



Restoring the Primacy of Choshen Mishpat

BUSINESS HALACHA *in the* CLASSROOM

❧ *Bava Metzia* ❧
PEREK ALEPH

Dedicated by Mr. Judah Wassner & Family

לעלוי נשמת אביו
ר' יוסף מנחם מענדל בן ר' אברהם הלוי ז"ל

*A project of the Business Halacha Institute
Under the auspices of HaRav Chaim Kohn, shlita*

Fruit of the Land

Bava Metzia 2b - HaMotzi MeiChaveiro

"This week is Tu B'Shevat," announced Rabbi Dayan. "We celebrate the 'New Year' of trees with produce of Eretz Yisrael, especially fruit. However, the Israeli Rabbinate does not take full responsibility for terumos and ma'asros (tithes) of export produce. So, unless the produce is marked as tithed, it is proper to take terumos and ma'asros yourself."

"But I thought terumos and ma'asros apply only in Israel," asked Mr. Israeloff.

"It depends on where the fruit grows and is packaged," answered Rabbi Dayan. "Fruit grown in Israel is obligated in tithes even when eaten in America."

Mr. Israeloff checked his local fruit store for Israeli produce, and found luscious Jaffa oranges, Israeli pomegranates, persimmons, avocados, tomatoes, peppers and cucumbers. He bought a bag of each and laid them out on his table. "What do I do now?" he wondered. "How do I take terumos and ma'asros?"

Mr. Israeloff invited his knowledgeable neighbor, Mr. Levy, to advise him.

"Taking tithes involves four easy steps," explained Mr. Levy. "First, cut off somewhat more than 1% of the produce. For ten oranges that means an eighth of an orange. Second, designate a coin to redeem the ma'aser sheni on. Take a quarter, since that allows you to redeem a few times."

Mr. Israeloff cut off a small piece of each type of produce and got a quarter. "Now what?"

"Third," continued Mr. Levy, "recite the terumos and ma'asros text whereby you declare the various tithes, in a language you understand. Fourth, double wrap the 1+% that you cut and dispose of it, and destroy or discard the coin after a few uses."

Mr. Israeloff had only a Hebrew text in his siddur, but was able to download an English one from a kashrus site. He recited the text, disposed of the fruit which had been cut off, put away the quarter safely for additional redemptions, and thanked Mr. Levy.

"My pleasure," smiled Mr. Levy. "But I'll take an orange, half a pomegranate, persimmon and avocado, and three-quarters of a tomato, cucumber and pepper."

"Huh?" Mr. Israeloff looked at him blankly.

"You know I'm a Levite," explained Mr. Levy. "One of the tithes you just declared was ma'aser rishon given to the Levite. So I'd like my share, 10% of each type..."

"Can you really collect 10% from everyone?" asked Mr. Israeloff

Fruit of the Land, cont.

"Why not?" retorted Mr. Levi. "You declared ma'aser rishon and I'm a Levite, so you owe it to me or some other Levite."

"But Rabbi Dayan never mentioned anything like that!" insisted Mr. Israeloff. "Let's check with him."

Mr. Israeloff called Rabbi Dayan, while Mr. Levy joined on the other phone. "Your question," said Rabbi Dayan, "touches on the basics of terumos and ma'asros.

"The mitzvah of terumos and ma'asros has two parts. The first is to designate and declare terumos and ma'asros. Even nowadays we must do this, because otherwise the produce is called tevel and is not kosher. Only after declaring tithes is the remaining fruit kosher.

"The second part is to give the tithes to the relevant parties, the Kohen and the Levite. The 1+% is the Kohen's portion, but it has sanctity and must be eaten in purity. This is not possible nowadays, so we dispose of it respectfully."

"What about my 10%?" demanded Mr. Levy.

"The Levite's portion has no sanctity and can be eaten nowadays. However, this brings us to the most fundamental principle of monetary law," answered Rabbi Dayan. "That is: Hamotzi mei'chaveiro alav hara'ayah – one who demands of his friend has the burden of the proof. A person can demand money only if he can prove that he is definitely entitled to it.

"There is an element of doubt here. Tithes may have been taken already by the Rabbinat, in which case the 'tithing' now was superfluous. Mr. Israeloff declared terumos and ma'asros out of doubt, to make sure that the fruit would be kosher. However, when you demand that he hand over to you the 10% Levite portion - that's a different story! This is no longer a kashrus issue, but rather a monetary one.

"To demand that Mr. Israeloff give you an orange places the burden of proof on you that terumos and ma'asros were not previously taken and that his tithing was meaningful. Otherwise, Mr. Israeloff can simply say, 'Prove that I owe you this orange. Maybe it isn't really ma'aser.' Furthermore, you have no proof of your lineage as a Levite, other than your own say so. Since no Levite can prove that he is definitely entitled to that orange of ma'aser rishon, Mr. Israeloff can retain possession of it and eat it."

Mr. Israeloff hung up, and turned to Mr. Levy, "Sorry, you can't demand the ma'aser. But how about joining us anyway for a festive Tu B'Shevat fruit meal?" 

Half the Truth

Bava Metzia 3a - Modeh BeMiktzas

Rabbi Dayan walked into his shiur (lecture).

“Today we will continue learning about oaths,” he began. “Does anyone know the three cases in which the Torah imposed an oath in beis din?”

“We discussed only one,” Sruli said, “an oath to contradict the testimony of a single witness.”

“Very good,” said Rabbi Dayan. “Can anybody tell me another case in which the Torah imposed an oath?”

“There’s also something called modeh b’miktzas,” Dani said, “a case in which there is a partial admission.”

“What do you mean by a partial admission?” asked Sruli. “Either you admit, or you don’t!”

“There’s also a possibility of a partial admission,” explained Rabbi Dayan. “Let’s say that someone claims that he lent you \$500. You admit that he lent you \$200, but deny the remaining \$300, and there are no witnesses. This is called a partial admission, since you admit to have borrowed \$200 out of the \$500. What is the ruling here? Can you help us, Dani?”

“Since you admit to \$200 — part of the claim,” answered Dani, “you require an oath to exonerate yourself from the remaining \$300.”

“Beautiful!” exclaimed Rabbi Dayan. “We suspect that you might have borrowed the full amount, but can only pay part and are trying to buy time to pay the remainder. The oath will force you to admit the full truth or confirm your claim (B.M. 3b).”

“And if I don’t want to take the oath?” asked Sruli.

“Then you must come to a compromise with the plaintiff or pay the \$300,” said Rabbi Dayan.

Sruli sank into thought for a moment. He reminisced about an event that had just happened. Before Purim, a sefarim store had given him some boxes of sefarim (Jewish books), Megillas Esther with commentaries, to sell in his shul and yeshivah. He had picked up the sefarim and taken them home in a friend’s car. He then moved the boxes to his room in the yeshivah, and from there to the shul. The sefarim store owner claimed that he had given Sruli ten boxes, 200 sefarim in all, but Sruli could only account for nine boxes.

Half the Truth, cont.

“It seems that one box is missing,” he told the sefarim store owner. “Are you sure that you gave me all ten boxes?”

“Absolutely,” said the storeowner. “Why do you ask?”

“One box is missing. I’m not sure whether you made a mistake or if I lost one box somewhere along the way,” replied Sruli. He tried to recollect whether he had initially counted nine or ten boxes, but didn’t remember clearly.

The storeowner demanded that he pay for all 200 copies, but Sruli had refused to pay for more than the nine boxes.

“Prove to me that you gave me all 200 sefarim,” Sruli insisted. “You have no evidence that you gave me ten boxes; it’s your word alone. You can’t make me pay just based on your word.”

Sruli now wondered whether he was correct in his insistence. After all, he’d admitted partially to having received nine out of the ten boxes.

“What happens if the borrower can’t swear because he doesn’t remember whether he borrowed \$500 or \$200?” Sruli finally asked Rabbi Dayan. “Can he swear that he remembers only \$200 and doesn’t know about the remainder?”

“This touches upon a fascinating concept known as: mitoch she’eino yachol lishava — meshalem; since he is unable to swear — he must pay,” replied Rabbi Dayan. “The partial admission gives credence to the lender’s claim, which, if not countered with an oath, requires the borrower to pay in full. The same applies when there is a single witness; if the defendant cannot swear to contradict the witness’s testimony, he must pay.

“This rule does not apply to an oath imposed by the Sages, though — only to a Torah-imposed oath. Thus, a person who admits partially, but does not remember clearly enough to swear about the remainder, must pay the amount claimed (C.M. 75:12-14).”

“I guess I’m going to have to pay for all the boxes,” Sruli said to himself. 

In Denial

Bava Metzia 3b - Hoda'as Ba'al Din

One evening, Mr. Morris's acquaintance, Mr. Roth, knocked at his door, asking to have a word with him.

"Certainly; come in," Mr. Morris said, welcoming him inside.

"Perhaps you've forgotten," Mr. Roth began, "but last year I lent you \$500, which you never repaid."

Mr. Morris scratched his head and thought for a moment.

"I never borrowed from you," he replied.

"You definitely did," Mr. Roth insisted. "And didn't repay."

"Do you have any written evidence?" asked Mr. Morris.

"No, I don't," acknowledged Mr. Roth.

"That just proves that I never borrowed your money," said Mr. Morris.

Two weeks later, Mr. Morris was summoned to Rabbi Dayan's beis din.

"I lent Mr. Morris \$500 a year ago, which he hasn't repaid," claimed Mr. Roth.

"What do you say?" Rabbi Dayan asked Mr. Morris.

"I never borrowed from Mr. Roth," responded Mr. Morris.

