



Week 3: BM Chapter 4

Mishnah in Depth

מסכת בבא מציעא

Tractate Bava Metzia



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Mishnah Bava Metzia, Chapter 4

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- Mishnah 2** How to finalize a transaction involving moveable property, examples
- Mishnah 3** Definition of *ona'ah* (financial exploitation)
- Mishnah 4** Who is subject to the laws of *ona'ah*
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Mishnah Bava Metzia 4:1

When one party takes possession of **the gold** coins, the other party **acquires the silver** coins. **But** when one party takes possession of **the silver** coins, the other party **does not acquire the gold** coins. In an exchange of silver coins for copper coins, when one party takes possession of **the copper** coins, the other party **acquires the silver** coins. **But** when one party takes possession of **the silver** coins, the other party **does not acquire the copper** coins. In an exchange of flawed coins for unflawed coins, when one party takes possession of **the flawed coins**, the other party **acquires the unflawed** coins. **But** when one party takes possession of **the unflawed** coins, the other party **does not acquire the flawed** coins. In an exchange of an unminted coin for a minted coin, when one party takes possession of **an unminted coin [asimon]**, the other party **acquires** a minted **coin**. **But** when one party takes possession of a minted **coin**, the other party **does not acquire an unminted coin**. In an exchange of a coin for movable property, when one party takes possession of the **movable property** the other party **acquires the coin**. **But** when one party takes possession of the **coin**, the other party **does not acquire the movable property**. **This is the principle:** With regard to those who exchange **all** forms of **movable property**, **each acquires** the property of **the other**, i.e., the moment that one of the parties to the exchange takes possession of the item that he is acquiring, the other party acquires the item from the first party.

משנה בבא מציעא ד:א

הזָהֵב קוֹנֵה אֶת הַכֶּסֶף, וְהַכֶּסֶף אֵינוֹ קוֹנֵה אֶת הַזָּהָב. הַנְּחָשֶׁת קוֹנֵה אֶת הַכֶּסֶף, וְהַכֶּסֶף אֵינוֹ קוֹנֵה אֶת הַנְּחָשֶׁת. מְעוֹת הָרְעוֹת קוֹנוֹת אֶת הַיְּפוֹת, וְהַיְּפוֹת אֵינָן קוֹנוֹת אֶת הָרְעוֹת. אֲסִימוֹן קוֹנֵה אֶת הַמְּטָבֵעַ, וְהַמְּטָבֵעַ אֵינוֹ קוֹנֵה אֶת אֲסִימוֹן. מְטַלְטְלִין קוֹנִים אֶת הַמְּטָבֵעַ, וְהַמְּטָבֵעַ אֵינוֹ קוֹנֵה אֶת הַמְּטַלְטְלִין. זֶה הַכֹּלָל, כֹּל הַמְּטַלְטְלִין קוֹנִין זֶה אֶת זֶה:

Mishnah Bava Batra 5:7

This mishnah discusses several methods of acquiring movable property. With regard to **one who sells produce to another**, if the buyer **pulled** the produce **but did not measure** it, **he has acquired** the produce through the act of acquisition of pulling. If **he measured** the produce **but did not pull** it, **he has not acquired** it, and either the seller or the buyer can decide to rescind the sale. **If the buyer is perspicacious** and wants to acquire the produce without having to pull it, and he wishes to do so before the seller could change his mind and decide not to sell, **he rents its place**, where the produce is located, and his property immediately effects acquisition of the produce on his behalf. With regard to **one who buys flax from another**, because flax is usually carried around **this purchaser has not acquired it until he carries it from place to place** and acquires it by means of the act of acquisition of lifting. Pulling the flax is ineffective. **And if it was attached to the ground, and he detached any amount**, he has **acquired** it, as the Gemara will explain.

