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SECONDARY SCHOOL, PART II: MAY ONE COMMIT TO A MESIVTA IF HE MAY YET CHOOSE ANOTHER?

Adapted from the writings of Dayan Yitzhak Grossman

In our previous article, on the question of whether parents may promise a child's attendance to a middle-tier *mesivta* while still seeking a spot at a top-tier one, we challenged an ends-justifying-the-means argument in favor. We noted that reneging on a verbal commitment constitutes an act of bad faith (*mechusar amanah*), and that one is generally obligated to keep his word. We argued that despite the fact that the Torah does condone lying under certain circumstances, there is no basis whatsoever for extending such dispensations to the breaking of commitments, and certainly not to the making of commitments in bad faith. In this article, we consider a couple of justifications for breaking commitments and their potential application to our question.

TREI TAREI (TWO PRICES)

Some *Rishonim* maintain that one who reneges on a commitment is not considered *mechusar amanah* in the case of "two prices": If he made a commitment to buy or sell something at a certain

price, and the market price of the item changed prior to the actual sale, he is no longer bound by his initial commitment.¹ Many *Rishonim* disagree and maintain that he is considered *mechusar amanah* even in such a case.²

The *Acharonim*, too, are divided on this question. Some, including the Rama (R' Moshe Isserles), the Shelah (R' Yeshayah Horowitz), and the Minchas Pitim (R' Meir Arik), rule stringently;³ the Bach (R' Yoel Sirkes) considers the matter questionable;⁴ and some, including the Chasam Sofer (R' Moshe Sofer) and the Sheivet Halevi (R' Shmuel Vosner), rule leniently.⁵ The Aruch Hashulchan (R' Yechiel Michel Epstein) rules that honoring one's commitment in

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¹ Ba'al Hamai'or Bava Metzia 49b; Piskei HaRosh ibid. perek 4 siman 14, Tur C.M. end of siman 204.
² Rashi s.v. Shelo yedober and Tosfos ibid. s.v. Modeh (as understood by Baie Yosef ibid. and Bivur HaGra to C.M. ibid. os 18); Ra'avad, Rashba, and Magid Mishneh (Hilchos Mechirah 7:8 – the Magid Mishneh cites the Ra'avad and Rashba, and the Baie Yosef ibid. cites other *Rishonim* who cite them as well). Cf. Milchamos Hashem ibid.
³ Hagahos HaBarna ibid. at the very end of the siman; Shnei Luchoos Habris, Aseres Hadibros, Chulin, Ner Mitzvah, Pnei Yehoshua to Rashi ibid.; Minchas Pitim, Shiyarei Mincha ibid. at the end of the siman.
⁴ Bach ibid. at the very end of the siman. Shach ibid. s.k. 8 cites the Bach, possibly indicating that he too considers the matter questionable.
⁵ Shu"t Chasam Sofer Y.D. siman 246, and cf. C.M. siman 102 s.v. Vehinev hanogeia le'ikar hadin; Shu"t Sheivet Halevi chelek 4 siman 206 s.v. Aval mah sheyeish leitzaddik lehaikel bezeh (the Sheivet Halevi seems to have seen only the teshuvah of the Chasam Sofer in C.M. and not the one in Y.D.).

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290 River Avenue, Lakewood NJ 08701

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www.baishavaad.org

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PARSHAS MISHPATIM

DOUBT OF THE BENEFIT

Excerpted and adapted from a *shiur* by HaRav Chaim Weg

When a man will borrow from his fellow and it will become injured or will die...

Shmos 22:13

Because a *sho'eil* (borrower) is permitted to use the item in his care and doesn't pay for the privilege, he has the highest level of liability among the Torah's four *shomrim* (custodians).

R' Meir Arik (Imrei Yosher 2:69) was asked about a minyan that suffered a fire that destroyed its borrowed sefer Torah. The Torah's owner argued that as borrowers, the minyan was liable even for *oness* (circumstances beyond their control).

