Restoring the Primacy of Choshen Mishpat

BUSINESS HALACHA *in the* CLASSROOM

Bava Metzia

Perek Daled

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

A Shoe, Handkerchief, and Pen

Bava Metzia 45b - 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 Shavuos, 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 - pelephone!

Little Lamb

Bava Metzia 47b - Maos Konos

The Becker family owned a small homestead and kept a few animals as a petting zoo. The children's favorite animal was a young sheep they named Rachel. There was much excitement as time approached for Rachel to bear her first lamb.

"What should we call it?" asked little Miriam.

"If it's male, we'll call it Tzoni," suggested Chaim, "and if it's female, we'll call it Kisba."

Mr. Becker, meanwhile, seemed lost in thought. "We just finished learning Maseches Bechoros in the Daf Yomi shiur," he said. "If Rachel has a male lamb, then he's a bechor (firstborn). We would have to give him to a kohen."

"What?" said Miriam shocked. "Give Tzoni away? After waiting five months for him?"

"I've heard about a pidyon haben for a firstborn son," said Mrs. Becker, "but not about giving a firstborn lamb to the kohen."

"A firstborn lamb is sacred even nowadays," said Mr. Becker. "We can't offer it now as a sacrifice, but it still has sanctity. You have to let the animal graze until it gets a blemish and then you give it to the kohen to eat (Bechoros 26b)."

"You mean we'll have a holy sheep roaming around the farm?!" asked Mrs. Becker. "What do we do with it?"

"Absolutely nothing," said Mr. Becker. "Since it's sacred, you can't use it for anything or shear it."

"How about if I just make a blemish in it?" said Chaim. "Then we can give the lamb immediately to the kohen."

"That won't work, either," said Mr. Becker. "You're not allowed to intentionally cause a blemish in a sacred firstborn animal. You just have to let it roam until it develops a blemish on its own."

"That can become a problem if it doesn't get a blemish for a long time," said Mrs. Becker.

"I think I heard something about selling it to a gentile," said Chaim.

"I don't see how I can sell a sacred lamb," Mr. Becker said. "I'll have to speak with Rabbi Tzedek about this."

Mr. Becker called Rabbi Tzedek. "We have a sheep about to deliver its first lamb,"

he said. "What do we do if the lamb turns out male?"

Rabbi Tzedek answered, "You should sell part of the mother sheep to a gentile beforehand, typically the ear, by receiving a cash payment and also having the gentile lead the animal into his property."

Rabbi Tzedek then explained, "Nowadays, when it is not possible to sacrifice a bechor, there is concern that a person will violate the prohibitions against using the bechor before it becomes blemished. Therefore, it is recommended to make a gentile a joint partner in the mother, so that the firstborn will not become sacred (Y.D. 320:6)."

"Why isn't it enough for me to receive cash?" asked Mr. Becker. "Why is it also necessary for the gentile to lead the animal?"

"This is because every transaction requires a kinyan, an act of transaction, to be of halachic validity," said Rabbi Tzedek. "There is a dispute regarding the manner in which a gentile acquires movable items from a Jew. The Rambam rules that either cash payment or taking the item suffices (Hil. Zechiya 1:14). However, Rashi writes that a gentile acquires only through cash payment (A.Z. 71a). On the other hand, Rabbeinu Tam and many other authorities maintain that a gentile acquires only through taking the item (C.M. 194:3; SM"A 194:1; Shach 194:1,4).

"In order to make the sale valid according to both Rashi and Rabbeinu Tam, the practice is to do both forms of kinyan – a cash payment and having the gentile lead the animal into his property."

"What if a person did only one of these forms of transaction?" asked Mr. Becker.

"Since there is a dispute which kinyan is valid, many authorities maintain that the firstborn lamb remains holy out of doubt," replied Rabbi Tzedek. "Others maintain, though, that the primary transaction is taking the animal, like Rabbeinu Tam; if the gentile only gave cash, the lamb would remain holy, whereas if he led the lamb, it would not be.(Shach Y.D. 320:8; Pischei Teshuva 320:6).

"Alternatively, the gentile can make a token cash payment to rent the area where the animal is standing and thereby acquire a share in the mother (Y.D. 320:6)," concluded Rabbi Tzedek. "There is much discussion in the achronim as to the exact nature of this method, whether through chatzer, agav, or meshicha (see Ketzos Hachoshen 194:3; Nesivos Hamishpat 200:Intro.)."

The Business of Bread

Bava Metzia 47b - Maos Konos

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

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)."

Refurbish or Retract?

Bava Metzia 48a - Meshichas Poel

Mr. Bloom was still using the tefillin from his bar mitzvah, even though he had already turned fifty. His father had invested in good-quality, mehudar tefillin. When Mr. Bloom looked at them recently, though, he noticed that the paint was beginning to chip and wear off, the corners were no longer pointy, the four sections of the shel rosh were separating slightly, and the base of the tefillin was starting to warp.

Mr. Bloom took them to his Rabbi to ask if they were still kosher.

"They are still usable," said his Rabbi, "but you should consider refurbishing them or getting new ones."

"Can they really be refurbished?" asked Mr. Bloom.

"Yes," replied his Rabbi. "A sofer (scribe) who deals with batim can do a full overhaul of the tefillin: sharpening the corners, tightening and straightening the squares, and redoing the paint job."

Mr. Bloom brought the tefillin to his local sofer, Rabbi Stam.

"I can do a full refurbishing for $200," Rabbi Stam said. "Or, if you prefer, you can buy new batim for about $350. Think about it."

Mr. Bloom considered the issue. He decided that he would keep his original pair of tefillin and have them refurbished.

"I'd like you to refurbish the tefillin," Mr. Bloom said to Rabbi Stam.

The following day, Mr. Bloom was talking to another sofer. "I can get you high-quality batim for about $275," the other sofer said. "I think they will last longer than refurbished old ones."

"But I already gave my tefillin to Rabbi Stam to be refurbished," said Mr. Bloom. "Can I change my mind now, after giving them to him?"

"That I don't know," said the sofer. "You can ask Rabbi Dayan, though. He should be able to answer that question. I'll give you his number."

Mr. Bloom called Rabbi Dayan and asked: "If I gave my tefillin to Rabbi Stam to be refurbished, may I retract my decision and cancel the job? Does it make a difference whether he started working or not?"

"There are many rules about an employer and worker, when one of them wants to pull out of the agreement," said Rabbi Dayan. "There is also a difference between a salaried employee, called a po'el, and one who gets paid for the job, called a kablan

or uman (C.M.333:1 ff.)."

"What would our case be considered?" asked Mr. Bloom.

"Since you agreed to pay Rabbi Stam a flat fee of $200 for the job," answered Rabbi Dayan, "he is considered a kablan."

"So what is the rule of a kablan?" asked Mr. Bloom.

