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Change your Mind?

Rav Kahana was selling linen. Buyers agreed to pay some linen, and made partial payment on their purchase. Before the buyers took possession of their linen, the price increased. Rav told Rav Kahana that the amount of linen which was worth the partial payment he must deliver at the original price, but the rest is simply a verbal agreement. Rav Kahana may back out of such an agreement, without being considered untrustworthy. The *Gemara* says this follows Rav’s general opinion that backing out of a verbal agreement is not a lack of trust. Rabbi Yochanan says that backing out of a verbal agreement is a lack of trust.

The *Gemara* cites a *Baraisa* to prove Rabbi Yochanan’s position. Rabbi Yosi bar Rabbi Yehudah said: What is taught by the verse: A correct hin [shall you have]: surely ‘hin’ is included in ‘ephah’? But it is to teach you that your ‘yes’ [hen] should be just and your ‘no’ should be just! [This *Baraisa* seems to indicate that one may not retract a verbal agreement.]

Abaye deflects this proof by saying that the *Baraisa* means that one should not say one thing with one’s mouth while meaning something else in his heart. [The *Baraisa* is only excluding a case where one said something that he didn’t mean *at the time*, while Rav is saying that one may change his mind later, and is not bound by what he said.]

The *Gemara* brings a *Baraisa*: Rabbi Shimon said: Though they [sc. the Sages] ruled: [The delivery of] a garment acquires the gold dinar, but not vice versa: that however, is indeed the halachah. However, they [also] said: The One Who punished the generations of the Flood, and of the Dispersion, the inhabitants of Sodom and Gomorrah, and the Egyptians at the [Red] Sea, He will exact retribution from someone who does not stand by his word. [This includes even a case where one changes his mind, disproving Rav.]

The *Gemara* explains that this issue is a dispute of *Tannaim*,¹ for we learned in a Mishnah: The *Mishnah* tells the story of Rabbi Yochanan ben Masya who said to his son, “Go out and hire workers.” He went, and agreed to supply them with food. But on his returning to his father, the latter said, “My son, should you even prepare for them a feast like Solomon’s when in his glory, you cannot fulfill your undertaking, for they are children of Abraham, Isaac and Jacob. But, before they commence work, go out and tell them: [I engage you] on condition that you have no claim upon me other than bread and beans.” - Now, if you should think that words involve a breach of faith, how could he say to him, “Go and withdraw”? — Rabbi Yochanan deflects this proof by saying that he considers a verbal agreement to be at all binding only once the parties rely on it being fulfilled. When a son hires workers, the workers do not rely on the verbal agreement, since they realize the father may modify the terms (but in a general

¹ While Rabbi Shimon is in line with Rabbi Yochanan, Rav cites the opinion of Rabbi Yochanan ben Masya, who allows one to change his mind.

case, where both parties relied on the verbal agreement, one may not change his mind. - If so, then this should be so even after they begin to work? - Once the workers began working, they assume that the father was apprised and agreed, and the verbal agreement cannot then be changed. (49a1 – 49a2)

When do they Rely?

Now, did Rabbi Yochanan really say this? But Rabbah bar Bar Chanah said in Rabbi Yochanan's name: If one says to his fellow, "I will make you a gift," he can retract from it. - 'He can [retract]' — but that is obvious²!? Hence [he must have meant], he is permitted to withdraw!³ — Rav Pappa replied: Rabbi Yochanan admits in the case of a small gift, because he [the recipient] relies upon him. That is logical too, for Rabbi Avahu said in Rabbi Yochanan's name: If a Yisrael says to a Levi, "You have a kor of maaser in my possession," he [the Levi] may declare it *terumas maaser* for other produce. Now, if you agree that he [the Yisrael] cannot [morally] withdraw, it is well: therefore, he [the Levi] is permitted [to declare this as *terumas maaser*]. But if you say that he [the Yisraele] can retract, why is he [the Levi] permitted [to declare etc.], seeing that it may thereby transpire that he eats *tevel*? — The reference here is to a case where, e.g., he [the Levi] had already received it and then re-entrusted it to him [the Yisrael]. — If so, consider the second clause: If he gave it to another Levi, he [the Levi] has nothing but resentment against him. Butnif you should think that it means, e.g., that he took it from him and then re-entrusted it to him: why has he nothing but resentment against him? Since he took possession of it, he has a monetary claim upon him! Hence it must certainly mean that he did not [first] take it from him. This indeed proves it.⁴ (49a2 – 49a3)

² Since there was no *kinyan*.

