle would later roll down and dribble down to the downstairs apartment, the man upstairs would not have financial liability. It was not direct damage—called *giri dileih*. The man downstairs should have moved himself away from the damage.

According to *halachah*, if one neighbor plants mustard, and the second neighbor sets up a beehive, even though the bees will likely eat from the mustard plants, the beehive owner does not have financial

liability. The beehive owner was allowed to set up his beehive. He was doing it in his own property. He kept it at least three *tefachim* away from the mustard plants. It was not direct damage. When there is no direct and immediate damage, the rule is *al hanizak leharchik es atzmo*—it is the responsibility of the damaged party to move himself away, and the damager has no liability when his friend neglected to act responsibly (*Mesivta*).

Bava Metzia 118**Can an Employer Change the Deal and Pay
with Wheat?**

Our *Mishnah* teaches that if a man promised to pay a worker cash to collect hay or animal feed, he cannot change the terms of the deal and tell the worker that he will allow him to keep some of the hay instead of giving him cash. What about if the employer offered the employee wheat and barley, not hay and feed? Could he change the terms? Generally, *halachah* considers items worth money to be the equivalent of money. Why can't the employer pay his employee with hay instead of cash?

Rashi and the *Rashba* differ in explaining the law of our *daf*. *Rashi* (s.v. *ein shom'in lo*) teaches that the law is based on a verse. The Torah enjoins the employer not to delay the payment of wages. It says, “*Lo salin pe'ulas sachir it'cha ad boker*”—“Do not have the wages of a hired man abide with you until morning” (*Vayikra* 19:13). The Torah prohibits delayed payment of a wage. A wage is usually cash. The worker assumed that the employer would give him cash. Based on the verse that requires that the wage be paid, the employer may not choose to switch the terms and pay with hay, an item worth money.

Rashba was of the opinion that the verse did not teach us

anything about what can be given as payment. According to *Rashba*, our law is based on logic. A person hires himself out in order to earn money with which he will purchase food for his family. He did not hire himself out to get hay, which he will then have to sell, to provide his family with food.

Rosh (*Bava Kama perek 1 siman 5*) agrees with *Rashi*. He holds that our law is based on the verse. He ruled that just as an employer cannot change the terms of the deal and pay with hay, he cannot change the terms of the deal and pay with wheat or barley. The verse mandated that the employer provide the wage, and that meant cash. However, *Rashba* ruled that an employer could change the deal to pay with wheat. Our *Gemara's* law was based on logic. An employee is working to feed his family. He had never agreed to work to get items that he would need to work with some more in order to feed the family. An employer could give him food as a wage. Then the worker's family would not need to wait to get their sustenance.

There might be another difference in law between *Rashi* and *Rashba*. *Bava Metziah* teaches that there are scenarios where there is no law of *bal talin*. If an emissary hired an employee, even though he said, "the employer you work for will pay you," there is no possibility for violating *bal talin*. According to *Rashi*, the law prohibiting paying with hay instead of cash is based on the *bal talin* verse. Therefore, if the employer were to hire through an emissary, since the verse does not apply in this case, he would be able to switch the wage. We would have the usual law that *shaveh kesef kekesef*—what is worth money is the same as money. However, according to *Rashba* our law is not based on a verse. It is based on logic. Therefore, even if the employer were to hire through a representative, he could not switch the wage and make the employee take hay instead of giving him cash (*Me'oros Daf Hayomi*).

Bava Metzia 119**Is Torah Learning Only for Jews?**

A man was asked to give a Torah lesson to a class. Some of the members of the class were Jewish. Others were not. Was he allowed to teach a regular Torah lesson? The *Gemara* (*Chagigah* 13a) teaches that the verse, “*Lo asah chein lechol goy umisphatim bal yeda’um*”—“He has not done so for every nation, and He has not informed them of His laws,” is a mandate that Torah is only for the Jewish nation. Perhaps the teacher should not teach Torah to a class of Jews and gentiles.

God gave the non-Jewish world seven Noahide laws. One of those laws is a mandate to avoid illicit marital acts—*arayos*. A second is to have a system of justice—*dinim*. Two sections of *Shas* deal with these topics: *Nashim* and *Nezikin*. The teacher could teach a class on these topics. Since these are laws that are applicable to the gentile world, it is correct to teach it to them, just as it is correct to teach it to Jews. Some might protest. They might argue that Hashem wants us to teach the gentiles the bottom line *halachos* of marriage and monetary justice. Perhaps Hashem does not want us to teach Talmud and deep analysis to others. Our *daf* proves such a thought wrong.

The *Gemara* discusses a complicated issue. If there are two

gardens, one on top and then the other below, and there are plants growing in the wall of sand between the gardens, who owns the plants? Rabbi Meir argues that the owner of the top garden owns the plants because their roots are drawing nourishment from his earth. Rabbi Yehudah argues that the owner of the lower garden owns the plants because they are in his air space. If he wanted, he could fill the area with dirt and kill the plants. Rabbi Shimon taught that the plants the owner of the top garden can reach are his, and the plants which he cannot reach by bending are the property of the lower garden owner. Efrayim the student of Reish Lakish taught that the *halachah* follows the ruling of Rabbi Shimon. He taught this to the Persian King Shvor Malka. Shvor Malka was an expert in Jewish law. He was so excited about the ruling that he declared that Rabbi Shimon deserved royal favor for his teachings. *Maharitz Chayus* proved from here that deep lessons about monetary law can be shared with members of other nations. Our *Gemara* is a complicated and involved lesson. All peoples should have just laws about monetary concerns. That is why *Amora'im* shared halachic analysis with the Persian king. Therefore, in the scenario of the teacher, the invited rabbi was told by Rav Zilberstein to accept the invitation and give a lesson about any *sugya* in *Nezikin* (*Chashukei Chemed*).