"There is a dispute whether a kinyan with a kablan obligates him to do the job, even if he is willing to bear the monetary consequences of a change of mind," explained Rabbi Dayan. "The Shach (333:2,4) rules that it does, although the SM"A (333:16) maintains otherwise (see Rabi Akiva Eiger 333:1)."

"Where is there a kinyan here, though?" asked Mr. Bloom.

"The Ritva (B.M. 76b) writes that if the worker took the item that he is to work on, that constitutes a kinyan, like any other kinyan meshichah, so that the owner cannot cancel the job," replied Rabbi Dayan. "The Mordechai, however, indicates that the owner can still change his mind, with subsequent monetary consequences if the worker has already begun, or if he gave up other opportunities on account of this job (see Machaneh Ephraim, Hil. Sechirus Po'alim #6; Pischei Choshen, Sechirus 7:2, 13:2)."

"How do we rule?" asked Mr. Bloom.

"The Ritva's position is generally not accepted," said Rabbi Dayan. "So long as Rabbi Stam hasn't started working yet, the owner has the legal option to retract, although it would often be morally improper (mechusar amanah). (See Chazon Ish, B.K. 23:26; P.C., Sechirus 7:[8].) However, if you pre-paid Rabbi Stam, this creates a greater commitment (Nesivos 333:1). Rabbi Stam would be entitled to withhold the entire amount that you paid him and insist that he be allowed to complete the job, also on account of the Ritva's position."

Summer Plans

Bava Metzia 49a - Mechusar Amana

Mr. Blank worked through the summer, so his family stayed in the city.

"It would be nice to get away to the country at least for a weekend," his wife suggested.

"Great idea!" Mr. Blank replied. "See if you can find a place."

Mrs. Blank searched the ad section of the Jewish newspaper.

"Here's one," she said. "Summer home available for weekends. Call Mr. Zimmer for details."

Mr. Blank called Mr. Zimmer. "Is your summer home available for the last weekend in August?"

"It's available, and it costs $500 for the weekend," replied Mr. Zimmer.

"Then we are interested in reserving the house for that weekend," Mr. Blank said.

"Excellent," said Mr. Zimmer. "Payment is due when you arrive."

A week later, Mrs. Blank received a call from her sister. "We're invited to a bar mitzvah at the end of August," the sister said. "Our summer home is available that weekend if you'd like to use it."

"That's so nice of you!" exclaimed Mrs. Blank. "We actually reserved a summer home for that Shabbos, but if yours is available, that would save us the expense!"

Mrs. Blank turned to her husband. "My sister just offered us her summer home for the last weekend of August," she said. "Can you call Mr. Zimmer and cancel the reservation?"

Mr. Blank called Mr. Zimmer. "We reserved your summer home for the end of August," he said, "but we do not need it now and would like to cancel the reservation."

"But you already confirmed the reservation," said Mr. Zimmer. "You can't just back out now — that's dishonest."

Mr. Blank was troubled. He saw Rabbi Dayan in shul that evening and asked if it was permissible to cancel the reservation.

"Just as a sale requires an act of acquisition (kinyan) to make it legally binding, so too, a rental agreement requires a kinyan to make it legally binding," said Rabbi Dayan. "Therefore, although you reserved the bungalow over the phone, since no kinyan or payment was made, you have the legal ability to cancel the reservation. To prevent this, it is wise for landlords to demand a deposit payment (195:9; 315:1)."

"Words alone mean nothing?!" Mr. Blank asked, astounded.

"Words are meaningful, and a person has a moral obligation to honor his verbal commitments," replied Rabbi Dayan. "One who does not uphold his word is called mechusar amana, lacking in trustworthiness, and possibly even wicked (204:7)."

"So it is wrong to cancel the reservation?" asked Mr. Blank.

"It would be if you hadn't received the offer from your sister-in-law," replied Rabbi Dayan. "There is a dispute whether a verbal commitment is morally binding when there was a change in market conditions. The Rema (204:11) cites both opinions, and favors the opinion that one should not retract even in this case. However, later authorities lean toward the lenient opinion (Pischei Choshen, Kinyanim 1:[5])."

"The Chasam Sofer (C.M. 102) writes," continued Rabbi Dayan, "that a change of circumstances, when another unit was already received for free, is certainly like a change in market conditions and is not considered a breach of integrity."

"What if I wasn't offered the other bungalow for free, but found a better deal?" asked Mr. Blank. "Would that also be considered a change in market conditions?"

"The Sm"a (333:1) indicates that is so," answered Rabbi Dayan, "but this is questionable unless there was some new development in the market, so one who is scrupulous should be careful (Emek Hamishpat, Sechirus Batim 9)."

"What if Mr. Zimmer had turned away other potential renters meanwhile?" asked Mr. Blank.

"That's a different story," replied Rabbi Dayan. "If he turned away other potential renters on your account and cannot find others, this might be considered sufficiently direct damage (garmi) to require compensation, as we find regarding workers (333:2; Sm"a 333:8). On the other hand, it is not actual damage, only lost profit (grama), so it is proper to compromise (see Pischei Choshen, Sechirus 10[10]; Pischei Teshuvah 312:4)."

Gifted

Bava Metzia 49a - Mechusar Amana

Mr. Samuel Scherr was a very successful businessman who generously gave of his wealth to others.

On his twentieth wedding anniversary, two of his married nephews came to visit him. Shlomo had a comfortable job, while Dan was in a difficult financial state. Mr. Scherr served some drinks and they shared a l'chaim.

Mr. Scherr was in a good mood. "Come back tomorrow and I'll give you each a check for $10,000," he said to his two nephews. "Ten and ten is twenty, just like the years of our harmonious marriage!"

"Thanks, Uncle Sam," Dan and Shlomo exclaimed. "That's really nice of you!" They walked out happily, each dreaming of how they might spend the sudden windfall.

The following day, Shlomo and Dan returned to Mr. Scherr's office. After talking a little, Shlomo said, "Yesterday you said that each of us would receive $10,000."

"I know, but when I reviewed my accounts last night, I decided that it was too much," Mr. Scherr replied apologetically. "And how will my other nephews feel when they hear about this? I'm going to have to cut it down to $3,000 each."

"You're backing out?" asked Dan. "We were hoping to use this to cover the kids' summer programs!"

"But I only said that I was going to give it to you," said Mr. Scherr. "I didn't confirm it with any contract, handshake or other means of kinyan (act of acquisition)."

"What about upholding your word?" said Shlomo. "You're known from your business dealings to be a man of your word!"

"I think this is a little different," said Mr. Scherr. "It's not a mutual business agreement; it's all from the good of my heart."

"What's the difference?" asked Dan. "A word is a word whether it's a gift or a business deal."

"It feels different to me," said Mr. Scherr.

