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CONTEMPORARY BUSINESS ETHICS: A SHAVUOS NIGHT STUDY GUIDE

On the 3rd of Iyyar (April 18th), students at Yeshiva University gathered for a memorial service to honor the memory of our dear rosh yeshiva, Rabbi Ozer Glickman. Rabbi Glickman distinguished himself as a member of two worlds: He was both a *talmid chacham* par excellence and a leader in the financial industry. His classes in business ethics were a bridge between those two worlds. As part of the memorial service, students spent a half-hour studying cases in business ethics using the study guide below (the third case was not included and was written for this publication). These cases highlight our ability to apply the Torah's values to the most contemporary of situations. The guide was designed for study with a *chavrusa* (study partner) or in a group setting.

Case Study #1: The New York City Taxi Commission vs. Uber

New York defeats taxi owners, lenders in lawsuit over rules, Uber (Reuters, March 30, 2017)

A federal judge on Thursday dismissed a lawsuit by taxi owners and lenders accusing New York City and its Taxi and Limousine Commission of jeopardizing their survival by imposing burdensome regulations and letting the Uber ride-sharing service take passengers away. U.S. District Judge Alison Nathan in Manhattan said credit unions, medallion owners and trade groups failed to show they were denied due process or equal protection by having to obey rules on fares, who they can pick up, vehicle equipment, and access for disabled people that Uber drivers need not follow. While the city's ground transportation industry "may well, as plaintiffs allege, be rapidly evolving," the differences in how yellow cabs and ride-sharing services serve passengers, including whether rides are hailed on the street or by smartphone, "easily justify" such distinctions, Nathan wrote. The growth of services such as Uber and Lyft in New York has caused the value of a medallion, essentially the right to operate a yellow cab, to fall by more than half from its \$1.3 million peak in 2014, according to recent sale listings.

Background: Owners of NYC taxi medallions invested a lot of money for the rights to pick up customers off the street. Without a medallion, the only other legal means of having a paid ride service is to order it in advance. Before Uber and other similar services, this meant that the only way to get a cab on demand was to hail a yellow taxi with a medallion. When someone purchased a medallion, it was a purchase of certain exclusivity rights that other ride services do not have. With the advent of Uber and other services, a customer can essentially "hail" an Uber through a smartphone and be in the car seconds later.

Discussion Starter: From a Jewish law perspective, who has a stronger claim, the medallion owners or Uber?

Source #1

אמר רב הונא האי
בר מבואה דאוקי
ריחיא ואתא בר מבואה חבריה וקמוקי גביה
דינא הוא דמעכ עילויה דא"ל קא פסקת ליה
לחיותי... תנאי היא דתניא כופין בני מבואות
זה את זה שלא להושיב ביניהן לא חייט ולא
בורסקי ולא מלמד תינוקות ולא אחד מבני
בעלי אומניות ולשכנו אינו כופיהו רשב"ג
אומר אף לשכנו כופיהו אמר רב הונא בריה
דרב יהושע פשיטא לי בר מתא אבר מתא

אחריתי מצי מעכב ואי שייך בכרגא דהכא לא
מצי מעכב בר מבואה אבר מבואה דנפשיה
לא מצי מעכב בעי רב הונא בריה דרב יהושע
בר מבואה אבר מבואה אחרניא מאי תיקו.
Rav Huna said: There was a certain
resident of an alleyway who set up a
mill in the alleyway and earned his
living grinding grain for people. And
subsequently another resident of the
alleyway came and set up a mill next to

his. The halakha is that the first one may prevent him from doing so if he wishes, as he can say to him: You are disrupting my livelihood by taking my customers...The Gemara answers: This entire matter is a dispute between tanna'im, as it is taught in a baraita: The residents of an alleyway can compel one another to agree not to allow among them in that alleyway a tailor, a tanner, a teacher of

