

Choshen Mishpat

Review Bechinah

Hilchot Ona'ah and Bitul Mekach (227-231)

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Directions

Answer each question in a paragraph or more, citing the relevant Gemaras, Rishonim, Shulchan Aruch, Nosei Kelim, and Shu"tim; not everything will immediately seem related if you haven't learned some contemporary Acharonim.

Rabbi Bleich sometimes asks questions that are not immediately on the page of the limud to see how you would think about it given what you know. Even if you never learned about the specific circumstances the question is asking about, you can most probably intuit the two tzedadim of the case and suggest what the Halacha would be according to either side based on the relevant information from our limud.

Other than from my own learning, the questions and answers below come also from various websites such as BusinessHalacha.com, Yorucha.com, and Mi Yodea. Due to lack of time, the answers are brief, but that does not absolve any of us from knowing all the details that were omitted and having them ready for this Bechinah or the final in Shamayim.

Questions & Answers

Siman 227 - Ona'at Mammon

1. What's the difference between Ona'ah and Onah?

Ona'ah (אונאה) means to take advantage of or oppress somebody. Ona'at Maman means overcharging or price fraud, and Ona'at Devarim means inflicting verbal injury.

Onah (עונה) means time, such as the seasons of the year, intervals of day and night, and time with one's wife.

2. What are the basic dinim of Ona'at Mammon?

The Torah prohibits one from committing Ona'ah against his fellow. The Gemara interprets this mean says that if one charges up to 1/6th higher or lower than the market price of an item, the difference must be returned to the victim. If it was 1/6th or more either higher or lower than the market price, then the entire sale is null and void. Rav and Shemuel debate if the sixth is calculated based on the money paid or the true value of the product.

[Shulchan aruch]

3. How would one calculate Ona'ah nowadays given the chaotic world of huge retail price ranges, international markets accessible from one's cell phone via Amazon, eBay, Alibaba, Temu, etc.?
4. Does one have to consider black market prices when determining "market price"?

Rav Asher Weiss (Shu"t Minchat Asher 3) argues Ona'ah should mainly apply nowadays wherever there is government regulation of a commodity's price. So the black market's nature as an illegal market invalidates its prices from affecting market price.

5. A gadol hador recently passed away and his pants were sold for many thousands of dollars. May one purchase them for that price? If he did and then realized that it wasn't a great idea, can he get return them? Can he do better than that? Let's not get started with his \$1.8M streimel.

If you're reading this, you probably agree that a pair of pants being sold for many thousands of dollars (or even a hundred dollars) is a gross violation of Ona'ah and warrants voiding the sale, unless a tenai was made. Some might argue that the tenai was self-understood.

[sentimental value, Ritva, Ketzot, etc.]

Based on Rama (227:7), one could purchase even though he knows there's Ona'ah involved, and then seek to recover the price difference in Beit Din. Although many dispute the Rama, which would lead the seller to be able to claim Kim Li like the other side, if the buyer and seller were both Ashkenazi, there would be a strong claim to be able to get the difference back and keep the pants, too!

6. Reuvein found an old copy of the Rambam in genizah. He then sold it to an antique seller for 1000 shekalim. The antique seller then noticed after the sale that there are handwritten notes on the side of the sefer with the signature of the Rama. Now the sefer is worth 50,000 shekalim. Does he have to return the sefer to the Reuven?

Reuvein found an old copy of the Rambam in genizah. He then sold it to an antique seller for 1000 shekalim. The antique seller then noticed after the sale that there are handwritten notes on the side of the sefer with the signature of the Rama. Now the sefer is worth 50,000 shekalim. (<https://judaism.stackexchange.com/questions/96762/>)

7. One sold an item worth \$60 for \$51 dollars, realized his mistake, and now wants his additional \$9. What's the din? (3)

Have to decide between the maggid and the mordechai

And on me'aneh vs. mitaneh

8. Give three scenarios where one can charge double the market price for an item.
9. Can a seller attempt to undo a sale in which he charged the buyer too much? (227:4)
10. Shimmy sold a yeshivish car to a yeshivish guy for triple the price and was so happy he bought a super expensive diamond ring with all the money and was mekadesh his girlfriend. Is she Mekudeshet?