משנה בבא בתרא ה:ז

המוכר פרות לחברו, משך ולא מדד, קנה. מדד ולא משך, לא קנה. אם היה פקח, שוכר את מקומו. הלוקח פשתן מחברו, הרי זה לא קנה עד שיטלטלנו ממקום למקום. ואם היה במחבר לקרקע ותלש כל שהוא, קנה:

Mishnah Bava Metzia 4:2

How so? If the buyer **pulled produce from** the seller, **but** the buyer **did not** yet **give** the seller their value in **money**, **he cannot renege** on the transaction, but if the buyer **gave** the seller **money but did not** yet **pull produce from him**, **he can renege** on the transaction, as the transaction is not yet complete. **But** with regard to the latter case, the Sages **said: He Who exacted payment from the people of the generation of the flood, and from the generation of the dispersion**, i.e., that of the Tower of Babel, **will** in the future **exact payment from whoever does not stand by his statement**. Just as the people of those generations were not punished by an earthly court but were subjected to divine punishment, so too, although no earthly court can compel the person who reneged to complete the transaction, punishment will be exacted at the hand of Heaven for any damage that he caused. **Rabbi Shimon says: Anyone who has the money in his possession has the advantage.**

משנה בבא מציעא ד:ב

כיצד. משך הימנו פרות ולא נתן לו מעות, אינו יכול לחזר בו. נתן לו מעות ולא משך הימנו פרות, יכול לחזר בו. אבל אמרו, מי שפרע מאנשי דור המבול ומדור הפלגה, הוא עתיד להפרע ממי שאינו עומד בדבורו. רבי שמעון אומר, כל שהכסף בידו, ידו על העליונה:

Babylonian Talmud Bava Metzia 48a

But isn't it taught in a *baraita*: **Rabbi Shimon says: Even though** the Sages **said** that when one party takes possession of a **garment**, the other party **acquires a gold dinar**, **but** when one party takes possession of a **gold dinar**, the other party **does not acquire a garment**, **in any case, that is** what the *halakha* would be. **But** the Sages **said** with regard to one who reneges on a transaction where one party pulled the gold dinar into his possession: **He Who exacted payment from the people of the generation of the flood, and from the people of the generation of the dispersion, and from the inhabitants of Sodom and Gomorrah, and from the Egyptians in the Red Sea, will in the future exact payment from whoever does not stand by his statement.** The *baraita* concludes: **And one who negotiates, where the negotiation culminates with a statement** committing himself to acquire the item, **did not acquire** the item without a formal act of acquisition. **But** with regard to **one who reneges on his commitment, the Sages are displeased with him.**

בבלי בבא מציעא מה, עמוד ב

וְהִתְנָא, רַבִּי שִׁמְעוֹן אוֹמֵר: אִף עַל פִּי שְׂאֲמָרוּ טְלִית קוֹנֵה דִּינָר זָהָב וְאִין דִּינָר זָהָב קוֹנֵה טְלִית, מְכָל מְקוֹם כֶּף הֶלְכָה. אָבֵל אָמְרוּ: מִי שְׂפָרַע מֵאֲנָשִׁי דוֹר הַמַּבּוּל וּמֵאֲנָשִׁי דוֹר הַפְּלָגָה וּמֵאֲנָשִׁי סְדוֹם וְעֵמֹרָה וּמִמְצָרִים בְּיָם – הוּא עֲתִיד לִיפְרַע מִמִּי שְׂאִינוּ עוֹמְדִים בְּדִיבּוּרוֹ. וְהַנוֹשֵׂא וְנוֹתֵן בְּדַבָּרִים – לֹא קִנָּה, וְהַחוֹזֵר בּוֹ – אִין רוּחַ חֲכָמִים נוֹחָה הֵימְנוּ.

Leviticus 25:14

(14) When you sell property to your neighbor, or buy any from your neighbor, you shall not wrong one another. (15) In buying from your neighbor, you shall deduct only for the number of years since the jubilee; and in selling to you, that person shall charge you only for the remaining crop years: (16) the more such years, the higher the price you pay; the fewer such years, the lower the price; for what is being sold to you is a number of harvests. (17) Do not wrong one another, but fear your God; for I, יהוה, am your God.