"I heard that you started attending the business halacha shiurim given by Rabbi Dayan," said Shlomo. "What would he say about this?"

"I wonder also," said Mr. Scherr. "Why don't you join me this week, and we can ask him."

"Will do," said Shlomo and Dan. "See you there."

Gifted, cont.

After the shiur, the three went over to Rabbi Dayan.

Mr. Scherr asked: "Am I required to uphold my commitment to give each nephew $10,000?"

"You are required to give Dan the full $10,000," replied Rabbi Dayan, "but you can recant from giving Shlomo if you feel it appropriate."

"That doesn't seem fair," said Shlomo. "Why is that?"

"For any transaction to be legally binding, there must be an appropriate kinyan; usually, verbal agreements alone are not legally enforceable," explained Rabbi Dayan. "However, a person is expected to uphold even his verbal commitments. If he does not do so, he is called 'mechusar amanah' - untrustworthy (C.M. 204:7)."

"I don't want to be considered 'untrustworthy,'" said Mr. Scherr. "Does this apply also to gifts?"

"Since gifts are one-sided, there is a difference between a small gift and a large gift," answered Rabbi Dayan. "When a person commits to a small gift, the recipient fully expects the donor to provide the gift. Therefore, if the donor recants, he is called 'untrustworthy.' However, if the person committed to a large gift, the recipient remains doubtful whether the donor will, in fact, carry through. Ten thousand dollars is a large gift, so you would not be considered 'untrustworthy' if you recant (C.M. 204:8; 249:1). A person may not speak deceitfully, though, and offer something when he is not sincere at the time about giving it (Pischei Choshen, Kinyanim 15:4[4])."

"So why must Uncle Sam give me the full $10,000?" asked Dan.

"When the recipient is needy, the promise of a gift is considered a commitment to tzedakah," replied Rabbi Dayan. "There is a separate requirement to uphold a tzedakah pledge, derived from the word 'b'ficha' (R.H. 6a). Therefore, a person who committed even a large gift to a poor person may not recant (Y.D. 259:12; C.M. 125:5)."

The Pizza Predicament

Bava Metzia 49a - Mechusar Amana

The Pfiefer family had finally finished putting away their Pesach dishes. "Thanks for all the help," Mrs. Pfeifer said to her family.

"How about ordering pizza as a treat?" suggested the children.

"I think you deserve it," said Mrs. Pfiefer. She turned to her husband. "Pinchas, could you please call the pizza store and ask them to deliver two pizzas?"

Mr. Pfeifer dialed the pizza store. "I'd like to order two pies with olive topping," he said.

"When would you like it?" asked the man in the pizza store.

"In fifteen minutes," said Mr. Pfiefer.

"You'll come pick it up?" asked the man.

"No, I'd like it delivered," said Mr. Pfeifer. "I don't have a car available."

"Give me your address and phone number," said the man.

Mr. Pfeifer gave his information.

"We are extremely busy now," said the man, "so I can't promise delivery. I'll send it if a delivery boy becomes available."

"How will I know--" Mr. Pfeifer began to say, but the man had already hung up.

"Abba, will they bring the pizza?" asked the children.

"I'm not sure," replied Mr. Pfiefer. "They couldn't promise delivery; they'll send it if someone becomes available."

Fifteen minutes later, Mrs. Pfeifer turned to her husband. "Pinchas, the kids need to eat. We can't wait half an hour to find out that they can't deliver, and then order from elsewhere," she said.

Mr. Pfiefer tried calling the store, but the line was busy. After a few more unsuccessful tries, he exclaimed, "It's a wonder I got through the first time. All I get now is busy, busy, busy…"

After half an hour, Mrs. Pfeifer said, "This is ridiculous. We still don't know if they will be able to deliver the pizza. Try one more time, and if they don't answer, we'll have to order from the other store."

Mr. Pfeifer tried again, but the phone was still busy. "That's it," Mrs. Pfeifer declared. "We can't wait any longer. Please call the other store."

Mr. Pfiefer called the other pizza shop. "I'd like pizza delivered," he said. "Can you

bring it in ten minutes?"

"Sure," said the man. "What would you like to order?"

"Two pizzas with olive topping," Mr. Pfeifer said. He gave his address.

Ten minutes later, one of the kids called out excitedly, "The pizza scooter's here!"

The doorbell rang. Mr. Pfeifer went to the door and saw the delivery boy from the first pizza store! "Sorry for the delay," said the delivery boy. "We've been extremely busy."

Mr. Pfeifer stood there dumbfounded, deliberating what to do. Meanwhile a second scooter arrived. "Here's your pizza order," said the second delivery boy, eyeing the first scooter with suspicion.

"Hold on a second," said Mr. Pfiefer. "I'm going to get money." He entered the house, whipped out his cell phone, and called Rabbi Tzedek. He quickly explained what had happened and asked, "Do I buy the first pizzas, the second pizzas, or do I have to take all?"

Rabbi Tzedek ruled: "You are not required to accept the pizza from the first store, even if it was a special order."

After Mr. Pfeifer dealt with the delivery boys, Rabbi Tzedek explained, "If a person places an order to make pizza and then buys from elsewhere, he is obligated to cover the store's loss if they cannot sell the pizza to another customer. If they can sell it to another customer, he is not legally obligated (Choshen Mishpat 333:8). Nonetheless, there is a moral obligation not to cancel an order unnecessarily (C. M. 204:7).

"However, all this applies when the order is concluded. A person is under no moral obligation to honor an agreement to purchase if the price hasn't been settled yet (C.M. 204:6). Presumably, this applies also if other terms of the sale haven't been finalized (Pischei Choshen, Kinyanim 1:2).

"In this case, you explicitly stated that you could not pick up the pizza; you placed the order on condition that it would be delivered. Since the pizza store could not commit to delivering it, the order is not considered to be concluded. The store should have called to notify you that they could deliver the pizza and to confirm the order.

"Furthermore, even had the store committed to deliver the pizza from the beginning, if the delivery was delayed significantly, you are entitled to order from elsewhere and cancel the first order [see Pischei Choshen, Sechirus 10(5)]."

Widgets Contract

Bava Metzia 49a - Mechusar Amana

Weiss' Widgets were capturing the market as the most highly acclaimed widgets. When they announced a sealed bidding for retail rights of their newest widget, the offers were highly competitive.

Reiss Retail was ultimately awarded the rights. A contract was drawn up: "Weiss' Widgets agrees to sell Reiss Retail Distributors 100,000 widgets @ $23 with a 20% down payment."

The 100,000 widgets were unpacked from the warehouse and sent on rail.

While in transit, the eccentric Mr. Weiss suddenly decided that he wanted to retail the widgets directly. "Weiss' Widgets belong with Weisses, not Reisses!" he insisted.

Weiss' lawyer immediately sent a notice to Reiss Retail that they were retracting the sale and would return the down payment.