Rabbi Dayan asked Mr. Roth, "Do you have any evidence?"

"I have two witnesses to the loan," replied Mr. Roth.

Rabbi Dayan called upon the witnesses to present their testimony. Each testified that Mr. Roth had lent Mr. Morris \$500 in their presence.

Rabbi Dayan turned to Mr. Morris. "Witnesses have attested to the loan," he said. "Do you have anything further to say?"

"I would like a month to seek counterevidence," he requested. Rabbi Dayan consented to delay the final verdict for a month.

At the second hearing, Rabbi Dayan asked Mr. Morris if he had found any evidence to counter the original testimony.

"Yes, I also have witnesses," replied Mr. Morris. The witnesses testified that Mr. Morris had repaid the \$500 loan to Mr. Roth four months earlier.

"See, I don't owe Mr. Roth any money," Mr. Morris said. "Even if I borrowed, I paid back what I borrowed." He sat down with a triumphant smile.

Rabbi Dayan requested that Mr. Roth and Mr. Morris exit for a few moments while the dayanim convened. The two were called in shortly for the ruling.

In Denial, cont.

“Mr. Morris is liable and must pay the \$500,” ruled Rabbi Dayan.

“What?” asked Mr. Morris, shocked. “But witnesses stated that I already repaid!”

“There is an important, well-known concept: Hodaas baal hadin k'meah eidim dami - The admission of a litigant is like the testimony of a hundred witnesses,” explained Rabbi Dayan. “In fact, his admission that he owes is believed - to his detriment - more than witnesses who exempt him!”


“But I didn't admit anything,” said Mr. Morris. “I deny the charge completely!”

“You initially claimed in court, though, that you never borrowed the money,” said Rabbi Dayan. “A person who never borrowed doesn't pay! Thus, implicit in your denial claim was an admission that you didn't repay. This is expressed in the Gemara (B.B. 6a) as: Kol ha'omer lo lavisi k'omer lo parati dami - Whoever says, ‘I didn't borrow,’ it is as if he is saying, ‘I didn't repay.’”

“But since there are witnesses to the case,” reasoned Mr. Morris, “shouldn't we follow them?”

“There are two parts to this case,” replied Rabbi Dayan. “One, whether you borrowed; two, whether you repaid. In regard to the loan, obviously we accept the witnesses' testimony that you borrowed. However, regarding repayment, we accept your implicit admission [that you never paid] - even against the testimony of the witnesses! Thus, we believe the witnesses that you borrowed, but we believe your implicit admission that you did not repay (79:1,6).”

“But people initially deny outright all kinds of claims, and then come to beis din and adjust their claim and bring witnesses,” insisted Mr. Morris. “Are these witnesses all rendered meaningless?”

“If the initial claim denying the loan was stated informally, not in beis din, or if the borrower changed his claim before the lender brought witnesses,” answered Rabbi Dayan, “he is not considered a proven liar and can say that he already repaid (79:9). You, however, maintained your claim of having never borrowed until after Mr. Roth's witnesses came.” 

Here, Take It

Bava Metzia 4a - Heilech

The Golds were packing to go away for Pesach.

“What should we do with my jewelry?” Mrs. Gold asked her husband. “I’m afraid to leave it unattended in the apartment. There has been a rash of robberies recently in the building.”

“We can leave the jewelry with our neighbors, the Ehrlichs,” suggested Mr. Gold. “They have a safe in their apartment.”

“That would be good,” said Mrs. Gold. “I would feel more secure knowing that the jewelry was stowed away.”

Mr. Gold called the Ehrlichs and asked if he could put some jewelry in their safe over Pesach.

“That’s fine,” said Mr. Ehrlich. “We’ll be happy to keep it in our safe.”

Mrs. Gold gathered together the valuable jewelry she wasn’t planning to take and put it in a bag. Mr. Gold brought it over to the Ehrlichs. He quickly showed Mr. Ehrlich the contents of the bag and then knotted it carefully.

Mr. Ehrlich put the bag in his safe.

“Have a safe trip,” Mr. Ehrlich wished Mr. Gold. “Chag kasher v’sameach!”

When the Golds returned two weeks later, Mr. Gold went to retrieve the bag of jewelry. Mr. Ehrlich took the bag out of the safe.

Mr. Gold took the bag and untied it. He perused the contents. With a concerned look, he said, “Would you mind if I examined the contents before retuning home?”

“You’re welcome to,” said Mr. Ehrlich, “but I assure you that nobody touched the bag while you were gone.”

Mr. Gold took out the items one by one. “There was also a golden pin with a diamond tip that is missing!” he said.

“I have no idea whether there was or wasn’t such a pin,” said Mr. Ehrlich in an offended tone. “I didn’t examine the contents of the bag carefully when you gave it to me. I assure you, though, that whatever you put in there is what you got back!”

“I am sure the pin was in the bag,” said Mr. Gold softly. “You’re obligated to swear a Torah oath of modeh b’miktzas, partial admission, or pay for the pin. We’re going to have to take this up with Rabbi Dayan.”

Mr. Gold and Mr. Ehrlich met with Rabbi Dayan.

Here, Take It, cont.

“I gave Mr. Ehrlich a bag of jewelry to keep in his safe over Pesach and a diamond-tipped pin is missing from the bag,” said Mr. Gold. “He doesn’t know whether he received the pin, but claims that he returned the bag intact. Is this not a case of modeh b’miktzas, partial admission?”

“At first glance, it might seem so,” replied Rabbi Dayan. “Mr. Ehrlich admits to having received a bag of jewelry, but denies having received that pin in the bag. If so, he would be obligated in a Torah oath to deny the claim.

“However, the truth is that Mr. Ehrlich is not required to make a Torah oath.”


“Why not?” asked Mr. Gold.

“There is a significant exception to the rule of partial admission known as heilech, ‘Here, take it,’” answered Rabbi Dayan. “If the defendant admits partially, but is prepared to return the admitted items — or to pay immediately in beis din the sum that he admits — we do not view the case as one of partial admission; he is not required to make the Torah oath of modeh b’miktzas (C.M. 87:1; 88:24).”

“I don’t quite follow,” said Mr. Ehrlich. “Why should that make a difference?”

“Since Mr. Ehrlich returned the remaining jewelry, the entire litigation revolves only around the gold pin,” explained Rabbi Dayan. “Mr. Gold claims that he entrusted a certain pin; Mr. Ehrlich denies it. Thus, there is no partial admission of the litigation claim. At most, Mr. Gold would be obligated to make a rabbinic oath (see also C.M. 88:23).”

“When would there be a case of partial admission?” asked Mr. Gold.

“Only if the defendant admits to owing, but is not in position to pay immediately,” said Rabbi Dayan. “Then the litigation relates to the entire amount, to which he admits partially (see Shach 87:3).” 

Pizza and Promises

Bava Metzia 4a - Eid Echad

“Today we will learn about oaths,” Rabbi Dayan announced to his shiur (class).

“I heard that you’re not supposed to swear,” Avrum said.

“Certainly, a person must be extremely careful when uttering an oath, for the prohibition against swearing falsely is extremely severe,” replied Rabbi Dayan. “As a rule, the phrase ‘I swear’ should be expunged from your vocabulary. However, there are three cases in which the Torah imposes an oath in the context of *beis din*.”

“For example?” asked Avrum.

“Let’s say you claim that your friend borrowed \$100 and he denies the loan,” answered Rabbi Dayan. “A single witness testifies that you lent him the money. To contradict the single witness, your friend would have to take an oath that he did not borrow.”

“This makes me think about a case that recently occurred,” Avrum said. “The class went to a pizza store for lunch. Most brought money, but a few didn’t, and I laid it out for them.”

“So what happened?” asked Rabbi Dayan.

“It was a bit hectic with 30 people all paying at the same time, so I don’t know exactly for whom I paid,” said Avrum. “My cousin, though, says that he saw me lay out the money for Dov.”

“What do you say about this?” Rabbi Dayan asked Dov.

“I paid by myself. Avrum did not pay for me,” said Dov. “Furthermore, Avrum admits that he doesn’t know whom he laid out the money for. He cannot make a claim based on his cousin’s testimony.”

“But my cousin is a single witness,” said Avrum. “Wouldn’t Dov have to swear to contradict my cousin?”

“A cousin is a relative who is disqualified from serving as a witness,” said Rabbi Dayan. “We cannot impose an oath on his word (C.M. 33:2).”

“What if I had a valid witness?” said Avrum. “Would Dov have to take an oath to contradict the single witness, even though I don’t know for sure whether he owes me?”

“Generally, a person only needs to swear when there is a definite claim against him,” explained Rabbi Dayan. “There are some cases, though, in which our Sages

Pizza and Promises, cont.

required an oath to disqualify even a possible claim (C.M. 75:17, 93:1)."

"But I'm not claiming that Dov might owe me," argued Avrum. "I am making a definite claim that he owes me, based on the witness! Does that count?"

"There is a dispute among the Rishonim whether the plaintiff must come with a definite claim when a single witness testifies," answered Rabbi Dayan. "Some say that even when there is a witness, a definite claim by the plaintiff himself is required. However, many maintain that a single witness suffices to impose an oath even if the plaintiff himself is unsure of the facts and makes a claim based on the witness's testimony, just as two witnesses obligate the defendant even if the plaintiff knows about the debt only based on their testimony (see Rosh, Shavuos 6:5)."

"What does the Shulchan Aruch rule?" asked Avrum.