ויקרא כה:יד

(יד) וְכִי־תִמְכְּרוּ מִמְכָּר לְעַמִּיתְךָ אֹו קָנָה מִיַּד עַמִּיתְךָ אֶל־תֹּנוּ אִישׁ אֶת־אֲחִיו: (טו) בְּמִסְפַּר שָׁנִים אַחַר הַיּוֹבֵל תִּקְנֶה מֵאֵת עַמִּיתְךָ בְּמִסְפַּר שָׁנֵי־תְבוּאָת יִמְכַר־לָךְ: (טז) לְפִי רֹב הַשָּׁנִים תִּרְבֶּה מִקְנָתוֹ וּלְפִי מְעַט הַשָּׁנִים תִּמְעִיט מִקְנָתוֹ כִּי מִסְפַּר תְּבוּאֹת הוּא מִכַּר לָךְ: (יז) וְלֹא תֹנוּ אִישׁ אֶת־עַמִּיתוֹ וְיָרֵאתָ מֵאֱלֹהֶיךָ כִּי אֲנִי יְהוָה אֱלֹהֵיכֶם:

Mishnah Bava Metzia 4:3

The measure of **exploitation** for which one can claim that he was exploited is **four silver *ma'a* from the twenty-four silver *ma'a* in a *sela*, or one-sixth of the transaction. Until when is it permitted for the buyer to return the item? He may return it only until a period of time has passed that would allow him to show the merchandise to a merchant or to his relative who is more familiar with the market price of merchandise. If more time has elapsed he can no longer return the item, as the assumption is that he waived his right to receive the sum of the disparity. The mishna continues: **Rabbi Tarfon ruled in Lod: Exploitation** is a measure of **eight silver *ma'a* from the twenty-four silver *ma'a* of a *sela*, one-third of the transaction. And the merchants of Lod rejoiced**, as this ruling allowed them a greater profit margin and rendered the nullification of a transaction less likely. **Rabbi Tarfon said to them:** Throughout **the entire day** it is permitted **to renege** on the transaction and not merely for the period of time it takes to show the purchase item to a merchant or a relative. The merchants of Lod **said to him: Let Rabbi Tarfon leave us as we were**, with the previous ruling, **and they reverted to following the statement of the Rabbis** in the mishna with regard to both rulings.**

משנה בבא מציעא ד:ג

האונאה, ארבעה כסף מעשרים וארבעה כסף לסלע, שתות למקח. עד מתי מתר להחזיר. עד כדי שיראה לתגר או לקרובו. הורה רבי טרפון בלוד, האונאה שמנה כסף לסלע, שלישי למקח, ושמחו תגרי לוד. אמר להם, כל היום מתר להחזיר. אמרו לו, וניח לנו רבי טרפון במקומנו, וחסרו לדברי חכמים:

Mishnah Bava Metzia 4:9

These are matters that are not subject to the *halakhot* of **exploitation** even if the disparity between the value and the payment is one-sixth or greater: **Slaves, and documents, and land, and consecrated** property. In addition, if they are stolen, these items are subject **neither** to **payment of double** the principal for theft **nor** to **payment of four or five** times the principal, if the thief slaughtered or sold a stolen sheep or cow, respectively. **An unpaid bailee does not take an oath and a paid bailee does not pay** if these items were stolen or lost. **Rabbi Shimon says:** With regard to **sacrificial animals for which one bears responsibility** to replace them, they are subject to the *halakhot* of **exploitation**, as this responsibility indicates a certain aspect of ownership. **And those for which one does not bear responsibility** to replace them, they are not subject to the *halakhot* of **exploitation**. **Rabbi Yehuda says:** Even in the case of **one who sells a Torah scroll, an animal, or a pearl**, these items are not subject to the *halakhot* of **exploitation**, as they have no fixed price. The Rabbis **said to him:** The early Sages **stated** that **only these** items listed above are not subject to the *halakhot* of exploitation.

משנה בבא מציעא ד:ט

אלו דברים שאין להם אונאה. העבדים, והשטרות, והקרקעות, וההקדשות. אין להן לא תשלומי כפל ולא תשלומי ארבעה וחמשה, שומר חנם אינו נשבע, ונושא שכר אינו משלם. רבי שמעון אומר, קדשים שהוא חייב באחריותו, יש להן אונאה, ושאינו חייב באחריותו, אין להן אונאה. רבי יהודה אומר, אף המוכר ספר תורה, בהמה ומרגלית, אין להם אונאה. אמרו לו, לא אמרו אלא את אלו:

Leviticus 25:14

(14) When you sell property to your neighbor, or buy any from your neighbor, you shall not wrong one another. (15) In buying from your neighbor, you shall deduct only for the number of years since the jubilee; and in selling to you, that person shall charge you only for the remaining crop years: (16) the more such years, the higher the price you pay; the fewer such years, the lower the price; for what is being sold to you is a number of harvests. (17) Do not wrong one another, but fear your God; for I, יהוה, am your God.