Rav Arik cites the question in the Gemara (Bava Metzia 96a) whether a man who borrowed a cow not to use it but in order to be seen with it and thought of as a person of means has the liability of a borrower, because he derives no benefit from the animal itself. The Rosh rules that in practice, such a man is not deemed a borrower. The Ketzos Hachoshen (72) says that likewise, one who borrows for mitzvah purposes

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Q&A from the
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Rules of Order

Q May I order groceries from Instacart on Friday if they might arrive on Shabbos?

A The prohibition of *amirah lenachri* applies even if the non-Jew was given his instructions before Shabbos. If it is late in the day, and it is not feasible for the food to arrive before Shabbos, you may not place the order, as you would effectively be instructing a non-Jew to perform *melacha* on Shabbos (O.C. 247:1).

If the food might be delivered before Shabbos, you may order, even if it probably won't. This
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such a case is not strictly mandatory (*midina*) but a matter of pious conduct (*midas chasidus*).⁶

The Melo Haro'im (R' Yaakov Tzvi Yalish) maintains that even the stringent view only requires that the commitment be honored if the change in price is slight (*nishtaneh ketzas*), in which case one should not renege just to avoid a small loss (*chisaron purta*). But in the event of a major change in circumstances, like someone who hired a farmhand and then discovered that his field's condition made the work unfeasible, all agree that he is not bound by his commitment.⁷ The Sheivet Halevi similarly suggests that even the stringent view only requires that one honor his commitment if the price change is small—because such a change is anticipatable, so he should have stipulated that he is not committing if the price changes; if he didn't, his commitment remains binding.⁸

On the other hand, the Sefer Yehoshua (R' Yehoshua Heshel Babad) makes the seemingly opposite suggestion: Even the *lenient* view may not allow reneging on a commitment if the price shift is small (*davar muat*),⁹ which implies that the *stringent* view does not allow reneging even if the change is large.

In light of the above, if parents committed to send their son to a particular *mesivta* and later secured a previously unanticipated opportunity at a preferable *mesivta*, there would be some basis for leniency, though even then the issue is far from clear given all the *Rishonim* and *Acharonim* that are stringent regarding *trei tarei*. But this would presumably not apply to our case, where both parties were well aware of the actuality (from the parents' perspective) or the likelihood (from the *mesivta's* perspective) that the parents applied to other *mesivtos*, and the *mesivta* still demanded, as a condition of acceptance, that the parents commit firmly and forgo all other opportunities.

Even according to Rav Vosner's suggestion that in the case of an unanticipated change in circumstances, all agree that one is not obligated to honor his commitment, and the dispute among the *Rishonim* is only about anticipatable change—which implies that the lenient view allows reneging even in the event of an anticipatable change—it still seems clear that this leniency is limited to changes like the price movement discussed by the *Rishonim*, which, even if somewhat anticipatable, was nevertheless not clearly included in the commitment. In our case, however, the *mesivta* is clearly demanding that the parent forgo any other opportunities. In other words, it seems quite implausible that anyone would maintain that a change in circumstances justifies reneging when both parties clearly intended the commitment to apply even in the event of *exactly that* change in circumstances.¹⁰

⁶Aruch Hashulchan ibid. se'if 8.

⁷Melo Haro'im cheilek 1 os shin; sechirus po'alim os 3 p. 212.

⁸Sheivet Halevi ibid. s.v. *Aval mah sheyeish leitzadeh bezeh im nishtaneh hash'a'ar beshiru gadol*.

⁹Sefer Yehoshua psakim uchsavim siman 528.

¹⁰The doctrine of *asmachta la karia* does void conditional commitments on the grounds that

Additionally, to the best of this author's knowledge, the entire discussion of *trei tarei* is limited to the question of reneging on a good-faith commitment. Nowhere is there any suggestion to permit making a bad-faith commitment, one that the maker does not intend to honor in the case of an *anticipated* change in circumstances.

A COMMITMENT THAT IS NOT RELIED ON

One possible argument for allowing the parents to renege derives from the fact that *mechusar amanah* is only applicable where the recipient of the commitment is assumed to have relied on it.