³ This indicates that one may change his mind after making a verbal commitment.

⁴ Rav Pappa explains that Rabbi Yochanan only said one may back out if he said he will give a large gift, since the recipient does not rely on a verbal commitment for a large gift. If it was a small gift, he must keep his word, since one does rely

It's your Money

A man paid money for sesame seeds, but before taking the merchandise, the price went up, and the sellers reneged and sold it to someone else. When the buyer asked for the seeds, the sellers told the buyer, "We have no sesame; take back your money!" Before he retrieved it, the money was stolen.

Rava said that since the sellers told the buyer to take his money, they are not custodians – not only are they not accounted as paid custodians, but they are not even unpaid custodians (and are not liable for the theft). Thereupon the Rabbis protested before Rava: But they [the sellers] must receive [the curse] 'He Who has exacted retribution! — He replied: Indeed, this is so.

Rav Pappi said: Ravina told me: "One of the Rabbis, named Rav Tevus — others state, Rav Shmuel bar Zutra — who, if he (who was so honest) were given all the hidden treasures of the world would not break his word, told me: That incident happened with me. That day was Friday, towards evening, and I was sitting when a certain man came, stood at the door, and asked me: 'Do you have sesame for sale?' 'No,' I said to him. He said to me: 'Then let me entrust this money to you, as it is growing dark.' I said to him: 'The house lies before you,' so he deposited it in the house, and it was stolen. When he came before Rava, he ruled: In every case of "The house lies before you," not only is one not a paid custodian, he is not even an unpaid custodian. Thereupon I said to that Rabbi: 'But the Rabbis protested to Rava: He must receive [the curse] 'He Who exacted retribution etc.,' and he answered: 'That thing never happened.'" (49a3 – 49b1)

on a mere verbal commitment for a small gift. Therefore, Rabbi Yochanan says that if one says to a *Levi* that he plans to give a measure of *ma'aser* to him, the *Levi* may already use that *ma'aser* as *terumas ma'aser* on his existing *ma'aser*. Since the gift being given by the owner of the grain is small (*just the right of choosing which Levi to give it to*), the *Levi* may rely on the verbal commitment made to him.



Who can Retract, and Why?

Rabbi Shimon said in the *Mishnah* that whoever has the money has the upper hand, and can decide whether to retract the sale or not.

It has been taught in a Baraisa: Rabbi Shimon said: When is that? If the seller has both the money and the produce. But if the money is in the seller's hand, and the goods in the buyer's, he [the buyer] cannot retract, since the money is in his hand. [You say,] 'in his hand'! but it is in the seller's! — Say then, because his money's worth is in his hand. - But that is obvious? — Said Rava: The circumstances here are, e.g., where the buyer's attic was rented to the seller. - Now, why did the Rabbis institute meshichah? For fear lest he say to him: Your wheat was burned in the attic. But here it is [already] in the buyer's ownership; should fire accidentally break out, he will take the trouble to save it!⁵

A certain man gave money [in advance payment] for wine. Subsequently he learned that one of the men of the office of Parzak the viceroy intended to seize it. — Thereupon he said to the seller: Return me my money; I do not want the wine! — So he went before Rav Chisda, who said to him: Just as meshichah was instituted in favor of the seller, so was it instituted in favor of the buyer too.⁶ (49b1)

Ona'ah – How Much and How Long?

The *Mishnah* discusses the details of *ona'ah* – a sale that is not at a fair price.

⁵ Rabbi Shimon says the only reason money does not effect a transfer of ownership is to ensure the seller will not be negligent with the merchandise, and not save from a fire. In this case, although the merchandise technically has not entered the possession of the buyer (*since the attic is rented to the seller*), since it is close to the buyer's house, if there were a fire, the buyer could salvage

The Sages say that unfair selling is defined as a difference of a sixth in the price (e.g., 4 coins out of 24). Until what time is one permitted to revoke [the sale]? Until he can show [the item] to a merchant or a relative.

Rabbi Tarfon ruled in Lod: Fraud is constituted by eight silver [ma'ahs] in twenty-four, which is a sela, [therefore] a third of the purchase. When the merchants of Lod heard this, they were happy (since it allowed them a larger margin above the fair price). Rabbi Tarfon said to them: Anytime during the entire day, the buyer has the right to return the item. They said to him: Let Rabbi Tarfon leave us alone in our place. They went back to following the Sages' opinion. (49b2)

Rav and Shmuel debate how the sixth of *ona'ah* is defined. Rav says the sixth is a fraction of the fair value of the item, while Shmuel says it also includes a sixth of the sale price.

