

CHABAD LUBAVITCH OF CHAUTAUQUA

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Everyday Talmudic Ethics – Week 1 – 2020

1. **MISHNA:** With regard to **one who hires artisans** or laborers... he principle that **whoever changes** the terms accepted by both parties **is at a disadvantage, and whoever reneges** on an agreement **is at a disadvantage.**
2. **GEMARA:** ... if **donkey drivers went and could not find** any **produce** to carry, or **laborers** went off to work **and found that the field was** too **moist** for tilling, the employer **must give them their full wages** to which they are entitled. **But** he does not give them the entire stipulated amount, as a donkey driver **who comes back loaded cannot be compared to one who comes back empty,** nor can a laborer **who performs work** be compared to **one who sits idle.** [The employer deducts a sum from the laborers' wages, paying them the amount they are willing to receive given that they do not actually have to perform the work.]
3. ... Rav **said: My uncle (Rav Chiyya) said: If I were ruling on this case I would not give them anything,** **and yet you said** that he gives them the wages **of an idle laborer? But this is difficult.**
4. It is **not difficult,** as **this** case, where Rabbi Chiyya would rule that the laborers are not paid at all, is referring to one **who surveyed his land the night before,** observed that it was fit to be tilled, and hired laborers on the basis of this examination. It is their misfortune that something occurred in the meantime to prevent them from carrying out the task. Conversely, **that** case, where the *baraita* rules that they are given some payment, is referring to a landowner **who did not survey his land the night before.** Since he failed to check his own field, he must bear the responsibility.
5. This **is like that which Rava said:** With regard to **one who hires laborers to till, and rain fell and filled** his land with **water,** preventing the laborers from performing the work, **if he surveyed his land the night**

before and did all he could, this is **the laborers' loss**, as it is a consequence of their misfortune. But if **he did not survey his land the night before**, it is **the employer's loss**, and **he gives them the wages of an idle laborer**.

6. **And Rava further said:** With regard to **this one who hires laborers to draw water** from a river or a trench to irrigate his field, **and rain fell**, so that he no longer needs laborers, this is **the laborers' loss**. The employer does not need to pay them, as he could not have known ahead of time that this would happen. But if **the river comes up** and irrigates the field, this is **the employer's loss**, as he should have taken this possibility into consideration. **And therefore he gives them the wages of an idle laborer**.

(Talmud, Baba Metzia 76b)

7. ...If donkey drivers went to the appointed place and did not find any grain, workers went to a field and found that the ground was wet, or the employer hired workers to irrigate his field and they discovered that it was filled with water. If the owner checked the area that required work on the previous evening and saw that the workers were necessary, the workers are not entitled to any reimbursement. What could the owner have done? If, however, he did not check the land where he wants the work to be performed beforehand, he must pay them as an idle worker. For a person who comes carrying a burden cannot be compared to someone who comes empty-handed, nor can a person who performs labor be compared to someone who does not.

(Maimonides, Sechirut 9:4)

8. The following rules apply when a person hires a worker to irrigate his field from a particular river, and that river dried up in the middle of the day. If the river does not ordinarily dry up, the workers need only be paid for the work they performed.
9. Similarly, if the inhabitants of the city frequently dam the river, and they stop its flow in the middle of the day, the workers need only be paid for the work they performed. The rationale is that the workers know the pattern of this river. If, however, the river often dries up on its own accord, the employer must pay the workers their entire wage. For it was his responsibility to inform them.

10. If a person hires workers to irrigate a field and it rains and completes the watering of the field, the workers need only be paid for the work they performed. If a river rises and irrigates the field, they should be paid their entire wage. From heaven, they were granted help. (Ibid, 6)
11. **The Sages taught:** With regard to **one who rents a boat, and it sunk halfway through the journey, Rabbi Natan says: If** the renter already **gave** money for the boat, **he does not receive** a refund, **but if he has not yet given** money **he does not give** it after the boat has sunk.
12. **What are the circumstances** of this contract? **If we say** that the owner stated he was renting him **this particular boat and** the renter said that he was transporting **unspecified wine**, then even **if he gave** money, **why should he not receive** a refund?
Let him say to the owner: Give me the boat so that I can transport wine, and if you cannot do so, refund the rental fee so that I can rent another boat.
13. **Rather**, one could say that this is referring to a situation where the owner said he would rent him **an unspecified boat, and** the renter said that he would transport **this particular wine**. But in that case, even **if he did not give** money, **why should he not give** the owner the rental fee?
Let the owner say to him: Give me that wine and I will bring a boat. Since that particular wine is gone, the renter cannot comply with his request, and therefore he should have to pay the rental fee.
14. **Rav Pappa said: You find** the correct application of Rabbi Natan's ruling **only in** a case where the two parties stipulated **this specific boat and that specific wine**. Since neither party can fulfill his part of the agreement, the money remains where it is. **But** if they stipulated **an unspecified boat and unspecified wine**, as they can both complete the agreement, **they divide** the rental fee, i.e., the renter pays half. (Talmud, ibid 79a-b)
15. The following rules apply when a person hires a ship and it sinks in the midst of the journey. If the owner told the renter, "I am renting you this ship," and the renter hired it to carry wine without specifying which wine he would be carrying, even if the renter already paid the owner his fee, the owner must return it in its entirety. For the renter can tell him: "Bring the actual ship that I rented from you, for I was very specific in wanting this ship. When you do, I will bring wine and transport it on it."