"The Shulchan Aruch rules that a claim based on a single witness is considered a definite claim that warrants an oath only if the witness actually testifies before us," answered Rabbi Dayan. "However, if the witness is not present to testify, but just told the plaintiff what happened, it is considered a doubtful claim that does not warrant an oath (C.M. 75:21, 23)."

"And what my cousin says is meaningless?" asked Avrum. "I know him well and trust him completely, so there's no doubt in my mind that he is truthful!"

"That is insufficient basis on which to impose a Torah oath," replied Rabbi Dayan. "However, if you trust him absolutely, some say that this suffices to impose a Rabbinic oath, shevuas hesses, provided that your relative doesn't have a vested monetary interest in the case. Others require that he come before the beis din or that there also be some circumstantial evidence against the defendant in order to impose this oath (see C.M. 75:23; Shach 75:82-83).

"Nowadays, beis din usually avoids imposing an oath regardless," concluded Rabbi Dayan, "and works toward seeking a compromise instead." 

I Want

Bava Metzia 5b - Lo Sachmod

Mrs. Jaffe served as curator at the Jewish Museum of Art. For the upcoming Pesach exhibit, she was preparing a collection of authentic Seder plates from around the world.

Little by little the collection was taking form. There were plates from Europe, Sephardic countries, early America, and even the Far East. In response to her ads she received a call from an acquaintance, Mr. Price. He had amassed Seder plates over the years, and was willing to sell some of them to the museum.

Mrs. Jaffe met with him and was highly impressed with his collection. She chose two Seder plates that she felt would add a special touch to the exhibit and negotiated a mutually acceptable price. Before she left, Mr. Price said to her, "I have one other Seder plate I'm sure you'd like to see."

He took her over to a heavy glass case, in which an exquisite pewter Seder plate was displayed. With a gasp, Mrs. Jaffe marveled at the detailed engravings of Pesach motifs. Although the design of the Seder plate dated it as 250 years old, it was in excellent condition.

"This is one of the most beautiful plates I have ever seen," exclaimed Mrs. Jaffe. "I would love to have it as the centerpiece of the exhibit!"

Mr. Price, however, refused. "This plate is not for sale," he declared. He proudly recounted how his grandfather had bought the Seder plate, and how the family managed to hide it during the Holocaust.

Mrs. Jaffe persisted. She knew from experience that people often refused to sell at first in order to get a better offer.

"Are you sure? This Seder Plate is exactly what I want for our exhibit, and we would be willing to pay extra for it."

"100% sure! It's not for sale," insisted Mr. Price.

Mrs. Jaffe returned to the museum with the other two plates. It had been a successful day, but her mind kept wandering back to that exquisite Seder plate. She desperately wanted it for the collection and racked her brain for ways to convince Mr. Price to sell.

She showed the Museum's director the two Seder plates she had purchased and described the other plate to him. "Mr. Price does not want to sell it, but perhaps if you

spoke with him directly and offered a hefty price he would be willing. It would make the entire exhibit so much more attractive. "

The director called Mr. Price the next day. "Thank you so much for the two Seder plates; they will certainly enhance our collection. Mrs. Jaffe also mentioned that you had another beautiful plate, for which we would be willing to pay \$75,000."

"Thank you for your offer," said Mr. Price, "but I would not sell it for a million dollars!"


Mrs. Jaffe did not give up, though. She desperately wanted that plate for the museum's exhibit, and many times before her persistence had "paid off." She contacted one of her relatives, who was a close business associate of Mr. Price, and asked if he could try to convince Mr. Price to sell.

She then spoke with Rabbi Tzedek, who was on the governing board of the Museum and had been an influential mentor of Mr. Price. She explained the tremendous value for the Museum in having the Seder plate, and asked if he could encourage Mr. Price to sell the Seder plate. Rabbi Tzedek adamantly refused, however, and told her she must stop pressuring Mr. Price immediately! Mrs. Jaffe was taken aback; she had always found Rabbi Tzedek encouraging and helpful.

"Why?" she asked.

Rabbi Tzedek explained, "Pressuring Mr. Price to sell you his Seder plate is a violation of the Tenth Commandment, *lo sachmod*, 'You shall not covet your fellow's house ... nor anything of your fellow' (Shemot 20:14).

"It is acceptable to inquire once or twice whether something is for sale. However, if you covet your fellow Jew's possession and persistently entreat him until you acquire it, you violate the prohibition of *lo sachmod*, even if you pay handsomely. Moreover, by scheming in your mind ways to acquire the item - you have already violated the parallel mitzvah in Sefer Devarim, *lo sisaveh*, 'do not desire' (Rambam Hil. Gezeilah 1:9 and Shulchan Aruch C.M. 359:10).

"The Ra'avad limits the prohibition to cases in which the owner sells reluctantly, but not in which he ultimately says, 'I am willing.' However, the Rambam and Shulchan Aruch indicate that even if the seller consents in the end - you still violate the mitzvah for having pressured him to sell. The Torah requires you to respect another person's rights of ownership and prohibits the strong desire and effort to acquire for yourself what belongs to others." 

A Guardian's Oath

Bava Metzia 6a - Shevuas Shomrim

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

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

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

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

“That’s really exciting,” said Menashe.

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

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

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

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

Yoel stared at him in horror.

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

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

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

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

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

Yoel and Menashe went to Rabbi Dayan.

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

A Guardian's Oath, cont.

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

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


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

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

“What difference does that make?” asked Yoel.

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

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

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

Capture the Candy

Bava Metzia 10a - Raah Metzia

Rabbi Tzedek's family had gathered for Shabbos to celebrate the aufruf of his son, Zvi.

On Shabbos morning, the gabbai called the chassan up to the Torah: "Ya'amod, ya'amod, ya'amod hechassan Zvi ben Harav Meir, maftir."

When Zvi concluded the final blessings of the haftarah, the shul began singing "Od yishama..." and showered him with candies. The children scrambled about the bimah, collecting as many candies as they could grab and stuffing them into their bulging pockets.

Near the bimah stood Mr. Cohen. One candy landed on a fold in his tallis.

"Abba, there's a candy on your tallis!" exclaimed his son, Aharon. "Could you please give it to me?"

Meanwhile, another boy, Bentzi, saw the candy and grabbed it from the tallis.

"Thief!" cried out Aharon. "That's our candy!"

"Please give the candy to Aharon," Mr. Cohen said to Bentzi.

"But I got it first," said Bentzi. "Why should I give it to him?"

"I intended to acquire the candy while it was on my tallis," replied Mr. Cohen. "So it was already ours."

"How did you acquire it?" asked Bentzi. "It was just sitting on your tallis and was going to fall off anyway. I could have picked it up afterward from the ground."

"I see we have a sharp little talmid chacham (Torah scholar) in the making," said Mr. Cohen. "Sounds like a case for Rabbi Tzedek."

After davening, Mr. Cohen went with Bentzi to wish Rabbi Tzedek mazel tov.

"We've also got a case for you," added Mr. Cohen. "Bentzi and I have a dispute over one of the candies that were thrown." He related what had happened.

"Even though the candy landed on Mr. Cohen's tallis," ruled Rabbi Tzedek, "Bentzi is legally entitled to keep the candy."

"Why is that?" asked Mr. Cohen.

"Candies that were thrown have the status of hekfer, ownerless property," explained Rabbi Tzedek. "It is necessary to make a valid kinyan (act of acquisition) to acquire them. Although the candy fell on your tallis, no kinyan was made until Bentzi picked it up."

Capture the Candy, cont.

“Why doesn’t the fact that the candy fell on my tallis serve as a kinyan?” asked Mr. Cohen. “I learned that a person’s vessels (keilim) can acquire for him.”

“That is correct,” replied Rabbi Tzedek. “A person’s vessels acquire for him wherever he has permission to leave them, such as in his own property or in a semipublic area - but not in a fully public area, where he has no right to leave them. Once an item falls into his vessel, it is as if he picked it up or it was placed in his house (C.M. 200:3; Pischei Choshen, Kinyanim 8:7[18]).

“Similarly, the Gemara (Gittin 78a) teaches that if a man threw a get (divorce document) into his wife’s lap or in her basket, she is divorced, if the basket was in a place where she was allowed to leave it (E.H. 139:10).”

“Why isn’t falling on the tallis considered like falling into a basket?” asked Mr. Cohen.

“The basket must be a container that has an interior (see C.M. 273:13; P.C. 8:[19]),” explained Rabbi Tzedek. “Therefore, falling on the tallis is not considered falling into a basket. Even if the candy fell into a fold in the tallis, it is not considered an interior, since the fold is of no permanent form and anything can easily slide off (see E.H. 139:15).”

“What if the candy had fallen into a pocket or tallis bag?” asked Mr. Cohen.

“That would be considered like falling into a basket, since it has an interior. However, it must be in a place where you are allowed to leave it, such as at your seat - but not, for example, in the aisle of the shul near the bimah, where you have no right to leave it (see Avnei Miluim, E.H. 30:8).”

“So the candy’s mine,” brightened Bentzi.

“Yes,” said Rabbi Tzedek with a laugh. “But I see that your pockets are already over-stuffed, so it might be nice to give the candy to Aharon anyway.”



Finders Keepers

Bava Metzia 10a - Daled Amos

“We’ll be taking a class trip now to the park a few blocks away,” the teacher announced. “Please walk in an orderly fashion and keep on the sidewalk.” The class headed out to the park.

Zvi, David, Benzion and Aharon were walking along together, when Zvi suddenly stopped. He looked intently at the other side of the street. “I think I see money lying there across the street,” he said.

His friends turned to see.

“Yes, it’s a \$20 bill!” Zvi exclaimed. “I saw it first; it’s mine!”