Reuven Reiss was dumbfounded when he received the message. "I've already begun a whole ad campaign," he exclaimed: "Ride the Widget Wave! Reiss retails Weiss!"

Reiss immediately responded to Weiss: "You already signed a binding contract to sell us the widgets. You can't back out."

"Check out the halacha," Weiss wrote back.

"I'm not a halacha expert," answered Reiss. "But I know without question that it is morally reprehensible to retract from such an agreement, even if legally possible. Such an action indicates a lack of trustworthiness and is unethical, wicked, and deserving of a curse (C.M. 204:1, 7)."

However, Weiss remained adamant. "We are not interested in ethics and moral considerations. Unless the agreement is legally binding in halacha, we intend to retract the sale and retail the widgets ourselves!"

Reiss's lawyer sent a formal legal notification: "Widgets were sold under contract and a cash deposit was paid by my client. If the legally binding arrangement is not honored, we intend to take legal action."

Weiss' lawyer responded: "For a transaction to be binding in halacha, it must be accompanied by an appropriate kinyan, a formal act of acquisition. Neither a contract nor a cash payment serves as a kinyan to finalize a sale for moveable items such as widgets. As such, we are able to retract the sale according to halacha."

Reiss was infuriated, but intrigued, by this response. He had learned in Maseches

Kiddushin about the need for an appropriate kinyan for each item.

"I know that a contract and cash serve as kinyan for real estate, not for moveable items," he mused. "Could it be that the sale is not halachically binding?"

Reiss asked Rabbi Tzedek to summon Weiss to a din Torah. The two appeared before the Beis Din.

"What do you claim?" asked Rabbi Tzedek of Reuven Reiss.

"We demand that Weiss' Widgets honor its contract and sell us the widgets!" Reuven stated.

"And what do you say?" Rabbi Tzedek turned to Mr. Weiss.

"We explained to Reiss," responded Mr. Weiss, "that neither a document nor a cash payment serves as a binding kinyan for moveable items."

Rabbi Tzedek and his Beis Din conferred and ruled: "The contract is binding on the basis of situmta and hischayvus."

"What's that?!" asked Weiss.

Rabbi Tzedek explained, "Each transaction must indeed be accompanied by a kinyan. However, the Gemara in Maseches Bava Metzia (74a) introduces a form of kinyan called situmta.

"Situmta was a practice of wine merchants to mark the barrels in their warehouse that were already ordered. If the practice of the merchants is to consider this mark as finalizing the sale, it is validated by halacha, as well. The Shulchan Aruch expands this concept to any common commercial practice. Thus, any act that merchants do to express completion of the transaction, even if not enumerated in halacha, is binding (C.M. 201:1-2). A common example of situmta is a contract, since merchants consider this agreement binding. Other possible examples are handshakes, down payments, and 'mazal u'bracha' in the diamond trade. If the local law considers the contracts legally binding, it could also be granted halachic validity on the basis of dina d'malchusa (Pischei Teshuva 201:2).

"Furthermore, the Nesivos (203:7) writes that a person can obligate himself to sell something, the same way he can obligate and accept upon himself a debt (hischayvus). The language, 'agree to sell,' can be understood nowadays as accepting an obligation to do so.

"Therefore, the widgets contract is absolutely binding also in halacha, and you have no legal ability to retract."

Silver Sale

Bava Metzia 49b - Ona'ah

"Mazal Tov," Sol said to his friend, Yisrael. "I heard you had a boy recently!"

"Thank you," said Yisrael. "The pidyon haben, redemption of the firstborn son, will take place next week."

"Mr. Kahn has five real silver coins with the proper weight of 3.4 ounces," said Sol. "He offers to sell the coins, if you want, so that you can do the pidyon with real silver coins that you bought."

"How much do they cost?" asked Yisrael?

"At my son's pidyon haben three years ago, the value was about $50," said Sol. "Silver went up, though."

Yisrael arranged with Mr. Kahn to serve as the officiating kohen at the pidyon. "I'd like to buy the silver coins from you," he added.

"Sure," said Mr. Kahn. "They're worth $100 now."

On the day of the pidyon, Yisrael paid Mr. Kahn $100 for the coins. He then gave them to him for the pidyon haben ceremony.

"How much were the coins?" Sol asked afterwards.

"Mr. Kahn asked for $100," Yisrael said.

"That's all?" said Sol. "I saw yesterday that silver prices have rocketed over the past two years. The 3.4 ounces for pidyon haben are now worth $140."

"You're kidding," said Yisrael with dismay. "That's not good!"

"What's the problem?" said Sol. "You saved yourself $40!"

"There is a concept of ona'ah, overcharging or underpaying," answered Yisrael. "If the discrepancy between the price paid and the item's value is more than 1/6, the sale is annulled. I underpaid by 30%, so the coins may not have been mine at all!"

"But Mr. Kahn only asked for $100," said Sol. "You didn't try to cheat him."

"Yes, but he erroneously thought that was the value," said Yisrael. "He wasn't trying to give me a discount."

"I don't know," said Sol with a shrug. "But I have Rabbi Tzedek's phone number if you want to give him a call."

"That would be great," said Yisrael.

Sol gave Yisrael the number, and he called Rabbi Tzedek.

"I bought coins from Mr. Kahn for pidyon haben, but he greatly undervalued the

coins," he said. "Is this ona'ah? Is there a problem with the pidyon?"

"This is definitely a case of ona'ah, mispricing, and Mr. Kahn can annul the sale of the coins (C.M. 227: 4; see also Aruch Hashulchan 227:2)," said Rabbi Tzedek. "However, there is no problem with the pidyon haben."

"Why not?" asked Yisrael.

"There is an important difference between a mistaken sale, where the wrong object was sold, and a mispriced sale, where there is ona'ah," explained Rabbi Tzedek. "When the wrong object was sold, the sale is inherently null and void (233:1). However, in cases of ona'ah, the sale remains valid unless the aggrieved party annuls it due to the mistaken price. Therefore, since Mr. Kahn does not care to annul the sale of the silver coins, it remains valid. The coins were yours and your son is properly redeemed."

"What if he should want to annul the sale later?" asked Yisrael.

"There is a time limit on ona'ah claims," said Rabbi Tzedek. "Once the person had time to check the proper price and didn't, he can no longer claim ona'ah. The seller's right usually does not expire, since he does not hold the item to have it evaluated. However, the value of silver is readily available, without need to show the coins, so his rights would also expire (227:7-8)."

"Can the aggrieving party also annul the sale?" asked Yisrael. "Actually, he wouldn't want to do that; he gained."

"He might want to," said Rabbi Dayan with a twinkle in his eye. "Let's say that you bought something and underpaid by 25% and then the market crashed and prices dropped by 50%. You thought you got a bargain, but would be happy now to annul the sale and buy the item at the new, very low price. Conversely, let's say that you sold an item and overcharged by 25% - and then the market soared by 50%. You thought you made a killing, but would be happy now to annul the sale and sell the item at the current, very high price."