children, nor any type of craftsman. They can bar outside craftsmen from plying their trade in that alleyway. But one cannot compel his neighbor, i.e., one who already lives in the alleyway, to refrain from practicing a particular occupation there. Rabban Shimon ben Gamliel says: One can even compel his neighbor not to conduct such work in the alleyway. Rav Huna, son of Rav Yehoshua, says: It is obvious to me that a resident of one town can prevent a resident of another town from establishing a similar business in the locale of the first individual. But if he pays the tax of that first town, he cannot prevent him from doing business there, as he too is considered a resident of the town. The resident of an alleyway cannot prevent a resident of his alleyway from practicing a particular trade there, in accordance with the opinion of the Rabbis in the baraita, and contrary to the opinion of Rabban Shimon ben Gamliel. With these conclusions in mind, Rav Huna, son of Rav Yehoshua, raises a dilemma: With regard to a resident of one alleyway protesting about a resident of another alleyway conducting business there, what is the halakha? No answer was found, and the Gemara states that the dilemma shall stand unresolved.

Bava Kama 116a

(Translation: The William Davidson digital edition of the Koren Noé Talmud)

Discussion Questions:

1. What do you think is the point of contention between those who restrict outsiders from setting up shop in town and those who permit them to do so?
2. Uber's drivers are local, but the company itself is not based in NYC. Does that make Uber a local company or an outsider? Why?

Source #2

פי' הר"י בן מג"ש ז"ל
דהיינו דוקא היכא דלא

מוחלי תרעא טפי אז אמרינן דמצו מעכבי אבל אי מוחלי טפי הא איכא תקנת לוקחים דההיא מתא [אם ישראל ניהו] לא מצו מעכבי ונראה דעת הרב ז"ל בזול גדול אבל להחיל מעט יותר ממוכרי העיר ודאי מצו מעכבי דאם לא כן לעולם לא מצו מעכבי שאי אפשר שכשיש שם הרבה מבני אומנות שלא יחל השער ובשביל דבר מועט כזה לאו כל כמיניה לבר מתא אחריתי דליפסיד להאי וליתקן להאי דאי בעו בני מתא דלחיל גבייהו או יתנו על השערים או ישיבו אחר מעירן כן נראה דעת הרמב"ן.

R. Yosef ibn Migash explained that the ability for local sellers to prevent outside competition only applies when the outsiders won't cause the price to be lowered. In that case, the locals can prevent outside competition. However, if they lower the price more, then it is beneficial for the local (Jewish) customers and one cannot prevent outsiders. It seems that the opinion of our teacher is to accept this qualification [of R. Yosef ibn Migash] only if there is a major discount of prices. However, if they are only selling at a slightly lower price, the locals can prevent the outsiders because when there are extra competitors there is a guarantee that the price will decrease slightly (and as such, the case where outsiders may not compete must be one where there is a minimal price decrease). For a small amount, it is not worthwhile to allow the outsiders to cause a loss to the locals in order to benefit the local customers because if the locals want the discounted prices, they can set up more local competitors. This seems to be the opinion of Ramban.

Nimmukei Yosef, Bava Basra 11a

Discussion Questions:

1. How does Nimmukei Yosef balance the rights of the local buyers with the rights of the local sellers?
2. How do you think this discussion applies to Uber?