“So what?” argued David. “It’s still on the other side of the street.”

David started running towards the money. So did Zvi, Benzion and Aharon.

David got there first. “I got here first,” he called out. “It’s mine.”

Benzion, who was just three steps behind, quickly stretched out his foot and covered the money with his shoe. “That’s it,” he said. “I touched it first. It’s mine!”

As he removed his foot to pick up the money, Aharon reached down and grabbed the bill. “No,” he called out, “it’s mine!”

The four boys stood in a circle shouting at each other, “It’s mine!” “No, it’s mine!”

Aharon put the \$20 bill in his pocket.

The teacher walked over. “What’s going on here?” he asked.

“I saw a \$20 bill lying across the street,” said Zvi. “I found it, so it’s mine.”

“But I got to it first,” claimed David.

“I put my foot on it first,” countered Benzion.

“And I picked it up first,” retorted Aharon.

“It was not safe to run across the street,” the teacher said. “Regarding the money, I don’t know what the halacha is. You can either agree to divide it or we can stop along the way at Rabbi Tzedek’s yeshiva and ask him who’s entitled to the money.”

“Let’s ask Rabbi Tzedek!” they all said.

“Listen up,” the teacher called out. “We’re going to stop at Rabbi Tzedek’s yeshiva.”

When they reached the yeshiva, the teacher took them to Rabbi Tzedek’s office.

“We were on a class trip and a monetary question came up,” he said. “Can we come in and ask you the halacha?”

“With pleasure,” he replied. “Come in.” The class piled in to Rabbi Tzedek’s office.

Finders Keepers, cont.

“Who is claiming from whom?” asked Rabbi Tzedek.

“I am claiming from Aharon,” said Zvi. “I saw money on the other side of the street and claimed it, and then Aharon went ahead and took it.”

“I got there first,” David added.

“And I put my foot over it first,” Benzion chimed in.

“What do you say?” Rabbi Tzedek asked Aharon.

“It’s all true,” replied Aharon, “but I picked it up first.”

“Who gets the money?” asked the teacher.

Rabbi Tzedek turned to the four boys. “The money belongs to Aharon,” he ruled.


Rabbi Tzedek then explained, “A person who finds a stray bill is permitted to keep it (C.M. 262:11). However, for a person to acquire a lost item, he must take possession of it through a kinyan (act of transaction). Seeing the lost item alone is not sufficient to make it yours. Putting your foot on it, or even lying down on it, also does not make it yours, since this does not constitute an act of acquisition. Only picking up the item, or dragging it, if it is heavy, is a valid kinyan to acquire the item (268:1). Therefore, neither Zvi nor Benzion acquired the money until Aharon picked it up and acquired it.”

“We learned, though, that whoever comes close first acquires the item,” inquired David.

“There is, indeed, a concept of ‘daled amos,’ replied Rabbi Tzedek. “In order to prevent fighting over found items, Chazal instituted that the item belongs to whoever comes first within close proximity. This means within four amos, which is approximately 7 feet. We consider this area as belonging temporarily to the person who stands there.”

“So why is the money not mine?” asked David.

“Chazal only instituted this in semi-public areas,” answered Rabbi Tzedek, “such as side alleys or the very edges of public areas where people generally don’t walk. Such an area can be considered as belonging temporarily to the person who stands there. Had the money been there, you could have acquired it through the rule of daled amos. However, in a public area, like the street, or in private property, this idea of daled amos doesn’t apply (268:2; see Aruch Hashulchan 268:1).

“Therefore,” concluded Rabbi Tzedek, “the money remained unclaimed until Aharon finally picked it up.” 

Help Wanted

Bava Metzia 10a - Ani HaMehapech

"Annie, the basement has to be cleaned because we're having guests for Shabbos," Rivki Rosen instructed her cleaning lady. It was only Monday, but Annie worked for other families the rest of the week.

"Shmuel, it would be really helpful if Annie could come twice a week," Mrs. Rosen said to her husband that night. "She spends the whole time cleaning and has no time to do the laundry. What she does clean is dirty again by Shabbos, so I have to clean again myself.

"Annie cleans a different house each day. Wouldn't she prefer to have one house twice a week?"

"I'm sure she would. Why don't you ask her?" Mr. Rosen suggested. "If we offered her more money, she would probably agree to drop her current Thursday job.

"Also," he added, "remember that we need to hire a tutor right after the summer. Aharon needs help with Gemara before he enters seventh grade."

"Did his rebbi have any recommendation?" asked Mrs. Rosen.

"Aharon needs someone who will get him excited about learning," said Mr. Rosen. "His rebbi recommended Baruch Stein, because he felt that Aharon would progress best with him. The problem is that he's tutoring someone else this year and doesn't have time for another boy. Baruch told me that they expect him to continue next year as well."

"We can try paying Baruch more," suggested Mrs. Rosen. "If we offer him an extra \$10 an hour, maybe he'd agree to tutor Aharon instead."

"You're probably right," said Shmuel. "I'll give him a call now."

He picked up the phone. "Hello, Baruch? This is Shmuel Rosen."

"Oh, hi," said Baruch. "Were you able to find a tutor for Aharon?"

"Actually..." Mr. Rosen hesitated. "I strongly feel that it's really important for Aharon to have you, and we'd be willing to offer an extra \$10 an hour."

"I very much appreciate the offer," said Baruch, "but I'm not comfortable about leaving the other people who are expecting me to continue. I assume you've heard of the concept of 'ani hamehapech bacharara'? When someone is scavenging, another may not come and interfere with his efforts."

"Sure," replied Shmuel.

Help Wanted, cont.

"Please check with Rabbi Dayan whether the concept of ani hamehapech applies here before we make any decisions," said Baruch. "Ask if you can intrude upon an employment agreement and solicit someone else's worker."

"I understand the problem," said Mr. Rosen.

He called Rabbi Dayan. "Hello, this is Shmuel Rosen. We need a Gemara tutor for Aharon next year. The rebbi recommended Baruch Stein, but he is working for another family and doesn't have time for both boys. We are willing to offer Boruch extra, but he questioned whether it would be considered ani hamehapech to solicit him."

"That's a fascinating question!" exclaimed Rabbi Dayan.

"Now that I think about it, we have the same issue with our cleaning lady, Annie," Mr. Rosen added. "We would like her to give us an extra day of work, but she is booked with other people."

"There may be a difference between the two cases," said Rabbi Dayan.


"How's that?" asked Shmuel.

"Tosfos, cited by the Rama (C.M. 237:2), seem to extend the idea of ani hamehapech to seeking employment," explained Rabbi Dayan. "Nonetheless, they permit you to solicit a melamed who is employed elsewhere if you think that your son will learn best with him."

"Why is this?" asked Mr. Rosen.

"Well," answered Rabbi Dayan, "many base this leniency on the opinion of Rabbeinu Tam that ani hamehapech applies only when there is a comparable alternative available (C.M. 237:1). A successful Jewish education is vital, so securing an appropriate teacher is considered something without a comparable alternative (SM"A 237:8; Nesivos 237:2). Others explain, however, that the leniency is because ani hamehapech does not apply to issues of mitzvah like Torah learning (Aruch Hashulchan 237:5)."

"What about Annie?" asked Mr. Rosen.

"You should find another cleaning lady for Thursdays," said Rabbi Dayan. "If there is no alternative available, according to the first explanation there is a possibility of soliciting Annie even though she will have to leave her present post (See Avnei Nezer IV:17)." 

No Intruding

Bava Metzia 10a - Ani HaMehapech

"I've had it!" said Mrs. Rosen to her husband. They had been looking at houses for sale all day. "Our friends, the Jacobs, invited us for a drink before we head home."

Mrs. Jacob welcomed them in and asked, "How was your day?"

"Exhausting," answered Mrs. Rosen. "Each house has its plusses and minuses, not to mention negotiating with the seller."

"Do you have any realistic options?" asked Mr. Jacob.

"Yes," answered Mr. Rosen. "It's just a question of which one to go with."

"Our neighbors are also selling their house," said Mrs. Jacob, "but I think they just found a buyer."

"It's actually a decent house and fairly priced," said Mr. Jacob. "I don't know whether it's still possible to make an offer."

"Have they signed a contract yet?" asked Mr. Rosen.

"I believe not," said Mr. Jacob.

The Jacobs took the Rosens to the neighbor's home.

"The house was for sale," neighbor told them. "We haven't signed anything official yet, but we've accepted an offer."

"Would you show us the house?" asked Mr. Rosen.

"I guess so," said the neighbor. He took them on a tour.

"This is really what we're looking for," said Mr. Rosen. "How much are you asking for?"

"We agreed on \$470,000," said the neighbor. "We expect to sign next week."

Mr. and Mrs. Rosen quietly exchanged glances with each other and then short nods of approval.

"I understand that you haven't finalized yet," said Mr. Rosen. "This house seems good for us and we are willing to pay \$500,000."

"I don't know," said the neighbor hesitantly. "We already agreed to someone else's offer in principle. In any case, I wouldn't sell to you without offering our buyer to match your price. Leave me your name and number, and we'll talk later this week."

The next day, however, Mr. Rosen received an irate phone call from the prospective buyer. "I understand that you just made an offer for the house next to the Jacobs."

"Yes," acknowledged Mr. Rosen. "We understand that the seller agreed to your offer"

No Intruding, cont.

but hasn't signed anything, and we are willing to give him a better price."

"What you're doing is wicked!" shouted the buyer. "It's against halacha!" He slammed the phone down.

"We'd better check with Rabbi Dayan," said Mr. Rosen to his wife. They called Rabbi Dayan right away and asked whether this was true.

