



Conditions against the Torah in Monetary Law

The *Mishnah* (7:11) teaches that if one makes a condition against *Torah* law then the conditional is null and void. In other words, the act is confirmed even if the condition was not fulfilled.

The *Gemara* (94a) explains that the scope of this law is the subject of debate. *R' Yehuda* maintains that if the stipulation was built into a monetary agreement, then it would work. For example, if a man betroths a woman on condition that he will not provide her with clothing, which is a biblical obligation, then the condition would stand. *R' Meir* however disagrees, maintaining that they would be betrothed and he would nonetheless be required to fulfil this *Torah* obligation. We shall try to understand this debate.

The *Ramban* (*Bava Kama* 126b) explains that the reason why *R' Shimon* maintains that these conditions work with monetary law is because “the *Torah* only obligated [one party] if the other party wanted it”. In other words, it appears that *R' Shimon* maintains that what he is doing does conflict with the *Torah* law. However, it is fine, because the obligation only has force if the beneficiary wants it. *R' Meir* however would then disagree that the *Torah* law does not have this inbuilt flexibility.

The *Chazon Ish* (*Even HaEzer* 56:17) however cites the *Rashba* who understands that when *R' Shimon* allows these conditions, he agrees that the *Torah* law is still in place. Nevertheless, since it generates a monetary obligation, the other party can willingly forgo that “debt”.

The *Chazon Ish* continues that it would seem, according to this understanding, that the debate

between *R' Meir* and *R' Shimon* is not substantive, but how we understand that language that is used when they make the condition. *R' Shimon* understand that it is a monetary waiver whereas *R' Meir* understands that it is attempting to contradict *Torah* law. Both would agree however that one cannot make a condition that directly contradicts *Torah* law.

The *Chazon Ish* however cites several *Gemarot* which imply that the debate is more substantive. For example, the *Gemara* in *Ketubot* (51a) discusses whether a woman can write into her *ketubah* that it should be considered as if she already received half its value, to reduce the value of the *ketubah* from the minimum *Torah* requirement. The *Gemara* explains that this is part of the debate between *R' Meir* and *R' Shimon* and does not appear to be because of any ambiguity in the text.

The *Chazon Ish* therefore understands the *Rashba* differently. It is not that what is involved in this case is forgoing a monetary debt. Rather it is a question of how we treat forgoing monetary rights. According to *R' Shimon* forgoing a monetary *Torah* right is similar to forgoing any monetary debt and not tantamount to uprooting a *Torah* law. *R' Meir* however would argue that since he would be forgoing his right from that outset, at the time of when the agreement is formed, it is no longer similar to forgoing a debt, but rather considered uproot a *Torah* law (considering it never had the chance to set it).

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Revision Questions

בבא מציעא ז' - ח' - ח': ח'

- Can an employee forgo the “right of food consumption” for money? (ז': ז')
- How is this right affected in a field of *neta revai*? (ז': ז')
- What is different about a guards “right of food consumption”? (ז': ז')
- What are the four type of guardians and explain the differences between them? (ז': ז')
- What are the two opinions about what constitutes *ones* for an attack by wolves? An attack by dogs? (ט': ז')
- If an animal in the hands of a *shomer* dies, when is it considered *ones*? (ז': ז')
- If an animal, in the hands of a *shomer*, falls off a cliff when is it not considered *ones*? (ז': ז')
- Can a *shomer* stipulate with the owner to change the level of responsibility? (ז': ז')
- What are the three cases of an invalid condition, and what is the law if one makes these conditions? (ז': ז')
- What is the exceptional case where a *sho'el* is exempt if the borrowed animal dies and what is the source of this law? (ח': ח')
- What is the law if a person borrowed an animal from someone and also rented this animal (for a different time) and the animal died and: (ז': ח')
 - Neither know when the animal died?
 - The lender claims it died during the time it was borrowed, and the renter claims it died during the time it was rented?
- Regarding the previous question, in what cases do we say the renter is *chayav* and when do we say he is *patur*? (ז': ח')
- If an animal was sent to the borrower by means of a *shaliach*, and it dies in transit, when is the borrower *chayav* and when is he *patur*? (ז': ח')
- What complication is raised in a case where a *kinyan chalipin* is performed exchanging a cow for a donkey and what is the law? (ז': ח')
- What is the law regarding a dispute between a buyer and a seller regarding which field was sold? (ז': ח')
- What is the law if *Reuven* sold *Shimon* his olive trees for him to cut down and use as wood, yet *Shimon* delayed and the trees grew olives and now each party wishes to claim ownership? (ז': ח')
- What other case is similar to the one in the previous question? (ז': ח')
- What is the law regarding when a tenant can remove an occupant if they did not initially fix a rental period if: (ז': ח')
 - The property is in the city?
 - The property is in a village?
- Regarding the previous question, is it different if it was a commercial property? (ז': ח')
- What must a landlord provide for his tenant? (ז': ח')
- When is the advent of a leap year advantageous to the tenant and when is it to the benefit of the landlord? (ז': ח')

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Next Week's Mishnayot...

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	שבת קודש
27 October כ"ה תשרי	28 October כ"ו תשרי	29 October כ"ז תשרי	30 October כ"ח תשרי	31 October כ"ט תשרי	1 November ל' תשרי	2 November א' חשוון
Bava Metzia 8:9-9:1	Bava Metzia 9:2-3	Bava Metzia 9:4-5	Bava Metzia 9:6-7	Bava Metzia 9:8-9	Bava Metzia 9:10-11	Bava Metzia 9:12-13