The *Gemara* explains Rav and Shmuel's position in different scenarios of a sixth: Now, if that which is worth six [ma'ahs] was sold for five or seven, all agree that we follow the purchase price. Wherein do they differ? If something worth five or seven [ma'ahs] was sold for six. According to Shmuel, who maintained that we follow the money paid [too], both cases constitute fraud. But according to Rav, viz., that we follow only the purchase price, if something worth five is sold for six, the sale is null; but if what is worth seven is sold for six, it is a case of a presumed waiver. But Shmuel maintained: When do we say that there is renunciation or annulment of the sale? Only if there is not a sixth on either side; but if there is a sixth on one side, it is fraud.

the item, and therefore there is no need to make the sale wait for a transfer of the merchandise.

⁶ Both the seller and buyer have the option of retracting a sale before the merchandise is transferred.

Fair price	Sale Price	Claimant	Sixth of?	Rav	Shmuel
6	5	seller	fair price	<i>Ona'ah</i>	<i>Ona'ah</i>
6	7	buyer	fair price	<i>Ona'ah</i>	<i>Ona'ah</i>
7	6	seller	sale price	Valid	<i>Ona'ah</i>
5	6	buyer	sale price	Voided	<i>Ona'ah</i>

The *Gemara* tries to prove Shmuel's opinion from the *Mishnah*. The *Mishnah* said if the price difference was 4 coins out of 24, it is *ona'ah*. The *Gemara* assumes the *Mishnah* means a case where the sale price was 24, and the fair price was 4 less (i.e., 20), and it is considered *ona'ah* of the buyer, following Shmuel's position (*the last case in the chart above*).

The *Gemara* attempts to deflect this by saying the *Mishnah* means a case where fair price was 24, and the sale was at 4 less (i.e., 20), and it is considered *ona'ah* of the seller (*the first in the chart above*).

The *Gemara* rejects this reading: Then who was defrauded? The seller! But consider the second clause: Until what time is one permitted to revoke [the sale]? Until he can show [the item] to a merchant or a relative. And Rav Nachman said: This was taught only regarding the buyer; the seller, however, can always withdraw.

Rather, the *Gemara* says the *Mishnah* is referring to an item whose fair price is 24, but was sold at 4 more (i.e., 28), and that is considered *ona'ah* of the buyer (*the second case in the chart above*).

We learned in our Mishnah: Rabbi Tarfon ruled in Lod: Fraud is constituted by eight silver [ma'ahs] in twenty-four, which is a sela, [therefore] a third of the purchase. Surely that means that one sold something worth sixteen [ma'ahs] for twenty-four, which proves that a third of the money paid was also taught? — No; it means that what was worth twenty-four was sold for sixteen. - Then who was defrauded? The seller! - But consider the next clause: Rabbi Tarfon said to them: Anytime during the entire day, the buyer has the right to return the item. And Rav Nachman observed: This was taught only of the buyer; the seller, however, can always withdraw! – Rather, it means that one sold the value of twenty-four [ma'ahs] for thirty-two.⁷

A Baraisa has been taught in accordance with Shmuel: He who was deceived has the upper hand. E.g., if one sold an item worth five [ma'ahs] for six — who was defrauded? The buyer. Therefore, the buyer has the upper hand, [and] he can demand of him [the seller] either, "Return me my money," or, "Return me the overcharge." If he sold him six [ma'ahs] worth for five — who was defrauded? The seller. Therefore, the seller has the upper hand! He can either say, "Return me the purchase," or, "Return me the sum underpaid." (49b2 – 50a1)

DAILY MASHAL

Keeping your Word

Rav and Rabbi Yochanan debate whether backing out of a verbal commitment is considered untrustworthy. The *Halachah* (C" M 204:7-9) follows Rabbi Yochanan, as he has clear support in the opinions of the *Tannaim*.

The Rishonim debate the parameters of their opinions.

⁷ The *Gemara* has the same logical discussion with Rabbi Tarfon's opinion, first assuming a case of a sale price of 24 on an item worth 18 (*proving Shmuel*), then

deflecting to a case of a sale price of 18 on an item worth 24, but finally settling on a case of a sale price of 32 on an item worth 24.