"The buyer is correct," said Rabbi Dayan. "You have no right to intrude and take the house for yourself after the parties have agreed to the sale."

"Why not?" asked Mr. Rosen

"It is because of the concept of *ani hamehapech bacharara*," explained Rabbi Dayan. "If a poor person is scavenging after a loaf of bread and someone comes and snatches it from him – he is called wicked."

"What does that have to do with us?" asked Mr. Rosen.

"The Gemara (Kiddushin 59a) applies this concept also to your situation, in which someone is actively involved in acquiring a field and another person intrudes and preempts him," answered Rabbi Dayan. "This halacha is cited in Shulchan Aruch (C.M. 237:1) regarding both buying and renting."

"How, then, can anyone ever compete for a house or apartment?" asked Mr. Rosen, "It doesn't make sense that once someone makes an offer, no one else is entitled to offer more. It's not fair to the seller or landlord!"

"Correct," responded Rabbi Dayan. "For this reason, the Rama (*ibid.*) limits the law to situations in which the buyer and seller have already agreed to a price, even if they haven't yet signed or made a formal *kinyan*. Some commentators note a custom not to intrude also if the parties are actively negotiating and about to settle (*Pischei Teshuva* 237:3)."

"Wow," said Mr. Rosen. "There must be a lot of discussion about this!"

"The poskim debate whether the law applies when there aren't comparable houses available," continued Rabbi Dayan, "what the seller's responsibility is, and whether there is legal recourse if the second buyer already completed the transaction. You have alternatives, though, so you clearly have no right to intrude upon the first buyer's agreement with the seller."

Mr. Rosen thanked Rabbi Dayan. He then called the Jacobs' neighbor and withdrew his offer.



Minor Damage

Bava Metzia 10b - Katan

“C’mon Dovi,” Yoni Balsam said to his twin brother. “The sun’s out! Let’s play catch.”

The two eleven-year olds grabbed their gloves and a softball. “We’re going outside to play ball,” Yoni called to his mother.

“Please be careful,” Mrs. Balsam said, “and keep the ball away from other people’s property, especially the Glazers.”

Last year, the boys had broken their neighbor’s window and the Balsams had paid to replace it.

After tossing the ball back and forth a few times, Dovi suggested, “How about a high fly?” Yoni threw the ball wildly in the air.

The ball soared up, slanting to the side. Dovi chased after the ball, running through the Glazers’ bushes into their yard. As he reached up to catch the ball, he heard a loud, “Crash!” Dovi looked down. He had knocked over a large, artistic planter in the Glazers’ garden and smashed it.

Mr. Glazer came outside. “What’s going on here?” he yelled.

“We were playing catch, and I knocked over this planter,” Dovi said apologetically.

“I warned you many times not to play ball near our house,” said Mr. Glazer sternly. “I’m going to speak with your parents.”

He walked the boys home. “Your boys damaged our property again,” Mr. Glazer told the Balsams. “They’re going to have to pay.”

“I’m sorry about the damage,” said Mrs. Balsam. “We’ll talk to them.”

“Last year we paid for the window,” Mr. Balsam said to the twins. “This time, you’re going to have to pay from your allowance money, as a lesson to be more careful. We’ll drive to the gardening shop now and you’ll buy the Glazers another planter, similar to the one you broke.”

The Balsams chose a nice ceramic planter and the boys brought it over to the Glazers. “We brought this to replace the planter we broke,” Dovi said.

Mrs. Glazer looked at the planter. “Thank you,” she said, “but this will not suffice! The planter you broke was artistic and more expensive than this.”

Dovi and Yoni looked at each other, flustered. “We thought this planter looked almost the same,” Yoni said.

“I’m sorry,” said Mrs. Glazer, “but the other planter was worth more. I expect you

Minor Damage, cont.

or your parents to fill in the full value of the damage.”

The boys returned home dejected. “What should we do now?” they asked. “We spent almost all of our saved allowance!”

“Let this be a lesson about how careful you have to be with other people’s property,” said their father. “But we’ll talk the issue over with Rabbi Tzedek.”

After Ma’ariv, Mr. Balsam, the twins, and Mr. Glazer sat down with Rabbi Tzedek. “It’s already the second time the boys damaged our property with their ball-playing,” said Mr. Glazer. “Isn’t it my right to demand full compensation for the damage?”

Rabbi Tzedek said, “A child who damages is legally exempt from paying, even when he grows up, but it is proper for him or his parents to pay nonetheless.”

Rabbi Tzedek then explained: “The Mishna (B.K. 87a) teaches that a child under bar-mitzvah who damages is legally exempt, since he has no legal culpability. Even when he matures, he is not accountable for the damages of his childhood (C.M. 424:8).

“Similarly, a child who stole must return whatever he still has, but is legally exempt from returning what was lost, even after he matures. However, Beis Din or his parents should discipline the child for having stolen or damaged, so that he should not continue doing so (C.M. 349:3,5).”

“Are you saying they don’t have to pay at all?” asked Mr. Glazer incredulously.

“No. The Gemara (B.K. 98b) relates that Rav Ashi was made to pay for a loan document that he destroyed,” said Rabbi Tzedek. “Rashi explains that he burned it when he was a child. Many authorities derive from this that although the child is legally exempt, there is a moral responsibility for him to pay when he matures. Nowadays, the parents usually pay instead, to relieve him of that responsibility.

“Rama (O.C. 343:1) also writes that if a child sinned, it is proper that he do something for atonement when he matures. Thus, if he stole or damaged, it is proper to pay (Mishna Berura 343:9). Some infer from the Rama’s language, ‘do something,’ that it is not necessary to pay the full amount, but Sefer Chasidim advocates paying fully to achieve complete atonement (Pischei Teshuva 349:2; Yechaveh Da’as 8:6). It is especially advisable to properly compensate and appease neighbors, to preserve good relations with them.”



Whose Tomatoes?

Bava Metzia 10b - Chatzer

Eliyahu, a close student of Rabbi Dayan, came to visit him. “An interesting Choshen Mishpat question recently came my way,” Eliyahu said. “It’s a humble question, involving just a few tomatoes, but I would be interested in hearing the halachic perspective on the issues involved.”

“Go ahead,” said Rabbi Dayan. “I’d love to hear!”

“I rented a house to an elderly couple for a year,” Eliyahu began. “Towards the end of the rental period, the couple was away for while. I stopped by the house and noticed a tomato vine, with a few ripe tomatoes on it, growing in the backyard amongst the weeds. It seemed clear that the tomato vine was not planted intentionally, but grew accidentally from a stray seed.

“As I stood there admiring the plant, I began to wonder: To whom do the tomatoes belong? Perhaps they are hefker (ownerless) and anyone can take them, since they grew by themselves? Perhaps they are mine, since they grew in my property? Perhaps they belong to the elderly couple, since they rented the property?”

“That’s a lot of questions for a few tomatoes,” Rabbi Dayan chuckled. “Had a money tree grown instead of a tomato vine, it would have been a weightier question. Even so, the halachic question and Choshen Mishpat principles apply just the same to a tomato vine, a money tree, or anything else!”

“First, is the tomato plant hefker, because it grew from a stray seed,” Eliyahu asked, “or does the property owner acquire the plant, because it grew on his property?”

“It is clear that the plant is not hefker,” replied Rabbi Dayan. “First of all, what grows from the ground is considered an extension of the ground, a capital appreciation of the property. Furthermore, even if a hefker item, such as a loose twenty-dollar bill, lands in a backyard, the yard acquires it for the owner (B.M. 11a).”

“Who, though, is considered the ‘owner’ of the rented property regarding these tomatoes,” Eliyahu asked, “me or the couple? On the one hand, the property itself belongs to the landlord. On the other hand, the tenant has the rights to use the property.”

“Based on the halachic principle that a rental is considered a ‘sale’ for that day (B.M. 56b), it would seem at first glance that the tomatoes should belong to the tenant,” replied Rabbi Dayan. “After all, he is considered the ‘owner’ for the duration

Whose Tomatoes, cont.

of the rental period. However, this issue is actually a subject of debate between the Rishonim.”

“Oh, really?” said Eliyahu.

“The Gemara discusses the following analogous scenario,” said Rabbi Dayan. “During the times of the Gemara, the organic waste of animals was considered a valuable product for use as fertilizer. When someone rents a house, who acquires the waste of stray animals that wander into the yard, the landlord or the tenant?”

“The Gemara (B.M. 102a) rules that the fertilizer belongs to the landlord. However, Rashi explains that in the Gemara’s case, only the house was rented, but not the yard. Had the yard also been rented, the tenant would acquire the fertilizer. Rambam, on the other hand, rules that the landlord acquires the fertilizer even if the yard is also rented. Shulchan Aruch (C.M. 313:3) cites the ruling of the Rambam.”

“It seems, then,” said Eliyahu, “that the tomatoes belong to the landlord!”

“It’s not so simple,” responded Rabbi Dayan. “Elsewhere, the Shulchan Aruch seems to rule like Rashi (C.M. 260:4). Later commentaries discuss this seeming contradiction at length and offer various, sometimes contradictory, resolutions.

“However, there is a major difference between a detached hefker item that falls into a property, such as the waste in the example above, and a plant that grows from and is attached to the ground,” continued Rabbi Dayan. “Since the plant is part of the ground, the plant itself belongs to the landlord; the tenant cannot uproot it and take it with him when he leaves. Ownership of the fruit, however, depends on whether the tenant had permission to plant there according to the rental agreement or prevalent practice.”

“The tenant had permission to plant there,” said Eliyahu.