Source #3

בדבר הנהוג בבעלי חנות
של אחד יש לו ליסענטץ

ופורע המס מחנותו כנהוג והאחר הסמוך לו אין לו ליסענטץ ושותקים לו מושלי העיר אם רשאי זה שיש לו ליסענטץ למסור אצל אדונים או שבא באופן אחר להעמיד חובטים במקלות שלא יניח למכור בחנותו וכן אחד שיש לו זכות למכור י"ש הקעלישעק שהשיג בתחבולה על שם הנכרי וכדומה והשני אין לו רשיון ע"ז ומוחג בחשאי אם רשאי זה למנוע אותו ע"פ ד"ת שלא ימוזג על הקעלישק או שיהי' מונעו בכל מסירה וכיוצא בו ... אחר העיון נלפע"ד דזה דוקא אם הי' סך קצוב כמה יהי' בעיר בעלי חנות או מוכרי מזיגה והוא בבל תוסיף חנות או מוכרי מזיגה אף בכסף מלא שייך לומר קפסקי' לחיותא והוה דומיא דבני עיר אחרת או בני מבוי אחת דמסתמא נקצב כמה אנשים יש בעיר או כמה פאמילנטין במבוי זו אבל באם שיכול להיות כמה חנות או מוכרי מזיגה רק שיש לאדון כך וכך א"כ אינו פוסק לחיותו דהא אם היה משלם היה גם הוא רשאי להיות בעל חנות וכדומה ורק שאינו משלם אם כן מזלו גורם שאינן משגיחים עליו ומה לאחר בזה ... אמנם לפענ"ד נראה דזה יכול לעכב אם מוחיל המקח עי"ז שלא צריך לשלם א"כ פשיטא דעכ"פ דיהיה עדיף מיניה בודאי אינו נכון

... Regarding a store owner who has a license to sell and pays taxes for that license, and if someone opens a store without a license, the government closes the store. Is it permissible for the store owner with the license to report the competitor without a license to the government? Similarly, if one purchased a liquor license which permits one to mix drinks and the competitor does not, and mixes drinks in a clandestine manner, is it permissible to force the competitor through a din Torah to stop mixing or to report the individual? ...

It seems to me that if there are a limited number of licenses for store owners or pubs and nobody else can enter the market even if he is willing to pay, then the license owners can claim "you are disrupting my livelihood" similar to the outsiders of a town or of an alleyway, as there are a limited number of potential competitors in a town or in an alleyway. However, if the

government sells unlimited licenses, then the seller who does not have a license is not disrupting the livelihood of the one who does ... Nevertheless (even when there are unlimited licenses), if the cost of the license forces the seller to sell at a higher price and the one without the license is able to sell at a lower price because he doesn't pay the license, then this is certainly not proper.

R. Yosef Shaul Nathanson, Shoel UMeishiv Vol. I 1:20

Discussion Questions:

1. Given that there are a limited number of taxi medallions, how do you think R. Nathanson would deal with the dispute between the medallion owners and Uber?
2. If Uber can undercut NYC taxi drivers because they don't have to pay for medallions, does that play a role?

Concluding Questions:

1. Uber can provide a much cheaper rate for its customers but it does so by circumventing the fees that medallion taxis pay. How do the sources above deal with this conflict?
2. The federal judge ruled in Uber's favor because Uber's service is fundamentally different. Instead of hailing a cab, you order one on your smartphone. How would you apply the sources above to this argument?

Case Study #2: The Printer Warranty

Discussion Starter: Reuven and Shimon share the costs of renting an office space. To save on costs, they share certain equipment including a high-speed printer. When the printer was purchased for \$1,000, Reuven wrote a check to Shimon for \$500 and Shimon went to the store to pick it up. At checkout, the cashier asked Shimon if he wanted to purchase a five-year extended warranty for \$50 that would cover 80% of the replacement cost if the machine ever broke. He purchased the warranty and put the paperwork in a drawer, forgetting about it. A few years later, the machine broke and they agreed to buy the same printer which was still selling for \$1,000. Shimon then remembered about the warranty. He was given a new printer, and with 80% of the cost covered by the warranty, he paid only \$200. Upon returning to the office, he told Reuven what had happened. Reuven said, "I guess I owe you \$25 for the original warranty cost and \$100 for the replacement printer." Shimon said, "Actually, you owe me \$500. If you would have paid for your half of the warranty, then we would have split the cost of the replacement printer, but now that you didn't, you pay for your half of the printer and I will pay for my half through my warranty purchase." Who is right?

Source #1

שטף נחל חמורו וחמור חבריו שלו יפה מנה ושל

חבירו מאתים והניה זה את שלו והציל את של חבירו אין לו אלא שכרו ואם אמר לו אני אציל את שלך ואתה נותן לי את שלי חייב ליתן לו.