Sifra – Behar, Section 3:1

Whence is it derived that (the law of) ona'ah ("wronging") does not apply to land? From "or acquire from the hand ... you shall not wrong" — ona'ah applies to a movable object, (which is transferred from hand to hand), but not to land.

ויקרא כה:יד

(יד) וְכִי־תִמְכְּרוּ מִמְכָּרְ לְעַמִּיתְךָ אֹו קָנָה מִיַּד עַמִּיתְךָ אֶל־תֹּנוּ אִישׁ אֶת־אֶחָיו: (טו) בְּמִסְפַּר שָׁנִים אַחֵר הַיּוֹבֵל תִּקְנֶה מֵאֵת עַמִּיתְךָ בְּמִסְפַּר שָׁנֵי־תְבוּאָת יִמְכַר־לָךְ: (טז) לְפִי רֹב הַשָּׁנִים תִּרְבֶּה מִקְנָתוֹ וּלְפִי מְעַט הַשָּׁנִים תִּמְעִיט מִקְנָתוֹ כִּי מִסְפַּר תְּבוּאֹת הוּא מִכַּר לָךְ: (יז) וְלֹא תֹנוּ אִישׁ אֶת־עַמִּיתוֹ וְיִרְאתָ מֵאֱלֹהֶיךָ כִּי אֲנִי יְהוָה אֱלֹהֵיכֶם:

ספרא – בהר, חלק ג:א

מנין שאין אונאה לקרקעות? תלמוד לומר "או קנה מיד..אל תונו" – המטלטלים יש להם אונאה ואין אונאה לקרקעות.

Babylonian Talmud Bava Metzia 48b

Reish Lakish says: The act of acquisition of **pulling is explicit in the Torah**, and it is not merely by rabbinic decree that payment of money does not effect acquisition of movable property. The Gemara asks: **What is the reason** for the opinion of **Reish Lakish**? He derives it from the Torah, as **the verse states:** “**And if you sell to your colleague an item that is sold, or acquire from your colleague’s hand, you shall not exploit his brother**” (Leviticus 25:14), and the reference is to **an item that is acquired from hand to hand**, i.e., by means of pulling. **And Rabbi Yoḥanan said:** The term “**from your colleague’s hand**” is not teaching that an item can be acquired by pulling. Rather, it serves **to exclude land, which is not** subject to the *halakha* of **exploitation** because it is not physically handed over from one to another.

בבלי בבא מציעא מה, עמוד ב

ריש לקיש אמר: משיכה מפורשת מן התורה.
מאי טעמא דריש לקיש? אמר קרא: “וכי
תמכרו ממכר לעמיתך או קנה מיד עמיתך”,
דבר הנקנה מיד ליד. ורבי יוחנן אמר: “מיד” –
למעוטי קרקע, דלית בה אונאה.

Mishnah Bava Metzia 4:9

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משנה בבא מציעא ד:ט

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Tosefta Bava Metzia 3:13

R. Judah says, A Torah scroll, an animal, or a pearl—they are not subject to a claim of fraud (by reason of overcharge, M BM 4:9). A Torah scroll, because it is beyond price; a beast or a pearl, because a person wants to buy them for a match with their counterpart (and therefore there is no limit to what they would be willing to pay). They said to him, But is it not so that every sort of object a man wants to match up with its pair? R. Judah b. Betera says, A horse, a battle-ax, and a good sword in time of war are not subject to a claim of fraud (by reason of overcharge).

And further: verbal oppression is worse than monetary oppression. Regarding monetary oppression [the Torah] says *you shall not wrong one another* (Lev 25:14), and regarding verbal oppression [the Torah] says *Do not wrong one another, but fear your God* (Lev 25:17) – you should fear the One who looks out for them.