"Okay, so can he annul the sale?" asked Yisrael.

"In general, there is a dispute whether the aggrieving party can annul the sale," answered Rabbi Tzedek. "The Rambam maintains that he cannot, whereas the Rosh maintains that he also can annul it. However, in the examples mentioned, he cannot annul the sale, so that he should not cheat and also benefit (227:10-11)."

A Powerful Question

Bava Metzia 51a - Al M'nas Ona'ah

A week after Hurricane Sandy swept throught their state, the Blums still had no electricity. They had run extension cords to a neighbor's house to power some basic items, but the protracted living without power was taking its toll on the family.

"We need to buy a generator," Mrs. Blum said to her husband. "I saw them in the store two weeks ago for about $750."

Mr. Blum drove to the store but didn't see any generators. He spoke to the manager, who said, "I'm sorry, but we sold out completely last week."

Mr. Blum tried a second and third store, but the answer was the same: "We sold out last week, and won't get restocked for at least another week."

"We can't go on like this," Mrs. Blum said. "We've got to do something!"

That afternoon, Mr. Blum saw an advertisement that someone had procured a limited stock of generators that he was selling. He immediately drove over to the address listed.

As he entered, Mr. Blum saw a sign: "The generators are being sold for $1,500 each. We apologize for the high price. No returns."

"What?" exclaimed Mr. Blum to the seller. "That's twice the cost of local stores. Why so much?"

"It is much more than the stores here charge, but I can't sell for the regular price," said the seller. "I had to buy these from a store very far away and transport them here. That added a lot to my cost and labor."

"That may account for adding 50 percent to the price," said Mr. Blum, "but it doesn't justify charging double!"

"I'm not interested in bargaining," said the seller. "This is the price that I'm charging. You want to buy for $1,500 — fine; you don't want to — don't."

"But overcharging like that is a violation of the prohibition against ona'ah (unfair pricing)," argued Mr. Blum. "It even jeopardizes the validity of the sale!"

"How am I cheating you?" asked the seller. "I'm not deceiving you about the cost; I acknowledge that the price is high."

Not feeling that he had a choice, Mr. Blum bought the generator. On Shabbos, he met Rabbi Dayan and related what happened.

"Was the seller permitted to charge way more than the generators were worth?"

asked Mr. Blum.

"In general, there is a prohibition of ona'ah to overcharge an unknowing customer," replied Rabbi Dayan. "Depending on the amount overcharged, the customer may be entitled to a refund or to return the purchase (see C.M. 227:2-4)."

"What if the seller stipulates, 'No returns'?" asked Mr. Blum.

"Even if the seller stipulates that the customer should have no ona'ah claim, the customer does not relinquish his legal recourse if the seller did not state that he is overcharging," replied Rabbi Dayan. "However, if the seller says: 'This item that I'm selling for $200 is worth only $100; I'm selling on condition that you have no onaah claim' — then the customer has no redress (C. M. 227:21; P.C., Onaah 10:18)."

"But still, is stating that the price is high sufficient to allow the seller to overcharge?" asked Mr. Blum. "What about the prohibition of 'lo sonu — do not aggrieve'?"

"If the seller specifies the amount he is overcharging, there is no prohibition," answered Rabbi Dayan. "Since the seller is transparent about overcharging, but only willing to sell for this price, and the customer decides that it is still worthwhile for him to buy and forgo the amount overcharged, the seller has not cheated him (see Pischei Choshen, Onaah 10:[34])."

"I still feel taken advantage of," Mr. Blum commented. "We were desperate!"

"Indeed, some indicate that a prohibition remains when taking advantage of an individual customer's circumstances," replied Rabbi Dayan (see Nesivos 264:8; Pischei Choshen, Onaah 10:[1,26]). "Nonetheless, the high price is justified here, as market price is determined by supply and demand. Since stores had sold out, there was a great demand and minimal supply. Many people were now willing to pay this high price, so even double the regular cost was considered a fair market value."

Gas Gouge

Bava Metzia 51a - Al M'nas Ona'ah

Hurricane Sandy, in addition to causing water damage and power outages, also severely disrupted fuel distribution; very few stations had gas. The lines of cars waiting stretched many blocks, and even the lines of people holding jerry cans stretched way down the block!

Noach waited for four hours to fill up. He was pleasantly surprised to see that the price of gasoline remained the same as before the hurricane, even though this was the only operational gas station for miles around. The government had imposed controls to prevent price gouging, requiring the stations to maintain their former prices.

Later in the week, Noach met Mr. Gassner, who operated the gas station.

"It was considerate of the government to freeze the gasoline prices," Noach commented.

Mr. Gassner, however, was furious! "It wasn't fair that the government required us to keep regular prices," he complained. "People went crazy to buy even a small amount of gas, and the supply was so limited. Based on supply and demand, I could have easily charged three times the price. People would have been happy to get anything at all!"

Noach was surprised to hear this view.

"It would be interesting to hear what halacha has to say about the price freeze," he said to Mr. Gassner.

"Do you really think halacha has something to say about this?" asked Mr. Gassner.

"I'm sure it does," said Noach. "Let's ask Rabbi Dayan."

"Is there any source in halacha for government regulation of prices?" Mr. Gassner asked Rabbi Dayan when they consulted him.

"This case is reminiscent of a fascinating halacha," said Rabbi Dayan, "which emphasizes the need for control of the market on critical items.

"The Gemara (Bava Basra 90a) states that a person should not earn a profit of more than one-sixth," explained Rabbi Dayan. "This means that if the item cost him $100, he should not sell for more than $120, which would provide a profit greater than one-sixth of the sale. This regulation is limited by the Rambam and Shulchan Aruch to items that entail chayei nefesh (staple food items), such as wine, oil, and flour (C.M. 231:20; Pischei Choshen, Ona'ah 14:[28])."

Gas Gouge, cont.

"But what about the store's overhead and labor costs?" asked Noach. "If a store were to charge only 20% above its purchase cost, it would never break even, forget about a profit!"

"The overhead is added to the cost, as well as basic consideration for time and labor," explained Rabbi Dayan. "Thus, if the food itself cost $100, the proportional share of overhead is $20, and basic time and labor amounts to another $5, the base cost is $125, and the store would be entitled to sell it for $150."

"But if other, non-Jewish stores don't follow this halacha, it seems unfair to limit the individual's profit," argued Mr. Gassner. "They easily mark up 50 to 100 percent!"

"This halacha applies only when beis din has control over the entire market and can force all the sellers to follow suit," said Rabbi Dayan. "However, if other stores sell as they please, an individual storeowner is not required to curtail his profit margin."

