

CHABAD LUBAVITCH OF CHAUTAUQUA

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Everyday Ethics – Week 1 – 2021

1. The following rules apply when a person gives a loan to a colleague and takes security in return. He is considered to be a paid watchman... Accordingly, if the security is lost or stolen, he is responsible for its value.
If the security was lost because of causes beyond the lender's control -e.g., it was taken by armed thieves or the like - the lender must take an oath that it was lost due to forces beyond his control, and the owner of the security must repay his debt until the last *p'rutah*. (Ibid, Sechirut 10:1)

2. **MISHNA:** One whose wall was adjacent to another's garden, and the wall fell, and the owner of the garden said to him: Clear away your stones, and the owner of the stones said to him:
They are yours, [as I hereby declare them ownerless, and you can take them for yourself; the court] does not listen to him, [since he cannot force the other to acquire the stones.]
If after the owner of the garden voluntarily accepted ownership of the stones upon himself, the owner of the wall said to him: Here you are, take your expenditures for the removal of the stones, and I will take the stones that are mine; the court does not listen to him, as they had already been acquired by the owner of the garden.

3. One who hires a laborer to do work with him with hay or with straw, and after he finished the task, the laborer said to the employer: Give me my wages, and the employer said to him: Take what you have worked with as your wages, i.e., take some of the hay or straw as payment, the court does not listen to him.
But if after the laborer accepted upon himself to keep the hay or straw as payment, the employer changed his mind and said to him: Here you are, take your wages and I will take what is mine; the court does not listen to him, since the laborer had already acquired the hay.

4. **GEMARA:** One whose wall... But from the fact that the last clause of the mishna teaches that if the owner of the fallen wall says: Here you are, take your expenditures, [the court does not listen to him, it can be understood] by inference that we are dealing with a case where the owner of the garden cleared away the stones. It can therefore be deduced that the reason the owner of the fallen wall cannot retract his offer is that the owner of the garden cleared them away, but if he did not clear them away, the stones are not considered his, and they remain in the possession of the owner of the wall.
Why [do they remain in the possession of the owner of the wall?] But shouldn't the owner of the garden's field effect acquisition of the stones on his behalf? As Rabbi Yosei, son of Rabbi H̄anina, says: The courtyard of a person effects acquisition for him of those items that enter it, even without his knowledge.
This statement applies only in a case where the giver intends to transfer them to him, [in which case the field can effect acquisition of the stones for the receiver without an additional act of acquisition,] but here, [the owner of the fallen wall] is seeking only to evade [the owner of the garden.]

5. One who hires a laborer to do work with him with hay... And it is necessary [to mention this halakha with regard to both cases.]
As had it taught us only with regard to this first case of the stones that fell that when the owner of the fallen wall says to the owner of the garden: They are yours, the court does not listen to him, one would have said that this is the halakha because he does not have a wage owed by him, [as they had no prior business dealings together, and the owner of the stones does not owe the owner of the garden anything.] But here, in the case of a laborer working with hay, in which the laborer does have a wage owed by the employer, one might say that the court listens to him, as people say the following proverb: When collecting a debt from your debtor, allow yourself to be repaid even in bran [parei], [i.e., take whatever you can as payment of a loan.]
And had it taught us only over here with regard to the hay, one would have said that it is only here that after the laborer has already accepted ownership upon himself, the court does not listen to the employer who desires to retract, because the laborer has a wage owed by him, and therefore there is reason to say that he receives the hay. But here, with regard to the stones, where the owner of the garden does not have a wage owed by the owner of the fallen wall, one might say that the court listens to him and he can retract. It is therefore necessary [for the mishna to teach both cases.] (Talmud, Bava Metzia 117b-118a)

6. When a wall belonging to a person that was located next to a garden belonging to a colleague falls, we compel the owner of the wall to remove his stones. If the owner of the wall tells the owner of the garden: "See, it came to you; they are yours," we do not heed him.
If, however, the owner of the garden desired the stones and agreed, saying "yes, " when he removes them, he acquires them. The owner of the wall may not retract. Even if he tells the owner of the garden: "Here is the money for your costs; let me take my stones, " we do not heed him. If, however, the owner of the garden did not remove the stones, he does not acquire them. We assume that the owner of the wall made the statement only to procrastinate.
(Maimonides, Hilchot Sh'chenim 3:8)
7. When a person hires a worker to work together with him with straw, stubble and the like, he is not given the option of telling the worker: "Take what you did as your payment." If, however, he made such an offer, and the worker agreed, he is not given the option of changing his mind and telling the worker: "Take your wage and I will take my straw."
(ibid, Hilchot Sechirut 9:10. Rashba)
8. This applies only if he performed *Meshicha* or *Hagbaha*, or alternatively, if it is in his property.
(Shulchan Aruch, C.M. 336:2)
9. By an employee too, if he did not remove the straw, stubble and the like, he does not acquire them. We assume that the owner of the wall made the statement only to procrastinate. (Nimukei Yosef, Ra"n on Bava Metzia, ibid)
10. When a lender possesses collateral, and he urges the borrower to redeem it (i.e. to repay the loan and retract the collateral), and the borrower says to him: "keep the collateral", he does not acquire it, since he made the statement only to procrastinate and he can renege. (Ibid, 72:26. Rama, ibid 73:17)
11. The hired worker's wage shall not remain with you overnight until morning. (Leviticus 19:13)
12. You shall not withhold the wages of a poor or destitute hired worker... You shall give him his wage on his day and not let the sun set over it, (Deuteronomy 24:14-15)
13. And the halakha [is that a marker effects the acquisition of the item only in that one who withdraws from the transaction is required] to accept upon himself the curse: He Who exacted payment.
But in a place where the custom is that it actually effects the acquisition of the item, it actually effects acquisition of it, as the halakha recognizes the legitimacy of the local custom. (Talmud, Tractate Bava Metzia 74a)
14. 7:6 The following rules apply when a verbal agreement alone was concluded with regard to the sale, a price was established, and the purchaser made a mark on the article so that he will have a sign that it is his. Even though the purchaser did not pay any money at all, if either of the parties retracts after the purchaser made the mark, he is liable to receive the adjuration *mi shepara*.
Moreover, if it is the accepted local business custom that making a mark constitutes a binding act of contract, by making that mark, the purchaser completes the transaction. Neither can retract, and the purchaser is liable to pay the price agreed to.
15. 7:7 It is a clear fact that this law applies only when the mark is made in the presence of the seller, or if the seller says: "Mark your purchase." For this indicates that he has agreed to transfer ownership, as explained with regard to *chazakah* and *meshichah*.
16. 7:8 When a person agrees to a transaction with a verbal commitment alone, it is appropriate for him to keep his word even though he did not take any money at all, did not make a mark on the article he desired to purchase, nor leave security. If either the seller or the purchaser retracts, although they are not liable to receive the adjuration *mi shepara*, they are considered to be faithless, and the spirit of the Sages does not derive satisfaction from them.
17. 7:9 Similarly, if a person promised to give a colleague a gift and failed to do so, he is considered to be faithless.
When does the above apply? With regard to a small gift, because the recipient will depend on the promise that he was given. With regard to a large gift, by contrast, the giver is not considered to be faithless if he retracts, because the recipient does not believe that he will give him these articles until he transfers ownership through a formal *kinyan*.
(Maimonides, Hilchot Mechira)