[Discussion of Gezel or not]

See SMA 227:8, Netivot, etc. According to the SMA, if the buyer wants to undo the sale after the seller does kiddushin, the kiddushin would be undone. Once the buyer reconciles with his purchase, though, seller takes ownership retroactively of the money, and if he is mekadesh a woman in the middle, it would be effected retroactively. Netivot (Biurim 1)

11. How long does one have to return an item he paid too much for? What if he didn't pay yet or if something came up? What if the other party wasn't home when he attempted to return it? (227:7)

One has the time it would take to show the item to a merchange who can assess if he was charged the right amount of not. After that time, he may not seek to undo the sale, unless he can prove that circumstances beyond his control prevented him from seeking the merchant's counsel.

12. What if the assessor made a mistake? (Netivot 3)
13. Reuven charged Shimon double the market price for an item, and now the sale is being undone. Can Reuven give Shimon a different item instead of a refund? Why or why not? (BY end of 6)
14. One goes shopping at the local fancy kosher supermarket and, upon returning home, checks his receipt to find out that he paid \$5 for a single avocado. What are his options? (Tur 8)
15. Ruvy bought five cell phones for his family from the Kosher phone store and then comes to Beit Din to get back what he claims he was overcharged. Asked why he went through with the sale at the time if he knew he was being overcharged, he said that he needed the phones right away and figured he would go through with the sale and claim the money back later. The owner argues he was mochel. What's the din?

Rama is Meikel, so Ashkenazim would give the money back, but see fn at end of dinei mammonot first perek, go by muchzak.

16. [price changes] (11-14)

17. [currency] (16)

18. Reuven opens a briefcase that seems to be full of \$100 bills and offers it to Shimon in exchange for his new \$100,000 car. Shimon accepts, and Reuven drives off, except it turns out the briefcase was full of \$1 bills concealed by a layer of \$100s, totaling only \$25,000. How much can Shimon get back from Reuven? (19)
19. [really badly needs a small object, willing to trade a huge one] (227:20)
20. Reuven's refrigerator breaks, so he asks his neighbor Levi if he can buy Levi's extra one. Levi is only willing to sell it for five times the market price. Can Reuven argue that is Ona'ah? 23-24
21. Christopher walks into a Judaica shop and wants to buy a fancy menorah as a gift for his Jewish coworker. The salesman quickly scribbles an extra zero on the handwritten price tag of the menorah Christopher is looking at and eventually buys. The shop does not take returns. When the Jewish coworker receives the gift, he realizes what happened and seeks to return the product for the full purchase price (he also has enough menorahs at home). How much is he entitled to in return? (26)
22. Janet has a giftware store and sells high end luxury gifts at a 20% markup. How can she make sure that this is halachically acceptable? (27)
23. In a game like Monopoly, is there an issue of ona'ah if a player owned, say, Mediterranean Avenue for \$60 and wants to sell it to the owner of Baltic Avenue for \$400?

If one assumes halacha applies to imaginary situations such as board games, where the money and property are truly worthless and nobody actually takes possession of the cards, there are still a couple factors to consider:

If we pretend that the property exists, then this would be ona'ah on karka and not chozer bediavad. After all, the cards are merely deeds to properties. (227:29)

Moreover, the actual prices of the properties are explicit on the board, so one could easily formulate a tenai to sell the property by saying "I bought it for \$60, but because I see you really need it, I'll sell it to you for \$200 on condition that you don't claim ona'ah." (227:27)

[price gouging]

Question from Stack Exchange <https://judaism.stackexchange.com/questions/81688/>

24. Eli is making Aliyah and looking for a place to live. Someone convinces him to buy an apartment in an up and coming neighborhood for a hefty sum, only for him to find out that he was majorly ripped off. Can he seek restitution in Beit Din? (32)
25. Is there Ona'at Mammon nowadays? How is an item's price determined? Explain as well as you can.
26. Can one dentist charge \$1200 for a root canal and another \$2000?

[Mishpatecha Leyaakov]

27.

Siman 228 – Ona'at Devarim and Genevat Da'at

1. What is Ona'at Devarim?
2. Which is worse, Ona'at Devarim or Ona'at Mammon? Why? (1)
3. With respect to whom does the prohibition of Ona'at Devarim apply?