"What about other items?" asked Noach. "Is there any profit limitation for gasoline?"

"The Sma (231:36) explains that staple food items have a one-sixth limitation, as I mentioned," replied Rabbi Dayan. "Items related to food preparation can be marked up 100% of the adjusted cost, and there is no mandated limit for items unrelated to food."

"So would halacha view the price freeze as a fair regulation?" asked Mr. Gassner.

"As I said, halacha directly limits the profit margin only on food items in a primarily Jewish community," answered Rabbi Dayan. "However, it stresses the importance of legislative control to ensure that staple items are affordable. The Shulchan Aruch adds that beis din is permitted to punish one who price gouges (231:21,27).

"Given the critical need for gasoline under the circumstances," concluded Rabbi Dayan, "it seems appropriate that the government imposed a price freeze to prevent price gouging on gas."

A Pretty Penny

Bava Metzia 55a - Perutah

"It's going to be really quiet this year on Chanukah," Mrs. Licht said to her husband. "Now that Baruch is married, none of the kids will be home anymore!"

"Actually, my boss just informed me that I have to travel to England," Mr. Licht responded. "I'll also be away for most of Chanukah."

"You're kidding!" exclaimed Mrs. Licht. "What will I do about Chanukah candles?"

"You'll light them," replied Mr. Licht.

"It will feel strange," said Mrs. Licht. "I haven't lit Chanukah candles since I was a child."

"Women are also obligated in the mitzvah of Chanukah candles," explained Mr. Licht. "Usually, the husband includes the wife in his lighting, but when he is not home, she lights (O.C. 675:3 and M.B. 677:9)."

"Baruch and his wife already invited us for Shabbos Chanukah," said Mrs. Licht. "So at least Shabbos won't be a problem; I'll be with them."

Thursday evening of Chanukah, Mrs. Licht called Baruch. "What can I bring?" she asked. "A roast? Kugels? Salads?"

"We'll take care of the cooking," laughed Baruch. "Just bring yourself! If you want, you can bring Abba's silver menorah."

"I've been lighting it," replied Mrs. Licht. "I'm happy to bring it for Shabbos, though, and have you include me in your lighting."

When Mr. Licht called later that evening from England, his wife said, "I offered to bring food for Shabbos, but Baruch said they would handle the cooking. He asked to bring your menorah. I told him to light it and include me, just like you always include me in your lighting."

"Actually, a guest is different," said Mr. Licht. "A person can include anyone of his household in his lighting. However, if a guest does not want to light himself and wants to be included, he has to share in the oil."

"How do I do that?" asked Mrs. Licht.

"It has something to do with a penny," replied Mr. Licht. "I'm not sure of the details. Let Baruch speak with Rabbi Dayan."

Baruch called Rabbi Dayan. "My father is in England for Chanukah, and my mother is coming for Shabbos," he said. "If she wants me to include her in my Chanukah

lighting, what does she have to do? My father mentioned something about a penny."

"Correct," answered Rabbi Dayan. "The Gemara (Shabbos 23a) teaches that a guest should share in the oil to be included in the lighting of the ba'al habayis. He or she can do this by giving at least a perutah (O.C. 677:1)."

"What's a perutah?" asked Baruch.

"A perutah was the smallest denomination that existed in the times of Chazal," explained Rabbi Dayan. "It was worth the value of 1/40 gram of silver. This is about 2.5 cents nowadays, when silver sells for about $27 an ounce. The perutah is also the minimal amount for most other monetary matters and claims (B.M. 55a)."

"That doesn't seem much!" said Baruch. "What can you buy with 2.5 cents?!"

"Commodities were cheaper then, relative to silver. The purchasing power of a perutah in those times was close to that of a quarter nowadays," said Rabbi Dayan. "Nonetheless, since currency in the Torah is based on actual silver, we continue to use the value of silver to define currency for halachic purposes, albeit there is some question about it (See SM"A 88:2)."

"So I tell my mother to give me a nickel to share in the oil?" asked Baruch. "That's a little embarrassing!"

"Not if you explain that she must share in the oil to be included in your lighting," replied Rabbi Dayan. "However, the poskim write that you can also grant her a share in the oil as a gift." (M.B. 677:3)

"Of course I'm happy to share the oil with my mother!" exclaimed Baruch. "Do we have to do anything special to designate it as a gift?"

"The common practice is that a guest who eats and drinks at the household table, and whose needs are provided for by the host, can be included in the lighting," answered Rabbi Dayan. "Just as the host provides all the other needs, he also provides the guest a share in the oil, and he is considered part of the household (Da'as Torah 677:1 citing Gan Hamelech #41; Yechaveh Da'as 6:43).

"Some say, however, that the ba'al habayis should verbally state that he is granting a share (Misgeres Hashulchan 139:19) or that the guest should pick up the bottle of oil or box of candles with the intention of acquiring a share (Sha'ar Hatziyun 677:9; Az Nidberu 13:47)."

Revalued Rental

Bava Metzia 56b - Ona'ah

With spring around the corner, the Coopers decided to do extensive gardening and landscaping work on their property. They contracted Hymie Ganz, a professional landscaper, to do the work, which was scheduled to take a full week.

At the end of the second day, satisfied with the work that had been done already, Mr. Cooper paid Hymie a partial payment of $1,500.

On the third day, Hymie called.

"I won't be able to come today," he said to Mr. Cooper. "I hope I can make it tomorrow."

The following day, however, Hymie called to say that he would not be able to make it again.

"When will you be able to come?" Mr. Cooper asked, somewhat irritated.

"Unfortunately, I can't say for sure," Hymie said. "It may not be for another week or two. I have a problem with my assistants, and it's very difficult to work without them."

"You're kidding me," said Mr. Cooper. "I can't leave my property like this for another two weeks! My neighbor does gardening; maybe he can finish the job."

Mr. Cooper called back a few hours later to say, "I arranged with my neighbor to finish the job. Send me a revised bill for the work that you did. My neighbor also asked if he can use the gardening tools that you left here; I'll pay you their fair rental value."

"If that's what you decided, okay," said Mr. Ganz. "I'll add the rental value to the bill."

Hymie made a summary of the work and mailed the bill to Mr. Cooper: $2,500 for two days' work, plus $150 per day for the tools.

When Mr. Cooper received the bill he threw a fit.

"Hymie messed me up, and is asking for so much!?" he exclaimed. "$1,500 is more than enough for the work he did!"

He responded to Hymie that he felt he had already compensated him fairly, and refused to pay any more.

Hymie summoned Mr. Cooper to a din Torah before Rabbi Tzedek for the remainder of the money. Mr. Cooper, in return, accused Hymie of damaging his sun deck, for which he demanded reimbursement.

Revalued Rental, cont.

At the beis din, Hymie raised the value of the tool rental from $150 a day to $200. He submitted a price quote from a rental store, showing that the rental value of the tools was $250.