16. If the owner does not specify a ship and the renter hires one to transport a specific shipment of wine, even though he did not pay the owner any portion of the fee, he is required to pay him the entire amount. For the owner can tell him: "Bring me the wine that you specified and I will transport it for you." He must, however, deduct compensation for the difficulty for half the journey, for a person who works to sail a ship cannot be compared to someone who is idle.
17. The following rules apply if the owner told the renter: "I am renting you this ship," and the renter mentioned a specific shipment of wine. If the renter already paid the owner his fee, he cannot require him to return it. If the renter did not pay it, he need not. The rationale is that the owner cannot bring that ship, nor can the renter bring that wine. If the rental agreement did not specify the ship or the wine, the fee should be divided between them. (Maimonides, Sechirut 5:3)
18. **MISHNA:** In the case of **one who receives a field from another to cultivate and grasshoppers consumed it or it was wind blasted, if it is a regional disaster** which affected all the fields in the area, the cultivator **subtracts from** the produce **he** owes as part of **his tenancy**. **If it is not a regional disaster**, the cultivator does **not subtract from** the produce **he** owes as part of **his tenancy**.
19. ...GEMARA: If **all the fields of the owner of the land were wind blasted and this one was also wind blasted with them, but the majority of the valley was not wind blasted, what is the *halakha*? Do we say that since the majority of the valley was not wind blasted the tenant farmer does not subtract for the owner** the amount owed for his tenancy, as this is not a regional disaster, **or perhaps** could one claim that **since all the lands of the owner were wind blasted the tenant can say to the owner: This happened due to your bad fortune, as all your fields were wind blasted?**
20. It **stands to reason that** the owner can **say to** the tenant: **If it was due to my bad fortune, a little would have been left for me, as it is written: "For we are left but a few from many"** (Jeremiah 42:2), which indicates that even one suffering from misfortune does not lose all he has.

21. **If all the fields of the tenant farmer were wind blasted and most of the valley was wind blasted and this field was also wind blasted with them, what is the *halakha*? Do we say that since most of the valley was wind blasted the tenant farmer subtracts for the owner the amount owed for his tenancy and does not pay, or perhaps, since all the tenant's lands were wind blasted, the owner can say to the tenant: The damage is due to your bad fortune, as all your fields were wind blasted. The Gemara responds: It stands to reason that the owner can say to him: It occurred due to your bad fortune.**
22. **Why should this be so? Here too, let us say to the owner: If it was due to my bad fortune, a little would have been left for me, as the following verse would have been fulfilled for me: "For we are left but a few from many."**
- This is not a valid claim because the owner can say to the tenant: **Had you been worthy of something being left for you, it would have been left from your own private land, not the field you paid to cultivate.** (Talmud, ibid 105b-106b)

23. The following rules apply when a person rents or makes a sharecropping agreement with regard to a colleague's field, and the crops are eaten by locusts or destroyed by drought. If this condition prevailed among the majority of the fields of that city, he may reduce his payments according to the extent of the loss that he suffered. If this blight did not prevail among the majority of the fields, he may not reduce his payments. This law applies even though all the fields belonging to this land owner were ravaged.
- If all the fields of the renter or the sharecropper were ravaged, even though the blight also affected most of the other fields, he may not reduce his payment. For the loss is dependent on the renter's bad fortune, as evidenced by the fact that all his fields were ravaged. (Maimonides, Sechirut 8:5)

24. We learned in a *baraita*: With regard to **one who gives a down payment to another, and says to him: If I renege, my down payment is forfeited to you, and the other person says to him: If I renege, I will double your down payment for you, the conditions are in effect; this is the statement of Rabbi Yosei. Rabbi Yosei conforms to his standard line of reasoning, as he says: A transaction with inconclusive consent [*asmakhta*] effects acquisition.** Even though it is a commitment that he undertook based on his certainty that he would never be forced to fulfill the condition, it is considered a full-fledged commitment. (Talmud, Baba Metzia 48b)
25. An *asmachta* is never binding, for the person transferring ownership did not make a firm decision in his heart to transfer ownership. (Maimonides, Mechira 11:1)
- i. ***Gemara: Asmachta*** (literally "reliance") -- term used in the Talmud for an agreement based on speculation. In general, an *asmachta* involves one party (or both) consenting to surrender to the other a certain sum of money, depending on the performance or outcome of a particular event. In each case, the individual obligating himself enters into the agreement "relying" that the outcome will be favorable and that he will not have to pay. Since a transfer of ownership requires that the object's owner give it willingly, an *asmachta* agreement is non-binding, because the obligated party never sincerely meant to obligate himself. (Rashi, Talmud, Sanhedrin 24b)
26. For this reason, the following rules apply if a purchaser gives security to a colleague and tells him: "If I retract, I waive ownership of the security in your favor," and the seller says: "If I retract, I will double your security." If the purchaser retracts, the seller acquires the security, because it is in his possession. But if the seller retracts, we do not require him to double the security. For his promise was an *asmachta* and is not binding. (Maimonides, *ibid* 4)

- i. There are those who argue and are of the opinion that even if the purchaser retracts, the seller does not acquire the security, even though it is in his possession, since an *asmachta* is never binding. (Rama, C.M. 207:11)
- ii. The deposit is to demonstrate sincerity and serve as a "penalty" if the guest retracts, (Pischai Teshuva 207:13)

27. **Umdena:** If, however, a person sells landed property without making any explicit statement, the sale is final even though he had the intent in his heart that he was selling the property for a particular reason, and even if it is apparent that he is selling the property for that reason. The rationale is that he did not make an explicit statement, and thoughts in a person's heart are of no consequence in business transactions.
(Maimonides, *ibid*, 9)

- a. However, if there is clear *umdena (presumption)* that there was no intention to commit under such circumstances, so that the agreement is null and void from the beginning (Rama *C.M.* 207:4; *Pischei Teshuva* 227:7; *Nesivos* 230:1)