“Then the tomatoes belong to the tenant,” concluded Rabbi Dayan. “However, since the couple is not around and will probably not use the tomatoes anyway, you can call and ask for permission to keep them.”

“Seems like a quite a discussion for four ripe tomatoes,” Eliyahu remarked, “but a Torah discussion is worth more than a money tree!”



Stuck in the Seats

Bava Metzia 11a - Chatzer

Reuven Lev drove carpool twice on Sundays. In the morning, he drove his older daughter and her friends to a chesed program, and in the afternoon, he picked up the boys from yeshiva.

One afternoon, his son's friend, Avi, had trouble finding the clasp to buckle his seatbelt. As Avi dug between the seats to find the clasp, he found a \$50 bill that had fallen in between the back seats.

"Wow! Look what I found!" he shouted. "A \$50 bill."

"You know, Avi," said Mr. Lev, "you have a chance to do the mitzvah of hashavas aveidah (returning lost objects)."

"How can I know who owns this money?" asked Avi.

"When you find something, you are supposed to announce it to the people who might have lost it," said Mr. Lev. "Next week, I can ask the girls who were in this morning's carpool."

The following week, Mr. Lev asked the girls, "Did anybody lose money in the car last week?"

"It could have been me," Rivka said. "After the program, I went shopping and realized that I had lost money along the way."

"How much did you lose?" asked Mr. Lev.

"At least \$20, but I'm not exactly sure," said Rivka. "I sat in the back middle seat; if it fell from me, it would probably be there."

"It was found there," said Mr. Lev. "But can you give me a more accurate amount?"

"I never counted the bills," Rivka answered, "but I estimate between \$20 and \$100."

"This is an interesting question," said Mr. Lev. "I don't know whether this serves as sufficient identification (siman)."

When Mr. Lev picked up the boys from yeshiva that afternoon, he told Avi, "One of the girls who sat in your seat lost money, but couldn't identify the amount properly."

"Can I keep the money then?" asked Avi.

"I'm not sure," said Mr. Lev. "Maybe I should keep it, since it was found in my car. I expect to see Rabbi Tzedek tonight at a wedding, though; I'll speak with him."

After the chupah, Mr. Lev found Rabbi Tzedek. "Mazal Tov!" he said. "A fascinating monetary case came up last week." Mr. Lev related what had happened.

Stuck in the Seats, cont.

Rabbi Tzedek replied, “Rivka does not have sufficient identification to claim the money. Therefore, you can keep the money found in your car. However, if it seems reasonably clear that the money is Rivka’s, it is meritorious to return it to her.”

Rabbi Tzedek then explained, “Identifying the denomination of a bill is not sufficient identification, since anyone could have lost a bill of that denomination. Even a particular mark on a bill is questionable, since money constantly changes hands. Only if Rivka had folded the bill in a special way, or if a number of bills were rolled or clipped together, would it be a siman (C.M. 262:11-13).”

“What about the fact that Rivka sat in that seat?” asked Mr. Lev.

“Location serves as an identifying siman when the person knows that he left or dropped his item there,” explained Rabbi Tzedek. “However, if the person was unaware that he lost the item, location is generally not a valid siman, since the owner is not aware of where along the way he lost it. Perhaps Rivka lost her money elsewhere, and someone else’s money fell in between the seats another day (262:3,9).”

“Even if Rivka cannot claim the money, why should I be entitled to it?” asked Mr. Lev. “Shouldn’t it belong to Avi, who found it?”

“If a lost item falls into a person’s property (chatzer), the property acquires it on behalf of the person if the property is secure or if the owner is adjacent,” said Rabbi Tzedek. “Therefore, since the money does not have an identifiable siman, you acquired it when it was lost in your car. However, a chatzer does not acquire a lost item that is not likely to be found. Therefore, if the lost money was buried deeply between the seats and you don’t think that it was yours, Avi could still acquire it when he found it (268:3; see Shach 268:2 and Pischei Choshen, Aveidah 2:ftnt. 12).

“Nonetheless, it is meritorious to return even an item that was found after the owner abandoned hope of reclaiming it (yei’ush),” concluded Rabbi Tzedek. “The same is true if the owner does not have a valid siman, but circumstances clearly indicate that it belongs to that person, especially if there are multiple indications (259:5; S.A. Harav, Metziah #18; see Beis Shmuel E.H. 17:73).”



Loose Change

Bava Metzia 11a - Chatzer

Yosef, Gad, and Benjy headed down to the dining hall in their high school. As they walked along the corridor, they noticed that a new vending machine had been installed.

“I wonder who the machine belongs to,” mused Yosef. “Do you think it belongs to the school?”

“I doubt it,” said Gad. “Look, it says here: ‘Operated by Tuv Taam, Inc.’ Let’s return after lunch and get a snack for dessert.”

After lunch, the three boys returned to the vending machine. “I’m going to get a large chocolate bar,” declared Yosef. “We can all share it.”

Yosef inserted two one-dollar coins into the machine and made his selection. The chocolate bar fell to the bottom, and he heard two quarters drop into the change compartment with a “Clink, clink.” He reached in to take out his two quarters and was surprised to find two additional quarters there.

“Wow! There’s extra change,” he exclaimed. “That saved me 50 cents!”

“Who says you can keep it?” asked Gad. “You need to place a sign for hashavas aveidah.”

“What’s the point of hashavas aveidah?” asked Benjy. “There’s no identification on the money. But maybe you should give the money back to the vending company rep. I heard he comes on Tuesday mornings to restock the machine.”

A bit of a commotion began as other students joined in the discussion.

While they were arguing, Rabbi Dayan walked by. “What’s going on?” he asked.

“I found extra change in the vending machine,” said Yosef. “We were arguing about what to do with the money.”

“It is usually permissible to take the change for yourself,” replied Rabbi Dayan.

“Why can I keep it?” asked Yosef.

“At first glance, this seems to be a case of hashavas aveidah (returning lost property) to the previous customer, who lost his change,” explained Rabbi Dayan. “Since we can presume that the customer already became aware that he did not receive his change, and either he likely does not know the exact form of the change or has abandoned hope of retrieving it (yei’ush), the finder is permitted to keep it (see Hashavas Aveidah K’halachah 12:8).”

Loose Change, cont.


“Wouldn’t the vending operator automatically acquire the lost money that sits in his machine?” asked Benjy.

“A person’s property can acquire a lost item on his behalf, even without his knowledge,” said Rabbi Dayan. “However, this is only if the property is secure and if the owner is likely to find the item left in his property (C.M. 268:3). In this case, the change compartment is not secure, nor is the operator likely to find the money, since it would probably be taken by someone else first.”

“Why did you say ‘At first glance?’” asked Gad. “Is this not a typical case of lost money?”

“Actually, although the change was probably dispensed for the previous customer, he never acquired it, since he did not take possession of it,” explained Rabbi Dayan (C.M. 203:7). “Therefore, upon further reflection, this case is similar to a borrower who placed the money he is returning before the lender, with his permission, but the lender did not take the money. While the lender has no further claim on the borrower, what is the status of the money?”

“Rabbi Akiva Eiger (C.M. 120:1) writes that the money becomes hefker, since the borrower relinquished his claim to the money and the lender did not take it. Here, too, the untaken change becomes hefker.

“In truth, the Nesivos (123:1) disagrees with Rabbi Akiva Eiger and maintains that the money does not become hefker but remains owned by the borrower,” continued Rabbi Dayan, “but even he would likely agree here. Since the vending operator expects the machine to dispense the change to an unsecure place, where it can be taken by anybody, he effectively renders it hefker or expresses yei’ush (C.M. 260:6, 261:4; Shach 261:3). Thus, it is usually permissible to take the extra change.” 

For a more detailed treatment of this topic, contact BHI for the article by Rabbi Tzvi Price, “What to Do When You Find Money in a Vending Machine.”

The Business of Bread

Bava Metzia 11a - Chatzer

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

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

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

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

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

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

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

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

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

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

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

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

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

The Business of Bread, cont.

extended as a loan, due after Pesach.”

Mr. Doe gave Rabbi Tzedek \$100.

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

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

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

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

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

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

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

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

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



A Shoe, Handkerchief, and Pen

Bava Metzia 11b - Chalipin

What do a shoe, handkerchief, and pen have in common? ... For English buffs, they all contain an "e."

Let's try in Hebrew: What do na'al, sudar, and eit have in common? ... They all begin in alphabetical order: nun, samech, and ayin.

OK, but better.... In Choshen Mishpat, these are the classic items for "kinyan chalipin."

A fundamental principle of Jewish monetary law is that a transaction must be accompanied by an act of acquisition (kinyan) to be valid. Verbal arrangements, while they should be upheld, are usually not enforceable as binding transactions. (There are a few exceptions, most notably charity pledges.) Even payment does not always make a transaction legally enforceable if not accompanied by an appropriate kinyan.

There are many different acts of kinyan that relate to different kinds of transactions, as described in the first chapter of Maseches Kiddushin. For example, small movable items such as books are acquired by raising (hagbaha), large items such as furniture by dragging (meshicha), and real estate through payment, contract or taking possession (kesef, sh'tar or chazakah). Perhaps the most versatile kinyan - which works for both movable items and real estate, and also to create personal obligations and debt - is kinyan chalipin.