The Gemara says:

But did R' Yochanan really say this? Didn't Rabbah bar bar Chanah say in the name of R' Yochanan: If one says to his fellow, "I will give you a gift," he is able to renege on this commitment. What does R' Yochanan mean when he says he is *able* to renege? It is obvious! Rather, he must mean he is *permitted* to renege.

Rav Papa said: R' Yochanan agrees concerning a small gift (that it is improper to renege), because the recipient relies on him. (In the case of a large gift, the prospective recipient is not sure whether he is serious and will follow through.)¹¹

The Gemara makes a similar point elsewhere:

He holds that reneging on a verbal commitment involves acting in bad faith. But that applies only in dealings between one Jew and another, for they uphold their verbal commitments. But when a Jew commits verbally to purchase something from an idolater, since they do not uphold their verbal commitments, he does not have to either (i.e., because the idolater doesn't expect a verbal commitment to be upheld, it doesn't carry legal weight).¹²

I have heard it alleged that commitments to *mesivtos* are frequently broken, and that this is well known. *Oy la'aznayim shekach shom'os*, and I would like to believe that this is not true. But if it is indeed the case that rather than living up to the standard of "The remnant of Yisrael will not commit corruption, they will not speak falsehood, and a deceitful tongue will not be found in their mouth,"¹³ people instead resemble the idolaters of whom it is said, "Their mouth speaks vanity, and their right hand is a right hand of falsehood,"¹⁴ then perhaps *kalkalasam takanasam*, and such commitments do not engender a *mechusar amanah* obligation because they are not generally relied upon.

Once again, however, the two cited Gemaras merely indicate that one who reneges on a good-faith commitment that we assume the other party has not relied upon is not considered *mechusar*

the maker of the commitment does not truly anticipate that the circumstance upon which his commitment is conditioned will occur, but this doctrine does not seem relevant to our context.

¹¹Bava Metzia 49a. Cf. Shu"t Betzeil Hachochmah cheilek 5 siman 158.

¹²Bechoros 13b. Cf. Shu"t Maharsham cheilek 4 siman 95 s.v. *Umah shesha'al bedin habechor*.

¹³Tzafaniah 3:13.

¹⁴Tehillim 144:8.

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is because the non-Jew receives a set payment for the job (known as *ketzitzah*) rather than payment for the time he spends (O.C. 152:4). But the food you receive may not be usable on Shabbos, because the Mishnah (Shabbos 122a) says that if a non-Jew performs *melacha* on Shabbos for a Jew—such as lighting a candle, drawing water (in *reshus harabim*), or constructing a ramp—the Jew may not benefit from that work until after Shabbos. In certain cases, a further delay—*kedei sheya'aseh* (the time it would take to complete the work)—is required after Shabbos ends.



RAV ARYEH FINKEL

The Rama (O.C. ibid.) rules that even in situations like yours, where the non-Jew is paid by *ketzitzah* so *amirah lenachri* is permitted, you still may not benefit on Shabbos from his work. In your case, because the non-Jew performed *melachos* on your behalf, the food may not be eaten until after Shabbos. But if you don't have enough food for the Shabbos meals otherwise, you may be lenient.

If the *melachos* performed were only *deRabanan*, the food may be eaten by someone other than the purchaser and his household, which includes his guests (O.C. 325:8). This would be the case if the delivery was made by bicycle and the area between the grocery store and your home does not include a very busy thoroughfare that qualifies as a *reshus harabim deOreisa*.

amanah, but they certainly do not imply that one may make a bad-faith commitment that he is prepared to violate—even if we assume that the other party will not rely on it.

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is deriving no benefit from the item—due to the principle that mitzvah performance is not reckoned as *hana'ah* (benefit)—and is not adjudged a borrower.

The Nesivos argues that Torah study is distinct from other mitzvos in this respect and is considered *hana'ah*, making the borrower of a sefer or a sefer Torah a classic *sho'eil*, with the attendant liability. The Or

Sameiach challenges the Ketzos on different grounds: Even if mitzvah benefit isn't classified as *hana'ah*, it is benefit enough to render a *shomer* liable.

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