If a river washed away his donkey and the donkey of another, and his donkey was worth one hundred dinars and the donkey of the other was worth two hundred, and the individual with the less valuable donkey abandoned his donkey and instead salvaged the donkey of the other, he has the right to collect only his wage, i.e., compensation for the effort he put into salvaging his fellow's donkey. But if he said to the owner of the more valuable donkey: I will salvage your donkey and you will pay me the monetary value of mine in exchange, the owner of the more valuable donkey is obligated to pay the rescuer compensation for his donkey.

Mishna Bava Kama 115b

Translation: The William Davidson digital edition of the Koren Noé Talmud

Discussion Questions:

When the owner of the more valuable donkey agrees to pay the rescuer for his donkey, is he purchasing the donkey or is he paying the rescuer for his services at a higher rate? What do you think is the practical difference?

Source #2

בעא מיניה רב כהנא מרב ירד להציל ועלה שלו מאליו מהו א"ל משמיא רחימו עליה

Rav Kahana raised a dilemma before Rav: If one descended into the river to rescue another's donkey instead of his own after stipulating that he would be compensated for the loss of his own donkey, and his own donkey emerged from the river by itself, what is the halakha? Is the rescuer still entitled to payment from the owner of the donkey that he saved, despite the fact that he did not suffer a monetary loss? Rav said to him: The rescuer is still compensated

because it was from Heaven that mercy was bestowed upon him, and his good fortune does not affect the stipulation.

Bava Kama 116a

Translation: The William Davidson digital edition of the Koren Noé Talmud

Discussion Questions:

1. How does Rav view the nature of the arrangement between the rescuer and the owner of the valuable donkey?
2. Can we compare the purchase of the new printer (where Reuven agreed to pay his half) to the rescue of the valuable donkey and the warranty to the less valuable donkey's self-rescue? Why or why not?

Source #3

נשאלתי באחד ששכר בית מחבירו וקיבל עליו אחריות מדליקה, ואח"כ הלך המשכיר והבטיח ביתו בחברת האחריות, ונשרפה הבית, מי מצי השוכר לומר כיון דלית לך פסידא, דדמי ביתך

את נוטל מן החברה, אדעתא דא לא קבלתי אחריות ... ונראה לי לדון, דהשוכר חייב בתשלומי אחריותה, דכמו כן שנינו בפרק הגזול ומאכיל (ב"ק דף קט"ז ע"א) במשנה דשטף נהר חמורו וחמורו חבירו כו', ואם אמר לו אני אציל את שלך ואתה נותן לי את שלי חייב ליתן לו, בעא מיניה רב כהנא מרב ירד להציל ועלה שלו מאליו מהו, א"ל משמיא רחימו עליה, אלמא דהא דקיבל אחריות הוא משום דמחמת דמציל את של חבירו מפסיד חמור של עצמו, ולסוף לא הפסיד את של עצמו, דעלה מאליו, לא מצי אמר אדעתא דא לא מחייבנא נפשאי באחריות חמורך, דמצי אמר ליה מאי איכפת לך במה דמשמיא רחימו עלי, כש"כ כאן, שע"י מה שנותן שכר קצבתו לחברת האחריות הרויח בתשלומי ביתו, ודאי דבזה לא נפטר השוכר מתשלומי אחריות שקבל עליו.