Towards the end of Megillas Ruth, which we read on Shavuot, Boaz took off his shoe to acquire rights to Ruth. This act smacks of yibum, particularly in the context of reestablishing the household of the deceased relative. However the verse clearly is not dealing with yibum, but rather with the transfer of legal rights: "Formerly this was done in Israel in cases of ... exchange transactions to validate any matter: One would draw off his shoe and give it to the other." (Ruth 4:7)

Handing over a shoe or other functional item (k'li) symbolizes an exchange, chalipin, and expresses full intention of the parties for the transaction. Boaz handed over his shoe to Ploni Almoni (usually understood as Mr. So-and-so), and received from him, in exchange, the legal rights to redeem the fields and take Ruth. This was commonly done to validate any transaction; the buyer would hand the seller an item as chalipin, a symbolic exchange. It was a quick and easy means of making transactions and agreements immediately enforceable and legally binding.

A Shoe, Handkerchief, and Pen, cont.


Consider the following scenario: Shmuel and Rina were engaged and shopping for furniture to outfit their apartment. Some stores were too expensive and others weren't quite their taste. At Frankel's Furniture they finally found a bedroom set that was just what they wanted. Because it was a display item they received a 35% discount, making it affordable. They paid for the item and received a sales invoice, with delivery slated for three days, and went happily along their way.

According to the classic rules of kinyan this sale is not yet finalized! Neither payment nor a contract is a valid act of kinyan for movable items, only picking up or dragging them. Both sides still have the legal right to renege, although they are strongly discouraged from doing so. However, if Shmuel were to hand his pen to Mr. Frankel as kinyan chalipin - the sale would be finalized and the bedroom set would be theirs, with no possibility of reneging.

In practice, halacha validates sales completed in the prevailing customary business manner, based on kinyan situmta (to be discussed at some later date, IY"H). Thus, nowadays, after paying and completing the sales invoice in the customary manner, it would not be possible to renege, unless the prevalent practice allows returns.

During the time of Ruth, the favored item of chalipin was a shoe. In the Gemara, the shoe gave way to the sudar - a cloth or handkerchief. It is not even necessary for the seller to take the entire cloth from the buyer, but to grasp a significant portion of it (3X3 inches) and then return it. In recent decades, as handkerchiefs gave way to insignificant paper tissues, the ever available pen is typically used to perform kinyan chalipin.

With decreased awareness of Jewish monetary law and the standardization of commercial practices, kinyan chalipin is rarely used in day-to-day business transactions and is mostly utilized in halachic transactions. Thus, we usually encounter kinyan chalipin when selling chametz, writing the kesuba at weddings, accepting binding arbitration in beis din, and preparing a halachically valid will.

With the world going paperless, pens are also going out of vogue. The up-and-coming item for chalipin is ... a cell-phone. English buffs – no worry; it also has an "e." Hebrew lovers, no worry - it also begins with the next letter, peh - pe! 

Chametz Sell-Off

Bava Metzia 12a - Zachin LaAdam

"I'm going to visit Mr. Morris in the hospital," Mr. Goodman called upstairs to his wife.

Mr. Morris was an elderly neighbor who lived alone. A week before Pesach, he had fallen and broken his hip.

When Mr. Goodman arrived, he greeted the old man. "How are you feeling?"

"Somewhat better," Mr. Morris replied. "They did hip replacement surgery yesterday."

"How long will you be in the hospital?" Mr. Goodman asked.

"Another three or four days," Mr. Morris answered. "I'll have to spend the Seder here."

"It's unpleasant," Mr. Goodman empathized. "But it's important that you recuperate now."

After a nice chat, Mr. Goodman wished Mr. Morris a "refuah sheleima" and headed home. On the way, he stopped off in shul to sell his chametz through Rabbi Tzedek.

"What about Mr. Morris?" he suddenly thought. "He doesn't even have a phone and won't be able to sell his chametz."

In shul, Mr. Goodman met his friend, Leo Katz. "I just visited Mr. Morris in the hospital," he said. "I wonder if there's any way I can sell his chametz for him."

"I don't see how you can sell someone else's chametz without his authorization," Leo said. "Can you sell his house or car without his authorization?"

"Obviously not," replied Mr. Goodman. "But it's not the same. There he would be losing his house or car, even if he gets paid. But here, he has everything to gain and nothing to lose! Selling the chametz saves him from the prohibition of maintaining chametz over Pesach and spares the chametz from becoming prohibited. The chametz is also purchased back afterwards!"

"But who gave you the right to act on his behalf?" Leo countered.

"No one," acknowledged Mr. Goodman. "But Rabbi Tzedek recently taught me the concept, 'zachin l'adam shelo b'fanav,' it is possible to acquire on behalf of someone not in his presence if it is for his benefit. Perhaps it's also possible to sell on behalf of someone when it's clearly for his benefit."

It was soon Mr. Goodman's turn. He authorized Rabbi Tzedek to sell his chametz, and then asked, "Mr. Morris will be in the hospital over Pesach. Can I sell his chametz also?"

Chametz Sell-Off, cont.

Rabbi Tzedek replied, “If it is not possible to contact Mr. Morris, selling his chametz is valid according to many authorities based on the rule of zachin l’adam shelo b’fanav, since it is an absolute benefit for him to have the chametz sold.”

Rabbi Tzedek then explained: “The Gemara (Pesachim 13a) teaches that if you are entrusted with chametz and the owner does not collect it before Pesach, you are supposed to sell it for him (Orach Chayim 443:2).


“In that case, however, you are entrusted with the chametz. Therefore, selling the chametz before it becomes prohibited is part of your responsibility, just as you are responsible to prevent it from becoming spoiled or ruined (C. M. 292:16; SM”A 292:40).

“There is a dispute among the authorities, though, whether it is possible to sell another person’s chametz without his instruction when you are not responsible for it. Most authorities validate the sale on the basis of zachin, if the person would be interested in having it sold (Pischei Teshuva Y.D. 320:6).”

“What is the basis of the dispute?” asked Mr. Goodman.

“It relates to the nature of zachin,” replied Rabbi Tzedek. “Tosfos (Kesubos 11a) explains that zachin is rooted in the law of shlichus, agency. Since this action is for the other person’s clear benefit, you are considered a ‘self-appointed’ agent. Therefore, the same way you can be an agent to acquire for someone’s benefit (C.M. 243:1), you can also serve as a ‘self-appointed’ agent to sell for the owner’s benefit. The Rama rules, on this basis, that a Jewish maid can separate challah from dough if the lady of the house is not available (Y.D. 328:3).

“Ketzos Hachoshen (243:7-8), however, maintains that a person cannot be considered an agent unless appointed by the owner. He understands zachin as a separate law that relates only to acquiring on behalf of someone, but not to other legal transactions. This is colloquially referred to as zachin l’adam, acquiring for a person; not zachin mei’adam, acquiring from a person (see Mirkeves Hamishneh, Hil. Gerushin 6:3).

“Most authorities rule, though, that whenever there is an unequivocal benefit for the owner, who is interested in the transaction, it is possible to act on his behalf when he not accessible. Therefore, if Mr. Morris cannot arrange the sale himself, it is possible to sell on his behalf (Piskei Teshuvos O.C. 448:21).” 

Giving a Gift

Bava Metzia 12a - Zachin

Rivka came home from school and handed her mother a note, which read:

“As class representative, I am collecting money for the annual end-of-year gift for the teacher, Mrs. Melamed. Each parent is asked to contribute \$30 for the gift, cash or check. Thank you in advance for your cooperation, Mrs. Roth.”

Rivka's mother promptly put the money in an envelope and sent it over to Mrs. Roth.

During the course of the week, Mrs. Roth collected about \$1,000. She brought the money to the school and gave it to the school secretary, Mrs. Green.

“Thank you very much,” Mrs. Green told her. “The teachers look forward to this gift.”

“I'm glad that the parents were responsive,” said Mrs. Roth. “Sometimes it takes a while to collect all the money and that's not fair to the teacher.”

Ten minutes later, the principal, Mr. Weinberg, returned from a round among the classes.

“One of the mothers brought in money for Mrs. Melamed's gift,” Mrs. Green said. “Should I put it in her box?”

Mr. Weinberg sighed. “You know that we have been struggling to keep up with salaries,” he said. “In order to alleviate the financial strain, the board has voted to utilize the class gift this year to defray part of this month's salary.”

“You mean you're not going to give her the money as a gift?!” asked Mrs. Green, shocked.

“Unfortunately, no,” replied Mr. Weinberg. “The board felt that it is more important that the teachers receive a proper paycheck than get a gift.”

“I understand that,” said Mrs. Green, “but I don't think it's fair to the parents. They gave the money as a gift for the teacher, not as a donation to the school to fund salaries.”

“Their money will be going to the teacher in the end,” said Mr. Weinberg, “so I don't see a problem with it.”

“But the parents expected this money to be an additional gift to the teacher to express their appreciation,” protested Mrs. Green.

“The parents don't have to know exactly how the money was given,” replied Mr.

Giving a Gift, cont.

Weinberg. “The main point is that the teacher ends up receiving it.”

“I apologize for sticking my nose in, but if I were one of those parents, I would feel cheated,” said Mrs. Green. “Perhaps the school should consult with Rabbi Tzedek before doing this.”

“That’s a good idea,” said Mr. Weinberg. “I’ll give Rabbi Tzedek a call and check with him.”

Mr. Weinberg called Rabbi Tzedek and presented the issue to him. “Can we utilize the money that parents gave for the teacher’s gift to defray part of her salary?”

Rabbi Tzedek ruled: “If the money was collected with the intention to give it as a cash gift to the teacher, the money is already hers and cannot be used for another purpose. Even if the money was meant to buy a gift for the teacher, it cannot be used to pay payroll if this will cause a delay in giving the gift.”