Mr. Cooper objected to this increase.

"Hymie already set the price at $150 per day," he said. "He can't raise the price now!"

"Why not?" argued Hymie. "I can even ask for $250 if I want!"

Rabbi Tzedek ruled, "If the discrepancy is significant, Mr. Ganz still has basis to raise the price to its fair value."

Rabbi Tzedek then explained. "It is advisable to set a clear price before renting or buying something. If a price was not fixed, but rather set at the 'fair rental value,' the renter pays the average going rate. This amount is at least $200 per day, as Hymie now demands (C.M. 331:3)."

"This would be fine had Hymie billed me for $200 at the outset,'" responded Mr. Cooper. "After he billed me for $150, though, he established that as the price!"

"If Hymie was not aware of the average going rate," replied Rabbi Tzedek, "just as there is ona'ah (price fraud) for sales, there is also ona'ah for rentals of tools. If the rent varied significantly from the fair value, the aggrieved party can demand the differential (227:35; SM"A 227:65)."

"But Hymie's a professional; he probably knew the true rental value," said Mr. Cooper. "He was willing to forego the amount beyond $150."

"First of all, we allow even a professional an ona'ah claim," said Rabbi Tzedek, "especially one who does not deal with tool rentals on a regular basis (227:14).

"Furthermore, even if Mr. Ganz did know the true price and knowingly billed you a lower price, there is an additional factor here," Rabbi Tzedek continued. "Although he charged only $150 for the tools, he was expecting that you would pay the full bill that he submitted for his labor. However, once you refused to pay the bill, and even submitted a counterclaim, Mr. Ganz can claim that he never intended to forego the full value of the rental under such conditions (see Shach 17:15; Minchas Pitim 17:12)."

"Therefore," concluded Rabbi Tzedek, "since the rental amount that Mr. Ganz initially billed is significantly less than the average going rate and you refused to pay the remainder of his bill, he can still ask for the full value of the rental."

Secondhand Siddur

Bava Metzia 56b - Undeterminable Ona'ah

Mr. Yankel Schreiber ran a business of used seforim. He would often come to shul with a "new" siddur. These siddurim may have been new for him, but they were often antiques – occasionally over a hundred years old.

He came to shul one morning with a siddur that was almost two hundred years old. It had been the personal siddur of a Chassidic Rebbe. After shacharis, he showed it to his friend, Eliezer.

"How'd you get it?" Eliezer asked.

"A young fellow, with a small kipa on his head, walked into the store," Mr. Schreiber replied. "His grandfather recently died and he cleaned out the apartment. A few items were antiques, but most were just old stuff that had to be junked."

"What about the seforim?" asked Eliezer.

"There were a few seforim in reasonable condition, including this siddur," replied Mr. Schreiber. "The grandson showed it to me and asked what I would pay for it.

"I realized this could be a great deal," concluded Mr. Schreiber. "I tried my luck and offered him $500 for the siddur. He agreed and walked out of the store smiling."

"How much is the siddur really worth?" asked Eliezer.

"He could probably get $1,000 from any dealer," said Mr. Schreiber, "and I can surely sell it to a collector or museum for much, much more than that."

"Show the siddur to Rabbi Tzedek," said Eliezer. "He loves old seforim!"

"Shalom aleichem!" Rabbi Tzedek greeted him. "Is that another new siddur?"

Mr. Schreiber proudly showed the siddur and related the story, ending, "It was such an inspiration to daven with the siddur of a true tzaddik!"

Rabbi Tzedek furrowed his brow, and said sternly, "I am afraid that your davening this morning was a mitzvah haba'a ba'aveira, a mitzvah done through sin!"

Mr. Schreiber recoiled in shock. "What do you mean?"

"You knew that you were dealing with a valuable sefer, and took advantage of the grandson's ignorance by underpaying him," said Rabbi Tzedek. "This is a violation of the prohibition against ona'ah, unfair pricing."

"I thought that 'ona'ah' means overcharging," said Mr. Schreiber.

"It doesn't make a difference who cheats whom of a fair price," explained Rabbi Tzedek. "Just as the seller cheats the buyer if he overcharges, the buyer cheats the

seller of a fair price if he underpays (C.M. 227:1)."

"But the whole used seforim business is built around this," insisted Mr. Schreiber. "I buy entire libraries of used seforim in the hope that a few of the seforim will turn out to be valuable!"

"If you buy a lot blindly, it is considered a business gamble and is permissible according to most poskim (Cf. Chochmas Shlomo 227:2)," explained Rabbi Tzedek. However, since the grandson brought you this specific sefer and relied on your expertise to evaluate it, it falls under the category of ona'ah to take advantage of his ignorance and pay him much less than it's worth."

"But how much should I have paid?" asked Mr. Schreiber. "There is no real 'book value' for antique specialty seforim; the price depends mostly on how much the buyer desires it. The average dealer would pay about $1,000; an avid collector would pay $10,000; a museum building an exhibit of these siddurim might pay $20,000."

"It is true that it is hard to assign a specific value to old seforim," answered Rabbi Tzedek. "For this reason, there is usually no issur of ona'ah when dealing with antiques (Pischei Choshen 10:13). However, if you say that any dealer would pay at least $1,000 for it and he came to you as a dealer, the 'fair market value' would be a minimum of $1,000."

"What should I do now?" asked Mr. Schreiber.

"When there is a clear price differential of more than 1/6," answered Rabbi Tzedek, "the buyer is entitled to revoke the sale (C.M. 227:4)."

"Do I have to make an effort to find the fellow and notify him?" asked Mr. Schreiber.

"Ona'ah is a form of theft," answered Rabbi Tzedek. "Therefore, you are obligated to return it (SM"A 227:1).

"You should notify the grandson that the siddur was worth significantly more than $500, and he can come and take it back. Then, you can work out a fair price with him. If the grandson chooses not to come back, you can keep the siddur and assume that he forwent his claim (C.M. 367:1; 227:7)."

Whose Tomatoes

Bava Metzia 56b - Sechirus

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

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!"

The Missing Gift

Bava Metzia 57b - Bnei Ha'ir

"Do you realize that it's Shaindy's 30th birthday in a month?" Sara said to Penina. "It's amazing how time flies."

"I would like to get her something special," Penina said. "It's not common that high-school friends are close for so long. We still talk on the phone once a week."

"Great idea," said Sara. "We should also include Bracha. She was her closest neighbor before Shaindy moved away."

"What should we get?" asked Penina.

"I know!" Sara's face lit up. "My neighbor, Mrs. Saffer, makes jewelry. We can choose a necklace for Shaindy."

"Fantastic!" exclaimed Penina. "I'll call Bracha and ask her if she's okay with the idea."

The following day, Penina met Sara outside in the park. "I spoke with Bracha and she was eager to participate in the gift. She also offered to deliver the necklace to Shaindy."