I was asked regarding an individual who rented a house from his friend and accepted upon himself responsibility for fire damage. The landlord purchased an insurance policy, and subsequently the house burnt down. Can the renter claim that since the landlord will collect from the insurance company, the renter is exempt from payment because he never intended to accept responsibility under these conditions? It seems to me that the renter is responsible to pay as we find in Bava Kama, "If a river washed away his donkey ... Rav Kahana raised a dilemma before Rav ... " The reason why the owner of the more valuable donkey accepted responsibility to pay was because the rescuer was losing his own donkey, and even though the rescuer

never ended up losing his own donkey and it emerged on its own, the owner of the valuable donkey cannot claim, "I never accepted responsibility under these circumstances." This is because the rescuer can respond, "the fact that my donkey survived is an external matter that is not relevant to you." Certainly, in this situation (regarding the fire insurance), the one who pays the premium for fire-insurance benefits from the compensation and this doesn't exempt the renter from his responsibility.
R. Meir Simcha of Dvinsk, Ohr Sameach, Sechirus 7:1

Discussion Questions:

1. R. Meir Simcha views the insurance arrangement as a secondary external arrangement while the renter bears the primary responsibility. If purchasing insurance were to hold the insurance company primarily responsible for the property, would that strengthen the renter's claim?
2. If the roles were reversed, and the landlord took on the responsibility for fire damage and the renter purchased property insurance that also happened to cover fire damage, who would receive the insurance money in the case of a fire? [See *Ohr Sameach, Sechirus 5:6*]

Concluding Questions:

1. The purchase of a homeowner's policy generally entitles one to compensation for damages even if the homeowner decides not to repair the damages. Warranties generally only cover replacements and do not offer compensation if the customer doesn't want to replace the item. Does that factor into this situation? Does Reuven have a claim in saying that without using his half of the broken printer, Shimon cannot cash in on the warranty? Why or why not?
2. In the presentation of the case, an important detail was left out: what happened after Shimon purchased the warranty? How would the following scenarios affect the case?
 - Shimon forgot to tell Reuven about the warranty and therefore Reuven never had a chance to pay for it.
 - Shimon told Reuven about the warranty and Reuven said "Why did you buy a warranty? These warranties are never worth it. I am not paying my share."
 - Shimon told Reuven about the warranty and Reuven agreed to pay but forgot to do so.

Case Study #3: The Disputed Bitcoin Transaction

Discussion Starter: Dan is a regular customer at Cohen's Bistro and an avid Bitcoin user. He was taking out his family one evening and was glad to see a sign that said "We now accept Bitcoin payments. Complimentary dessert for anyone paying with Bitcoin." When they ordered the food, Dan mentioned that he would be paying with Bitcoin and would like the complimentary dessert. At the end of the meal, he received the bill. The price of Bitcoin that day was \$5,000 and his bill was \$150, making his amount due .03 Bitcoins. He tried to pay using an app on his phone but the service that processed his account was down. Mr. Cohen came over and said "Don't worry. I trust you, you can send me the Bitcoins later." Dan never got around to sending the Bitcoins. Two weeks later, he walked into the restaurant and Mr. Cohen reminded him that he has an outstanding bill of .03 Bitcoins. At that point, the price of a Bitcoin had spiked to \$8,000. Dan said that he would prefer to pay the bill in cash and took out \$150. Mr. Cohen said, "I am sorry, but we agreed that you would pay .03 Bitcoins. If you don't want to pay in Bitcoins, you should pay me the monetary equivalent of .03 Bitcoins which is \$240." Is Mr. Cohen correct?



Background: Several years ago, Bitcoin was introduced as a cryptocurrency (i.e., based on encryption) to be used as an alternative to standard currency. Bitcoin is not backed by any government or central bank and does not require any third-party institution to complete the transaction. A Bitcoin has no physical properties; it is a digital entity. Furthermore, there is no inherent value to Bitcoin. It currently is accepted as a form of payment in a limited number of online and brick and mortar stores. Most stores still do not accept Bitcoin for payment.

In Jewish law, the purchase of (movable) goods takes place when the buyer takes possession of the goods. If the buyer has not yet paid, the money owed is assumed to be a debt that the buyer owes the seller. If the money was paid prior to the buyer taking possession, either party is legally entitled to cancel the sale (though it is not proper to do so).