Rabbi Tzedek then explained, “When a person accepts a gift on behalf of someone else, the recipient acquires it immediately based on the rule of *zachin l’adam shelo b’fanav* – it is possible to acquire for someone not in his presence. Therefore, if the money was meant to be given directly to the teacher, whenever Mrs. Roth received the money, the teacher immediately acquired it (C.M. 243:1).

“Nonetheless, it is not necessary to give these exact bills to the teacher. The class representative can exchange them for larger bills or utilize them and replace them immediately with her own money (see SM”A 183:12; Nesivos 183:4).

“If the money was meant to be used to buy the teacher a gift and not to be given in cash, the money does not become hers yet; rather, it still belongs to the parents. They entrusted it to the class representative or school to buy the gift for the teacher.

“There is a dispute amongst the authorities whether an agent who was given money to purchase something may borrow the money temporarily for his own needs (Shach 121:33; Nesivos 121:10). However, everyone agrees that to use the money for payroll and not to buy a gift, or to delay purchase of the gift, would be cheating the parents. Their intention was that the money should be used to purchase a gift at the end of the school year in addition to the regular salary (see also Pischei Choshen, Pikadon 5:20,21).”



Taking the Cake

Bava Metzia 12a - Zachin LaAdam

Pesach was fast approaching. The Levins were trying to use up their chametz. The cookies and cakes they had received on Purim didn't help the situation.

"Gadi, take these packages with you to yeshiva," Mrs. Levin told her teenage son. "I'm sure your friends will be able to finish them."

Gadi stuffed the cookies and cakes into a shopping bag and took them with him to yeshiva. He met his friend, Yisrael, and asked, "Would you like some cookies?"

"Sure," said Yisrael. "What's the occasion?"

"We're trying to finish the chametz before Pesach and have loads left over from mishloach manos," Gadi explained.

"I'm glad to help," Yisrael smiled.

Gadi gave him a cake, and gave out the remaining packages to other classmates who were present. "Almost finished," he announced. "One box left."

"Can I have it for my brother?" Yisrael asked.

"No problem," Gadi said. He reached in the bag and handed Yisrael the box of cookies. "Here, take this for your brother," he said.

Just then, Gadi's best friend, Ari, entered the room. He saw the packages of cookies and cakes all around. "What's going on here?" he asked. "Someone making a party?"

"We're trying to get rid of the chametz," Gadi explained. "My mom told me to give out the extra cakes from mishloach manos."

"I'm starving," laughed Ari. "I could really use a package of cookies now!"

"Sorry," said Gadi, "but I just gave the last box to Yisrael for his brother."

"For his brother?" questioned Ari. "Where's his brother?"

"He's home," said Yisrael. "I'll bring it home with me tonight."

"Would you mind giving it to Ari?" Gadi asked Yisrael. "Ari's my best friend and he's here now. Your brother won't even know he missed anything."

"I already took the cookies for my brother," said Yisrael. "I can't give them away without his permission."

"But they're not his yet," said Gadi. "The cookies are still mine until your brother receives them, so you can give them to Ari."

"I'm not convinced that they're still yours," replied Yisrael.

Just then Rabbi Tzedek walked in. "Let's ask Rabbi Tzedek," suggested Ari.

Taking the Cake, cont.

The three boys approached Rabbi Tzedek. “I gave Yisrael a box of cookies to take for his brother,” said Gadi. “I would like him to give it now to Ari, though. Can Yisrael give it to Ari or does it already belong to his brother?”

Rabbi Tzedek ruled: “Yisrael already acquired the cookies for his brother and he has no right to give it to Ari without his brother’s permission.”

Rabbi Tzedek then explained, “This case is an example of the halachic concept, *zachin l’adam shelo b’fanav* – it is possible to acquire on behalf of a person not in his presence. When a person accepts a gift on behalf of someone else, the recipient of the gift acquires it immediately. The one who gave it can no longer back out, nor can he give it to someone else (Choshen Mishpat 243:1).”

“What is the basis of *zachin l’adam*?” Yisrael asked.

“The Gemara (Kiddushin 42a) derives this concept from the division of the Land of Israel, in which the leaders of each tribe received a portion on behalf of the entire tribe,” explained Rabbi Tzedek. “Tosfos explains further that *zachin l’adam* is an extension of the law of *shelichus*, agency. The person accepting the gift serves as an agent to receive the gift on behalf of the recipient (Kesubos 11a; see, however, Ketzos Hachoshen 105:1).”

“What if Yisrael’s brother doesn’t want the cookies?” asked Ari.

“A person cannot be forced to accept something against his will,” replied Rabbi Tzedek. “Therefore, the recipient has the ‘upper hand’ and can choose either to uphold the gift retroactively or to refuse it.”

“Does that mean that every time I ask you to bring something to a friend it becomes his already?” asked Gadi.

“The application of *zachin l’adam* depends on the language used,” Rabbi Tzedek concluded. “The language must indicate that the person was meant to acquire the item immediately on behalf of the recipient, such as: ‘acquire’, ‘take’, or ‘accept for so-and-so’ (*zechei*). However, if Gadi had said to Yisrael, ‘deliver’ or ‘bring the cookies to your brother’ (*holeich*) the language does not indicate immediate acquisition on behalf of the recipient.

“In that case, Yisrael’s brother would not acquire the cookies until he received them. The term ‘give to so-and-so’ (*tein*) is questionable and subject to dispute (C. M. 243:2-3; 125:6-7).”



Shoe Business

Bava Metzia 13a - Shtar Hakna'a

Bava Metzia 17a - Shtar Mukdam

"Mazel Tov! Mazel Tov!" wished the guests as they arrived at the wedding hall.

"Thank you so much," answered the choson's parents, Mr. and Mrs. Epstein.

"Where's Eli? Where are the grandparents?" inquired their next-door neighbor.

"My parents are right over there," pointed Mrs. Epstein. "My in-laws are on the way; they should be here any minute. And Eli, our choson – he's getting ready for the choson's tish in the other room!"

Ten minutes later, Mr. Epstein received a call from his mother. "There was a serious accident on the highway," Grandma Epstein said. "Traffic is at a complete standstill. We've been sitting here for forty minutes and don't know when we will arrive."

"Oh my!" exclaimed Mr. Epstein. "We'll have to stall until you come. Please keep us abreast of what's happening."

Mr. Epstein alerted the family that his parents would be significantly delayed. He consulted with Rabbi Tzedek and they decided to proceed meanwhile with the choson's tish and filling out the kesuba.

"I hope they make it to the chupah," Eli said. "I can't imagine having the chupah without Zayde and Grandma."

"Neither can I," said his father. "But it takes time to sign the kesuba, daven mincha, etc. If need be, we'll delay the chupah with some extra singing and ma'ariv."

Eli pulled out the kesuba. "It was hand-made by my kallah's best friend," he said.

Rabbi Tzedek examined the kesuba to make sure that it was written properly. He noted that the date, "Sunday, 24th of Sivan," was written under the assumption that the chupah would take place while still day.

He then explained to Eli and the witnesses: "The kesuba is essentially a debt document, which sets forth the monetary obligations of the husband toward his wife during their marriage and in the eventuality of death or divorce." He reviewed with them the various obligations and translated the relevant text.

Eli had a slight cold and sneezed twice while going over the kesuba. Just before signing, Rabbi Tzedek offered him a handkerchief.

"Thanks, Rabbi," Eli said apologetically, "but I have tissues."

"I wasn't offering you my handkerchief to blow your nose," laughed Rabbi Tzedek.

Shoe Business, cont.

"I offered you my handkerchief to effect a kinyan sudar."

"What's that?" asked Eli.

"A kinyan sudar is a fast and easy way to validate almost any transaction or obligation," explained Rabbi Tzedek. "It's derived from the story of Boaz, who gave his shoe to Mr. Ploni-Amoni to acquire the rights to redeem Elimelech's fields."

"What does Boaz's shoe have to do with a handkerchief and kesuba?" asked Eli.

"Kinyan sudar symbolizes an exchange," Rabbi Tzedek elaborated. "In Boaz's time this was done with a shoe; in Chazal's time with a sudar, a handkerchief; nowadays sometimes with a pen. I grant you my handkerchief as a representative of the kallah, and you, in exchange, commit to the obligations toward her set forth in the kesuba."

Eli grasped the handkerchief and raised it, after which the witnesses signed the kesuba.

Shortly afterwards, Grandma Epstein called again. "Traffic is moving again slowly. We're almost past the accident and should arrive in about half-an-hour."

At last Zayde and Grandma arrived. After hugs and kisses all around and a few quick photos, the families organized for the chupah. It was already night before Eli finally gave the ring to his kallah.

"The choson's grandfather, Zayde Epstein, is invited to read the kesuba," announced Rabbi Tzedek.

Zayde Epstein stepped forward and began reading in a voice filled with joy: "On Sunday, the 24th of Sivan...." A look of concern came over his face as he read the date. After the chupah, he approached Rabbi Tzedek.

"Excuse me for asking," he said, "but I noticed that the date of the kesuba was left as Sunday, even though the chupah did not take place until night time. Does that not invalidate the kesuba?"

"You're correct that a pre-dated kesuba is invalid," answered Rabbi Tzedek. "However, since your grandson made a kinyan sudar while it was still day, the kesuba is valid."

Rabbi Tzedek explained, "A kesuba that is dated early is invalid, like any other pre-dated debt document, and a new one has to be written (C.M. 43:7). However, the choson obligates himself from the time he makes the kinyan sudar. Therefore, if the kinyan sudar and the signatures were done in the afternoon, that date remains correct, even though the chupah did not take place until evening (39:13). Mazel Tov!" 