

You Might Be Right, But Don't Bet On It!

Efraim reached into his wallet and pulled out a ten dollar bill. "Here, Menachem. Take it, but I still cannot believe that I was wrong about that *Tosafos*. I thought for sure it was on *daf lamed*," Efraim said dejectedly. It was the third time this week that he had been proven wrong and each time it had cost him ten dollars. "Don't worry, Efraim. Maybe you'll be right the next time," said Menachem with the slightest trace of a smirk on his face.

Efraim and Menachem were best friends. They had gone to yeshivah together. They worked for the same company. But most importantly, they were *chavrusos*. They had learned Torah together for more than twenty years, every night from 8:30 until 11:00, rain or shine. Both of them were passionate about their learning and were not shy about expressing their opinions. They often found themselves in heated debate. Yet they had a great deal of respect for each other. Anyone seeing Efraim and Menachem learning together could sense that there was something special and intense happening.

Of the two, Efraim had a bit more of that competitive edge, and it showed itself in an interesting way. Efraim would often cite Talmudic sources from memory, and he was correct more often than not. Despite Efraim's impressive accuracy (or maybe because of it), Menachem often claimed that Efraim was mistaken. This would inevitably lead to Efraim saying, "I know for a fact that I am right. I am so sure about it that I will even sign a paper stating that if I am wrong, I'll owe you ten dollars." Menachem had come to expect this reaction from Efraim. Often, he would be reaching for his pen even before Efraim could conclude his offer.

Menachem was more than willing to take advantage of Efraim's hot-headed "generosity." He had nothing to lose and everything to gain. And he gained indeed. Over the years Efraim had given Menachem hundreds of dollars due to these mistaken quotes. However, this week was unusual. Efraim had been wrong three times in a row! To his credit, Menachem felt bad for his friend, and as he put the ten-dollar bill into his wallet he almost wished that Efraim had

not been wrong. Then, in a rash moment of mercy that he would later regret, Menachem said to Efraim, "You know what, Efraim? The next time that I am certain about a source that I cite, if you prove me wrong I'll owe you fifty dollars."

Efraim's face lit up! In the more than twenty years that they had been *chavrusas*, Menachem had not once bet his money in the way that Efraim had. Efraim had waited a long time for this day to come. "Really? Are you serious? I hope you are not doing this because you feel sorry for me," Efraim asked bluntly. "And if I am?" answered Menachem. Efraim thought for a moment and smiled. "Menachem, you have a good point. I accept your offer. Now let's get back to learning. There are fifty dollars to be won!"

Two weeks passed before the inevitable happened. "Ha! I got you, Menachem! That *Gemara* is in *Sotah*, not *Nazir*," exclaimed Efraim with glee. Menachem stood his ground. He was quite sure that he was correct about the *Gemara* he had cited. "No, Efraim. I am sure that it is in *Nazir*. I know you have been waiting a long time to win those fifty dollars, but today will not be the day," Menachem said confidently. In a flash Efraim produced a paper ready for Menachem to sign. Menachem signed without thinking twice and Efraim raced off to find the *Gemara*. After a few moments, Efraim returned with a *Sotah* in his hand and a proud smile on his face.

"Do you have your checkbook on you?" teased Efraim. "I can't believe it. Let me see that *Gemara*," Menachem said reaching for the *sefer* in Efraim's hands. After checking the *Gemara*, Menachem had no choice but to admit that he was mistaken. Menachem pulled out his checkbook and started to write a check.

"Excuse me, but I don't think you owe your *chavrusa* that money," said an unfamiliar voice. Bewildered, Menachem looked up from his checkbook. "I'm sorry, what did you say?" Menachem asked the stranger.

The distinguished-looking man introduced himself. He said his name was Rabbi Lerner and that he had come into town for a *chasunah*. "I'm sorry, but I was learning at the table next to you and I couldn't help but overhear your

conversation. I've been learning *Choshen Mishpat* for quite some time and it seems to me that the bet you made with your *chavrusa* is an *asmachta*," said Rabbi Lerner. Efraim had been listening to the conversation between Menachem and Rabbi Lerner and he didn't like what he was hearing.

"What's an *asmachta*? I've never heard of it and I've been learning a long time," Efraim asked suspiciously.

"I've never heard of it either, but that's probably because we've never learnt *Choshen Mishpat*," Menachem retorted.

Rabbi Lerner nodded in agreement with Menachem and explained, "The word *asmachta* is derived from the word *somach*, which means 'to rely.' Your *chavrusa* **relied** on his

that would be a form of deception. However, your situation is different, since you agreed to the *asmachta* in good faith. The Torah knows that a person like you who has agreed to an *asmachta*-type deal could never truly have meant what he said. Words that are known not to reflect the speaker's heart are of no meaning. The Torah only demands that a person keep his meaningful words, not words that by their very nature are meaningless."

Menachem's face turned apologetic as he glanced at Efraim. "Rabbi Lerner, can I give Efraim the fifty dollars anyway?" asked Menachem.

"Of course you may, and it would show that you stand

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expertise in *Gemara* when he agreed to the bet. He never expected that he would ever have to pay you."

"You'd better believe it!" Menachem said emphatically.

Rabbi Lerner continued. "In *Choshen Mishpat* 207:13 this type of situation is discussed. The laws of *asmachta* are quite complex and it took me months to learn them, but I can give you a general rule. Often a person may agree to accept upon himself a conditional penalty. For example, a person might agree to a penalty of ten dollars if he does not arrive by a certain time, or a penalty of a hundred dollars if he does not repay his loan on time. An agreement to pay fifty dollars if proven wrong is another example of a conditional penalty.

"The Torah understands that a person who agrees to a conditional penalty relies on his expectation that the event upon which he agreed to pay will never occur and the penalty will never be levied. You might say that the Torah plumbs the depths of a person's mind. It knows that deep down, the person feels he never really agreed to pay the penalty, since he did not expect that the condition would be met. Therefore, the Torah exempts him from paying it.

"Although there are many exceptions to this general rule, in your specific case it is my opinion that to take the money as a result of this bet would involve a question of stealing! In fact, this is one of the many reasons why the Rabbanim strongly disapprove of betting and gambling." Efraim and Menachem squirmed at Rabbi Lerner's words.

"Are you telling me, Rabbi Lerner, that a person does not have to keep his word? After all, I did say that I would pay Efraim fifty dollars if I was proven wrong," Menachem asked.

"No, not at all," Rabbi Lerner replied. "A person certainly has to keep his word. Furthermore, it is absolutely forbidden to agree to an *asmachta* penalty with the premeditated intention of reneging on the agreement, since

by your word even beyond what the *halachah* requires. However, you should realize that in essence you are giving your friend a present," answered Rabbi Lerner.

"Menachem, you are missing the point," Efraim said with a wry smile. "There is no fun in taking presents. I would only take the money if you owed it to me. Though I wouldn't mind if you returned to me the hundreds of dollars in lost bets that I have mistakenly paid you during the past twenty-some years!"

"Not so fast," said Rabbi Lerner. "In *Choshen Mishpat* 207:10, there is a discussion about whether one has to return money mistakenly given to him as the result of a deal involving an *asmachta*. Your *chavrusa* certainly may act according to the opinion that says that he does not have to give you back the money."

Efraim laughed. "I guess I just can't win today!" said Efraim.

Rabbi Lerner looked at Efraim intensely. Efraim stopped laughing. He thought for a long moment and said softly, "Rabbi Lerner, thank you for saving me from taking money that didn't belong to me. I guess on second thought today was my lucky day."

"You're welcome," Rabbi Lerner said as he turned to leave, "any time."

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