The next day, Sara and Penina bought a necklace from Mrs. Saffer. "Shaindy will love it," Sara said. "It's just her taste!"

"I'll give Bracha the necklace next week," said Penina, "so that she can deliver it to Shaindy."

Penina brought the necklace over to Bracha.

"It's lovely," said Bracha. "I'll make sure it gets to Shaindy in time for her birthday."

A few weeks later, Sara and Penina were talking. "It's strange," Sara said. "Shaindy never said anything to me about the necklace."

"I know," Penina replied. "I also heard nothing. I finally asked Shaindy if she received the necklace, and she said that she hadn't. I'll ask Bracha what happened."

"I sent the gift with my neighbor, who works with Shaindy," Bracha said. "I'll call her."

Bracha called her neighbor. "Did you ever give that necklace to Shaindy?" she asked.

"I remember that you asked me about bringing it to her," answered her friend, "but you never ended up giving it to me."

Bracha called Penina back. "Somehow, my neighbor doesn't recall that I gave her the necklace to deliver to Shaindy," she said. "It seems there was a mix-up."

Penina called Sara. "Bad news," she said. "Bracha says that she gave the necklace to her neighbor, who works with Shaindy, but the neighbor claims that she never received it."

The Missing Gift, cont.

"What do we do now?" asked Sara. "That necklace cost a lot of money! Bracha was supposed to get it to her."

"I agree," replied Penina. "But she says that she sent it to Shaindy with her neighbor."

"Well, then, it's her neighbor's fault," said Sara. "Maybe she lost it, or even worse..."

"I don't think Bracha would give the necklace to someone who would steal it," said Penina. "But her neighbor said that she doesn't recall getting the necklace. It's very strange."

"Someone's got to take responsibility for the necklace," said Sara. "The question is: Who?"

"Maybe Rabbi Dayan can help," suggested Penina. "My husband will ask if we can meet with him in his house."

They all met with Rabbi Dayan. Penina related what happened and asked, "Who is responsible for the missing necklace?"

"If Bracha informed you and Sara that she was going to send the necklace with someone," said Rabbi Dayan, "she is not responsible for it, since she followed the arrangement and you trusted that her neighbor was reliable (C.M. 176:10)."

"What about the neighbor?" asked Sara.

"The neighbor is also not held responsible," said Rabbi Dayan, "since she denies ever having received the necklace (121:8)."

"I have to acknowledge," Bracha said with a sigh, "that I never told Sara and Penina that I was going to deliver the necklace through my neighbor."

"In that case, you are responsible for the necklace if you cannot ascertain what happened to it," said Rabbi Dayan. "A person or partner who is entrusted with an item, and certainly one who is asked to deliver it, should not give it over to another, unless the other person is implicitly trusted by the owners. If she does, she carries liability if the item is lost (291:26; Pischei Choshen, Pikadon 4:ftnt. 8)."

"And if we had trusted the neighbor?" asked Penina.

"Bracha is responsible for the necklace in our case even if you had trusted her neighbor," concluded Rabbi, "since Bracha cannot account for it and the neighbor denies having received it."

A week later, Bracha called Penina. "Guess what happened?" she exclaimed. "My cousin, who also works with Shaindy, returned the necklace to me. I forgot that I gave it to her instead and she didn't remember to whom she was supposed to give it!"

Under the Hood

Bava Metzia 60a - Lignov Da'as

Noam had been driving his Toyota Camry for ten years; he now decided it was time to sell. The car was in fair condition overall, but its age was beginning to show. There was a slow leak in the water tank, the padding on one of the seats was wearing through, the car had been in two accidents and the trunk door had been replaced, a seat belt was missing, there were assorted dents and scratches on the outside, the tires were showing signs of wear and were going to have to be replaced soon, and the air conditioning was not as powerful as it used to be. Quite a list when you put it all on paper, but for a ten-year-old car, it was certainly in decent shape. To the best of his knowledge, the motor worked fine.

One issue that troubled Noam was the issue of disclosure. He wanted to be honest, emulating stories he had heard about the Chofetz Chaim, who would disclose any possible defect in his merchandise. He began to feel, though, that he was scaring away potential buyers by pointing out more than necessary. After all, the car couldn't be expected to be in the same pristine condition as a new one.

He spoke to a friend, a used-car dealer, who told him: "Don't disclose anything that you can get away with. Otherwise, you'll never sell!"

This sounded wrong to Noam; he knew there were issues with the car and couldn't ignore them in good faith.

"Where is the balance in this issue?" Noam asked himself.

"How about discussing the issue with Rabbi Dayan?" his wife suggested. "Perhaps he can guide you."

"That's a great idea," replied Noam.

Noam called Rabbi Dayan. "I'm selling my used car, which has certain problems," said Noam. "What issues am I required to disclose of my own initiative, and what issues can I be quiet about?"

"A seller is not allowed to cheat the buyer or mislead him," answered Rabbi Dayan. "If the merchandise is defective, the seller is required to disclose this to the buyer (C.M. 228:6). The definition of defective is dependent on time and place: whatever is considered by the local people as defective is treated as such (C.M. 232:6)."

"How do I know what's considered defective for a used car?" asked Noam. "I clearly would not have to point out every scratch and dent."

"The seller is required to disclose things to the buyer of his own initiative in any one of four situations," answered Rabbi Dayan. "First are deficiencies that render the item not fit for proper use, e.g. a serious problem with the engine, chassis, or other significant mechanical component."

"That seems obvious," said Noam.

"Second are items that a buyer would be particular about and has no reason to expect in such an item," continued Rabbi Dayan. "For example, one would have to disclose a slow water leak in a relatively new car; in an old car, not so. A missing seat belt would have to be mentioned, regardless.

"The third situation is where the aggregate of the deficiencies reduce the value of the item 17% below the price asked," added Rabbi Dayan. "That would be a violation of onaah, mispricing the item, according to many authorities - even if each individual deficiency is not of great consequence (C.M. 227:1-2, 24)."

"What is the fourth situation?" asked Noam.

"Whatever is required by law, which becomes a common commercial practice, the minhag hamedina (C.M. 201:1-2; 232:19; 331:2)," replied Rabbi Dayan. "Thus, if the law requires disclosing any accidents, one is required to do so."

"What, then, do I not need to disclose?" asked Noam.

"Deficiencies that do not affect the use significantly; are reasonable for a car this age; that do not reduce its value substantially; and those not required by law to disclose - such as the tires and weakened a/c - you do not need to disclose of your own initiative. However, if you are asked about any of them, you may not lie or deny the problem. You may also stipulate that the car is being sold 'as is,' and tell the buyer to have it checked by his mechanic. Then you would have to reveal only deficiencies that a mechanic cannot identify (see Maharsham 3:128)."