Source #1a

הדינרין של זהב לגבי מטבעות של כסף הרי הן כפירות וכן המעות של נחשת כמו פירות לגבי מטבעות של כסף. כיצד נתן לו דינר של זהב בעשרים וחמשה דינר של כסף נקנה הכסף אע"פ שעדיין לא בא הכסף לידו וחייב ליתן לו עשרים וחמשה דינר של כסף כמו שפסק עמו אם חדשים חדשים אם ישנים ישנים אבל אם נתן לו עשרים וחמשה כסף בדינר זהב לא קנה עד שיקח הדינר של זהב וכל אחד יכול לחזור בו. *Gold dinars vis-à-vis silver coins are considered commodities and similarly copper coins are like commodities vis-à-vis silver coins (because these coins don't circulate as well as silver). How is this applied? If A gave B a gold dinar in exchange for 25 silver dinars, A acquired the silver, even though it has not reached his hand, and B must give A 25 dinars of silver exactly as specified; if they specified new coins, he must give new coins, if old coins, he must give him old coins. However, if B gave A 25 dinars of silver for a gold dinar, the transaction is not complete until B takes the gold dinar and each party is legally entitled to back out. [This is because acquisitions involving commodities require transfer of the commodity from the seller to the buyer. Merely paying for the commodity with money is insufficient.]*

Rambam, Hilchos Mechira 6:3-4
Codifying discussions in Bava Metzia 44-45

Source #1b

ברם צרכיני לברורי דלאו כל דינרי דהבא הוו טיבעא לגבי פירי אלא דינרין דסגין בההוא אתרא וחבני ומזביני בהו אינשי הוא דהוו טיבעא אבל דינרי דמיפסלן ולא זבני ומזביני

בהו אלא מאן דמזבני בהו אזיל בהו לבי טיבעא א"נ אזיל בהו לדוכתא אחריתא דסגין בה או דמזבין להו למאן דאזיל בהו התם כגון הני ודאי לא הוו טיבעא כלל אלא פירא נינהו. *One must clarify that not all gold is considered currency vis-à-vis other commodities. Only gold coins that are used in that location for transactions are considered currency. However, gold coins that are not in circulation and are not used for transactions such that if one wants to transact with them, he must either go to a money changer or go to a place where they are in circulation or sell them to someone who is going to that location, those coins are not considered currency at all and are considered commodities.*

Rif, Bava Metzia 26b

Discussion Questions:

1. Does Bitcoin meet Rif's criterion to be considered a currency? What other criteria should be used to determine whether Bitcoin qualifies as currency?
2. According to Rambam, if the purchase of a commodity was done with the understanding that a specific type of currency would be used for payment, one must use that payment method. Do you think the same would apply if they agreed that the payment would be with another commodity? How would you apply this question to our case study? Does it matter if Bitcoin is considered a currency or commodity?

Source #2a

ודכוותיה במטלטלין שמי שמשך חפץ מחברו והתנה ליתן לו כור חטים חדשים חייב ליתן לו כמו שפסק. *The same rules apply to an exchange of two commodities. If A took possession of an item from B and agreed to provide a barrel of fresh wheat as payment, he must provide the barrel of wheat, as specified. Nimmukei Yosef, Bava Metzia 27a [See, Taz, Yoreh De'ah 162:1 and Chavos Da'as 162:1, regarding the prohibition of ribbis and why it doesn't apply in this case if the price of wheat rises.]*

Source #2b

השוכר את הפועל ופסק עמו לתת לו כור חטים זה או בגד זה אם רצה לחזור חוזר ויהיב ליה מידי אחרינא דהא מיחסר משיכה וכדאמרי' הכא גבי טלה זה והא מחסרא משיכה ואפשר נמי דאפילו פסק עמו חטים סתם אינו חייב לתת לו חטים אלא נותן לו שכרו במעות ... כשפסק עמו חטים כיון שאין סתם שכירות בחטים אלא שבא לדון עליו מפני שהתנה עמו בכך לא קנה שהרי לא משך אבל מ"מ נראה שחייב ליתן לו דמיו שאע"פ שגוף הדבר לא נקנה מ"מ הרי מתחייב השוכר בשוויו. *If one hires a laborer and they agreed that the laborer would be paid with this specific barrel of wheat or this specific garment, if the employer wants to, he can back out of this commitment and pay something else because [the laborer] didn't take possession of the item. It is possible that even if they agreed to a generic barrel of wheat, there is no requirement to give wheat, but rather, he may pay with cash ... When one sets*