(Rama, SMA, Rav Willig's Chabura)

4. The latest convert to join the Young Israel is demanding that davening be slowed down and that the mechitzah be raised to the ceiling. How should one respond?
5. Jewish people were massacred and taken captive by terrorists. Is it appropriate to note to the victims how their level of religious observance may have contributed to their experience? Prove it. (4)
6. Define Genevat Da'at and present five examples.
7. With respect to whom does the prohibition of Genevat Da'at apply?

Jewish and Non-Jewish people alike (Rambam Mechirah 18:1ish).

8. Does a used car or used sefarim business have to outline all of the issues with a product to every buyer? (6)
9. The culture among Persians is to incessantly invite people over to their homes and to their events, even when they know the recipient cannot come. Condemn and justify this practice. (SMA 278:8)
10. How much may one fix up an old car before selling it? Can he give it a brand new paint job so it looks new? Can he do that with nail polish (and not three coats of professionally applied paint) in order to make it look freshly painted? How about painting a new car a different color? (228:9, SMA)
11. May one dye his hair to hide that he's graying before a job interview?
See 228:9. As long as it doesn't help him get the job. (Iggerot Moshe YD 2:61)
12. May one add false claims to a medical article that nobody will ever read?
No! (Tzitz Eliezer 15:12)
13. What about using publicly posted answers on a state exam?
No! Le'Maaseh, people care and it'll help you get ahead, so it's Assur. (Iggerot Moshe CM 2:30. See also Mishneh Halachot 7:275 and a full write up at <https://www.yutorah.org/lectures/727123/>)
14. During the Covid-19 pandemic, there was plenty of unemployment money available with few questions asked. Could one who is learning in Kollel apply for the money given the government wasn't going to investigate the true nature of his employment?
Obviously, no, as that would be gezel, sheker, genevat da'at, etc. (based on Iggerot Moshe CM 2:29)
15. A fruit distributor wants to get rid of some almost ripe bananas fast. Can he throw them into a container of fresh ones that just came in to the warehouse?
16. Can a supermarket dump old avocados into a bin of fresh ones that are for sale?
17. Can a restaurant or catering hall dilute coke or alcoholic beverages before serving?
18. Many people like to pour their wine into a decanter to preserve it better and for aesthetic effect. Can a restaurant or catering hall refill a blue label whisky bottle with a red label one in order to look nicer at the bar?
19. Can the 90-year-old Mexican man who works at the local kosher pizza shop give out lollipops to the kids to encourage them to come to that pizza store and not the other kosher one four doors down? (228:18 plus some Yoreh De'ah)
20. Can one have weekly sales with a "loss leader" to attract customers (228:18, AHS)?

21. Can one go from booth to booth in Bloomingdales and try on every perfume with no intention to buy?
22. Can one test drive a car at a local dealer and then go buy it online instead?
23. Is it permitted to browse through a mom and pop Judaica store if he's most likely to go buy whatever he finds on Amazon when he leaves instead?

Any store owner knows that potential customers comparison shop and might decide not to buy there. (Pischei Choshen, Ona'ah 15 nt. 15) It is also permissible if you ask the store owner up front, "Do you mind if I browse the products without buying?"

Furthermore, browsing in a large store full of customers is permissible if you do not distract the salespeople, since the owner or salespeople do not note an individual person who enters and browses. Similarly, it is permissible to browse in stores that emphasize feature displays, such as FAO Schwarz, since the owner encourages people to view the display and does not necessarily expect a sale.

Finally, the prohibition of ona'as devarim applies only to a fellow Jewish storeowner. (Rama 228:1) (Businesshalacha.com)

24. Are bait and switch techniques an issue?

[Orchot Mishpat, Ushinsky]

- 25.

Siman 229 – Acceptable Amounts of Waste in a Product

1. How much dirt is acceptable at the bottom of a 25lb. bag of basmati rice? How much powder is acceptable at the bottom a bag of cheerios? What is the most important factor in determining how much useless byproduct can be sold with a product?