תוספתא בבא מציעא ג:יג

ר' יהודה אומר ס"ת בהמה ומרגלית אין להן אונאה ס"ת מפני שאין לו דמים בהמה ומרגלית מפני שרוצה לזווגן אמרו לו והלא כל דבר רוצה לזווגו ר"י בן בתירא אומר הסוס והטיטוס והסייף במלחמה אין להן אונאה כשם שאונאה במקח כך אונאה בדברים.

ועוד מרובה אונאת דברים מאונאת ממון באונאת ממון אומר (ויקרא כה) אל תונו איש את אחיו ובאונאת דברים הוא אומר (שם) ולא תונו איש את עמיתו ויראת מאלהיך ויראת ממי שפוקד על אלו.

Mishnah Bava Metzia 3:10

Just as there is a prohibition against **exploitation [ona'a]** in **buying and selling**, **so is there ona'a in statements**, i.e., verbal mistreatment. The mishna proceeds to cite examples of verbal mistreatment. **One may not say to a seller: For how much are you selling this item, if he does not wish to purchase it.** He thereby upsets the seller when the deal fails to materialize. The mishna lists other examples: **If one is a penitent, another may not say to him: Remember your earlier deeds. If one is the child of converts, another may not say to him: Remember the deeds of your ancestors, as it is stated: "And a convert shall you neither mistreat, nor shall you oppress him"** (Exodus 22:20).

משנה בבא מציעא ג:י

כָּשֶׁם שְׂאוֹנְאָה בְּמִקְח וּמִמְכָר, כִּף אוֹנְאָה
בְּדַבְרִים. לֹא יֹאמֶר לוֹ בְּכַמָּה חִפְץ זֶה, וְהוּא
אֵינוֹ רוֹצֶה לְקַח. אִם הָיָה בְּעַל תְּשׁוּבָה, לֹא
יֹאמֶר לוֹ זָכַר מִעֲשֵׂיךָ הָרַאשׁוֹנִים. אִם הוּא בֶן
גְּרִים, לֹא יֹאמֶר לוֹ זָכַר מִעֲשֵׂה אֲבוֹתֶיךָ,
שֶׁנֶּאמַר (שְׁמוֹת כב) וְגַר לֹא תוֹנֶה וְלֹא
תִלְחָצְנוּ:

Babylonian Talmud Bava Metzia 58b

Rabbi Yoḥanan says in the name of Rabbi Shimon ben Yoḥai: **Greater is the transgression of verbal mistreatment than the transgression of monetary exploitation, as with regard to this, verbal mistreatment, it is stated: “And you shall fear your God.” But with regard to that, monetary exploitation, it is not stated: “And you shall fear your God.”** And Rabbi Elazar said this explanation: **This, verbal mistreatment, affects one’s body; but that, monetary exploitation, affects one’s money. Rabbi Shmuel bar Naḥmani says: This, monetary exploitation, is given to restitution; but that, verbal mistreatment, is not given to restitution.**

The Gemara relates that **the *tanna*** who recited *mishnayot* and *baraitot* in the study hall **taught a *baraita* before Rav Naḥman bar Yitzḥak: Anyone who humiliates another in public, it is as though he were spilling blood.** Rav Naḥman bar Yitzḥak **said to him: You have spoken well, as we see that** after the humiliated person blushes, **the red leaves his face and pallor comes in its place, which is tantamount to spilling his blood.**

בבלי בבא מציעא נח, עמוד ב

אמר רבי יוחנן משום רבי שמעון בן יוחאי: גדול אונאת דברים מאונאת ממון, שזה נאמר בו “ויראת מאלהיך”, וזה לא נאמר בו “ויראת מאלהיך”. ורבי אלעזר אומר: זה בגופו וזה במקומו. רבי שמואל בר נחמני אומר: זה ניתן להישבון, וזה לא ניתן להישבון.

תני תנא קמיה דרב נחמן בר יצחק: כל המלבין פני חברו ברבים, כאילו שופך דמים. אמר ליה: שפיר קא אמרת, דחזינא ליה דאזיל סומקא ואתי חוורא...