wheat as the terms of payment, since it is unusual to pay with wheat, and the only reason to require payment with wheat is because those were the terms, there is no commitment because the laborer didn't take possession of it. However, the employer must pay the laborer his wages. Even though the laborer didn't acquire the specific item, the employer is nevertheless obligated to pay the value [of the item specified for wages].

Rabbeinu Nissim, Avodah Zarah 30b

Discussion Questions:

1. Nimmukei Yosef writes that if the terms of the sale are to pay a barrel of wheat, one must pay a barrel of wheat. Rabbeinu Nissim writes that if the terms of the employment are to pay the laborer a barrel of wheat, there is no requirement to pay a barrel of wheat. Is there a dispute between Nimmukei Yosef and Rabbeinu Nissim or are they dealing with two different scenarios?
2. Rabbeinu Nissim states that even when the employer doesn't have to pay for the item, he must "pay the value" of the item specified for wages. What if the value of the item goes up in the interim?

Source #3

כתב בנימוקי יוסף
ודכותה במטלטלין ...

ואחי הרב המופלג מוהר"ר יהודה הכהן ש"ן הקשה ממ"ש הר"ן ... שהשוכר את הפועל והתנה ליתן לו בשכרו כור חטים זה או אפילו כור חטים סתם, אינו חייב ליתן לו חטים אלא מעות ומשום דמחסרא משיכה ... ולכן נראה לענ"ד ... דאפילו מחייב עצמו ליתן זהב עבור כסף לא מהני, וא"כ אפילו פירי סתמא אינו מתחייב עבור מעות, והיינו דינא דהר"ן דמעות אינו קונה אפילו להתחייב בכור חטים סתמא, ומש"ה בשוכר את הפועל [אינו חייב ליתן לו חטים] דמלאכת הפועל אינו אלא כמו נתינת מעות, אבל מי שמשך בפירות והתנה ליתן לו חטים במקום דמי הפירות שפיר מתחייב כמו שהתנה.

Nimmukei Yosef wrote, "The same rules apply to an exchange of two commodities etc." My brother, the esteemed R. Yehuda the kohen, may his light shine, asked from a comment of Rabbeinu Nissim ... that if one hires a laborer ... one does not have to pay in wheat ... It seems to me ... that even if one specifically obligated oneself to pay gold in exchange for the acquisition of silver, it does not work and as such, one cannot be bound by a promise of a generic commodity in place of money. This is the law described by Rabbeinu Nissim that currency cannot be used for a purchase, even to obligate oneself to pay a generic barrel of wheat and for this reason, if one hires a laborer, he is not obligated to pay in wheat because the wages of a laborer are considered like money. However, if one acquired commodities with the understanding that he would receive

wheat in exchange for the value of those commodities, the terms are legally binding.

Ketzos HaChoshen 203:4

Discussion Questions:

1. According to Ketzos HaChoshen, the physical acquisition of an item has the ability to "lock in" the terms of payment associated with that acquisition, whereas the generation of an obligation to pay a laborer does not. Do you think this distinction applies more broadly to the difference between purchase of goods and purchase of services? Why or why not?
2. When one receives a restaurant bill, what percentage of the bill goes toward the food and what percentage goes towards the service? If the customer and restaurant owner worked out in advance to pay with a commodity, according to Ketzos HaChoshen, are those terms binding?

Concluding Questions:

1. Dan received a complimentary dessert when he decided to pay in Bitcoin. Does that play a role in this case? Why or why not?
2. Does the fact that Dan attempted to pay right away but was unable to affect the case? Why or why not?



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