Minhag! (229:2)

2. A father and son are walking through the shuk and the son pulls out some rocks from a merchant's bucket of nuts and shows his father. The merchant scolds the father and demands the father pay for the boy's touching his goods. What's the din? (229:2 and more)

Siman 230 – Selling a Wine Cellar or Wine that Sours

1. You hire someone to sell your wares at the annual event for your field and the price suddenly drops and/or the product goes bad before he gets there. In what cases is he responsible and in what cases is he not?

230:9 + Pitchei Teshuvah there and in the crossreference

2. How long is a bottle of mevushal wine supposed to last? (230:10)

Siman 231 – Honest Weights, Measures, and Prices and Their Regulations

1. To whom does cheating in weights and measures apply?

Everyone, both Jewish and non-Jewish (231:1). See SMA (231:1) who explains that since, he's trusting you, unlike by onaah where he can see what he's buying, it's assur even to non-Jewish people. Pitchei Teshuvah says for Rambam it's Deoraita. Bach thinks Tur holds it's Derabbanan but Ara Derabbanan says Kanhag says Tur holds it's Deoraita also.

2. Can one use metal weights on a scale nowadays?

[See 231:10] Yes, stainless steel doesn't really rust. (Mamon Kasher page 85)

3. If one's bathroom scale always says he weighs five pounds less than he really does, does he have to throw it away? What about a thermometer that always reads a few degrees too low?

No to the scale. Nowadays we have specialized non-commercial scales for weighing food for cooking or people, so maybe those aren't a problem of keeping if they're inaccurate. ([Mamon Kasher page 84](#))

The thermometer could be a problem, though, because one cannot send his children to school if their temperature reaches a certain threshold. During the Covid-19 pandemic, one wasn't even permitted to enter certain institutions without getting his temperature taken!

4. Does a supermarket have to exclude the weight of the plastic bag, which costs much less than produce, when weighing produce on the cash register scale?

Lechatechilah, one should exclude it, but bediavad he doesn't have to pay the money back. If there's a clearly posted notice that the weight is not excluded, then that is fine. (Mamon Kasher page 85, Mishpatecha LeYaakov 8:29)

5. Eglon the taxi driver's meter is a little fast, can he use it?

No! (Mamon Kasher page 85)

6. How terrible is it if you use inaccurate scales? (231:19)

7. How much is the basic retail sales profit allowed to be at a maximum? (231:20)

8. Does the one from shopkeeper have to sell at the price supposedly prescribed by halacha if nobody else does? (231:20)
9. You sell Coca Cola at a public venue. Whenever you pour, there's inevitably some froth at the top. Are you allowed to sell it as is or do you have to wait until the froth settles and then fill it up the rest of the way?

If the froth is normal, you may sell it as is. (Mamon Kasher)

10. Does a Jewish food company have to put more of its product in a package than the stated net weight on the packaging to fulfill the law that one must give a little extra?

Mamon Kasher is unsure.

11. Give some examples of prohibited price gouging.

During an emergency, a gas stations pump up the price of gas.

During the beginning of the Covid-19 pandemic, people bought up toilet paper in fear of a shortage.

12. Define "Chayei Nefesh" and give a number of examples. (231:22-26)

13. Sneakers usually sell for \$50-\$250. Noach invented unique sneakers that have waterproof Bluetooth speakers, GPS, cameras, and LED flashlights built in. Can he sell them for \$500?

Rav Yoel Schwartz writes in Mammon Kasher (page 90) that one may charge a price higher than market price of an item, given he has a unique variation until everyone else copies him. So, for now, he should sell them for as much as he can!

14. Does one have to abide by HOA/Va'ad HaBayit regulations and payment demands?

Yes, living in that space is an implicit agreement to abide by them, plus they are empowered by the laws of Bnei HaIr (231:27, Ateret Devorah 3:12).

15. May one build an extension to his house without a building permit? What about finishing his basement?

If the law requires one apply for and receive a building permit for major construction, then he may not build without it, by force of Dina Demalchuta, Takkanot Bnei HaIr (231:27), and Minhag, regardless of whether or not the change is observable from the outside or not (Piskei Din Rabbaniiim 12 pages 15 and 354). If it changes one's property tax rate given expanded living space, there's further argument to prohibit it.