Rashi indicates that Rav only allows one to back out of a verbal commitment when conditions changed, as in the case of Rav Kahana.

Many Rishonim, including the Rif, Ramban, Tosfos (49a Modeh) and Rashba hold that Rav and Rabbi Yochanan hold their positions regardless of whether conditions changed. In all cases, Rav says it is considered trustworthy, while Rabbi Yochanan says it is considered untrustworthy.

The Baal Hamaor and the Rosh say that both Rav and Rabbi Yochanan allow one to back out of a verbal commitment if conditions changed.

The table below summarizes these opinions:

Conditions changed?		Rashi	Ramban, Rif, Rashba, Tosfos	Rosh, Baal Hamaor
Yes	Rav	Yes	Yes	Yes
	Rabbi Yochanan	No	No	Yes
No	Rav	No	Yes	Yes
	Rabbi Yochanan	No	No	No

According to the Baal Hamaor, even Rabbi Yochanan would agree to the ruling Rav gave Rav Kahana, and the *Gemara* only used the story as a springboard for the more general debate.

In the course of the discussion, the *Gemara* quoted the statement that we learn that one must keep his “*hin*” (yes) just, by keeping his word. Abaye deflected this as a proof to Rabbi Yochanan by limiting this requirement to

one meaning what he says at the time he says it. According to the Baal Hamaor, Abaye’s statement is also relevant to Rabbi Yochanan, since he allows one to violate his verbal commitment if conditions changed.

The Nimukei Yosef explains that in any case Abaye’s statement is relevant to Rabbi Yochanan, since Rabbi Yochanan agrees that one may violate a verbal commitment on which the recipient did not rely (*e.g., a large gift*). Therefore, the Rif quotes Abaye, although he rules like Rabbi Yochanan. Once someone is called untrustworthy, the community is allowed to employ social sanction, by calling him wicked, and announcing in public what he did.

INSIGHTS TO THE DAF

Promising an Honor

The Rishonim discuss a case where a father committed to honor someone with part of the *bris* ceremony, either as a sandak or a *mohel*, and then changed his mind. (See Beis Yosef YD 264)

The Maharam says that since these commitments are routinely made and kept, the commitment is enforceable in court.

Rabbeinu Yechiyel limits this to a commitment made after the baby was born.

The Rosh disagrees, and says that only a standard *kinyan* is enforceable.

Rabbeinu Tam says that if one committed to a *mohel* to do his son’s *bris*, this has the status of a verbal commitment, and one who does not keep it is considered untrustworthy.

The Pri Yitzchak says that committing to a *mohel* has the status of a small gift, since the father typically cannot perform the *bris*, and he is simply giving the right to choose the *mohel*. However, committing to a *sandak* is a large gift, since the father himself can do that, and he is giving that right to the *sandak*. Since it is a large gift, a verbal commitment would not be binding.

What is a Sixth?

Shmuel states that *ona'ah* includes a case of a sixth of the sale price, even if it is not a sixth of the fair price. Shmuel also agrees that a sixth of the fair price is considered *ona'ah*. Therefore, according to Shmuel, all the cases below are *ona'ah*:

1. Item worth 70, sold for 60
2. Item worth 60, sold for 50
3. Item worth 60, sold for 70
4. Item worth 50, sold for 60

The Rambam (Mechira 12:3) says that anything less than a sixth is considered forgiven. The Rambam gives two examples:

1. Item worth 60, sold for 51
2. Item worth 60, sold for 69

The Magid Mishnah challenges the first case of the Rambam. In this case, a sixth of the fair price is 10, while a sixth of the sale price is 8.5. The difference in the sale is less than a sixth of the fair price, but is more than a sixth of the sale price (8.5), and should be *ona'ah* according to Shmuel!?

The Shulchan Aruch (HM 227:3) only discusses the second case, while the Rama (227:4) cites the first case.

The Sma (227:5,11) rules like the Magid Mishnah.

The Taz explains that the Rambam holds that Shmuel accepts either form of sixth, but only at a sixth. Any other

deviation is evaluated based on the fair price only. See Drisha C" M 227:4 for more details.

QUESTIONS AND ANSWERS FROM YESTERDAY'S DAF to refresh your memory

Q: What is said about someone who retracts his words?

A: The *Chachamim* are not pleased with him.

Q: How does a gentile acquire merchandise according to Rish Lakish?

A: Money.