

THE BAIS HAVAAD

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## A TALE OF TWO CITGOS:

### Oil Change in Venezuela

Adapted from a shiur by Rav Daniel Dombroff

#### WHOSE OIL IS IT?

Venezuela has the largest proven oil reserves of any country in the world, estimated in 2017 at 300 million barrels. But its people are starving.

No war or natural disaster brought what was once the fourth-richest country on Earth to its knees. The crisis resulted almost entirely from choices and policy decisions made by the late socialist revolutionary leader Hugo Chavez since his election two decades ago. Profligate spending on social services to buy the support of the poor, imposition of price controls, confiscation of private businesses, corruption at the highest levels of government, failure to diversify the economy beyond oil, and creeping dictatorship guaranteed that the house of cards would collapse. And collapse it did in 2014, when the inevitable cratering of oil prices arrived, just after Chavez died and was replaced by his chosen successor, Nicolas Maduro. A former bus driver who made all the stops on his way to the top, Maduro's response to the crisis was to deny it was happening and stay the Chavista course.

Fast forward to today: A tenth of the population has fled the country, 90% of those who remain live in poverty, inflation is well over one million percent annually, shortages of food and medicine abound, and the average citizen has lost twenty pounds on what locals wryly call the "Maduro diet."

In January, Juan Guaido, president of the National Assembly—the parliament that Maduro declared invalid and replaced in 2017—involed a constitutional provision to declare

himself acting president and call for new elections. The U.S. backed him, as now do more than fifty countries.

As in most family fights, there is money at stake.

Citgo, the Houston-based gas station chain, is a subsidiary of the Venezuelan state-owned oil company, Petroleos de Venezuela. Guaido has announced that he will name new boards of directors for the companies to wrest control from Maduro, leaving each company with two competing boards.

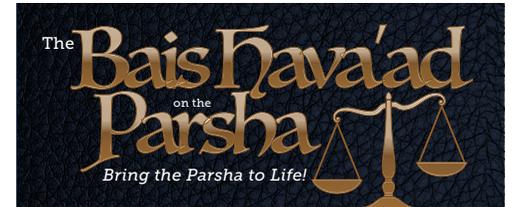
The case of two people fighting over a *pi-kadon*, monies deposited for safekeeping with a third party, is discussed by the Gemara in the beginning of Bava Metzia. Both men are considered *muchzak*, in possession of the funds, and *ain hachaluka yechola lihiyos emes*, a fifty-fifty split couldn't possibly be correct. So if neither party can prove his claim, *yehay munach ad sheyavo Eliyahu*—the money shall remain in place until Eliyahu Hanavi, the herald of Mashiach, will identify the true owner. Or until proof is adduced, whichever comes first (Bava Metzia 3a and Tosafos 2a s.v. *v'yachaloku*).

An oil company with conflicting claims appears comparable. But in our particular scenario, there may be a *muchzak*, a party in possession.

In a monarchy, the king owns the country (Ran, Nedarim 28a). If he is a *melech*, Maduro would be the *muchzak* on Citgo assets, and if there is a question, he would retain ownership.

If a king loses de facto control of his country, he loses the status of *melech* and its attendant perquisites, including his *ba'alus* over the country. (Though if he loses power in a drawn-out process, it might be difficult to identify the exact point at which this shift occurs.) In a *kibush*, where one king's domain is

(continued on back)



An Overview of a Shiur by Rav Daniel Dombroff on Parshas Shemini

### Karpas and Tumah

וכי יותן מים על זרע ונפל מנבלתם עליו טמא הוא לכם (ויקרא יא:לח)

*Netilas Yadayim* for fruit dipped in liquid – Chazal required this due to a complex *gezeira* related to *tumah*.

*Mishna Berura* – Many people do not do this today, and although there is some support for that, one should really comply with the *gezeira*. If the fruit is less than a *k'zayis* – *Mishna Berura* says there is room to be lenient, based on a precedent concerning *netilas yadayim* for bread.

Pesach Night – Everyone washes for *karpas* dipped in salt water to comply with the stringent opinions.

*Tur* – Eat less than a *kezayis* of *karpas* to allow the *beracha* count for the *maror* but still avoid questions about reciting a *beracha acharona*.

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# GENERAL HALACHA

## WHO IS AT FAULT FOR A DEFAULT?

### Reneging on an Agreement Part I

By: Rabbi Yosef Greenwald



There are two categories of agreements which can affect when an agreement is broken. In *Bava Metz'ia*, 49A, the Gemara discusses two different types of contractual agreements and the ramifications of nullifying each one.

#### KINYON KESEF: WHEN GOODS HAVE CHANGED HANDS

This Mishna refers to *kesef* which is not *koneh m'taltalin*. The Gemara *paskens* like *Rav Yochanan* who holds that *M'doraisa*, *kesef* is *koneh*, but *Chazal* were *mevateil kinyon kesef*. Therefore, the *kinyon* is not complete until *meshicha* was performed. Once the item is taken into the *reshus* of the *lokeach*, then the *kinyon* is valid. Before the *meshicha* is complete, either party can be *mevateil* the *kinyon*.

However, the Mishna does make a qualification if someone breaks an agreement where *kesef* was paid or a down payment was made on moveable *m'taltalin* that are being sold. If someone breaks this kind of agreement, the Mishna says he receives a *mi shepara*. The *mi shepara* is a *klala*, a curse, of "*Mi Shepara m'anshei mabul v'anshei dor hafloga hu yifrah mizeh shechozar b'diburo*" - "He who took retribution from the people of the Mabul and the people of the Dor Hafloga, He should take retribution from one who goes back on his word".

#### A VERBAL AGREEMENT

A person who breaks a verbal agreement has a different level of *tayna* against him.

The above Gemara refers to this as "*michusar amana*." In this case, a *mocher* and a *lokeach* have agreed on the sale of a certain item. They

made up a price and the deal was finalized, though no goods or money have changed hands. If one party breaks this contractual agreement, there is no *mi shepara*, since no actual *kinyon* occurred.

However, there is a degree of *tayna* against him, and he is considered to be *m'chusar amana*, he is from those lacking in faith or as we would call it today, lacking in good faith. Two people had a verbal agreement, and one went back on his word, so he is lacking in good faith in honoring his word.

#### WHAT LEVEL OF TAYNA?

There is a fundamental difference between one who breaks a deal with a *kinyon*, and one who breaks a verbal agreement.

When a *kinyon* is broken, *Chazal* say this is a "*mi shepara*." This is not the simple understanding that *Chazal* were *mevateil* the *kinyon*, rather the *kinyon* was broken and *Chazal* have a strong *tayna* against this.

But someone who was *m'chusar amana* did not break a contract, since there was no *kinyon*. The only thing he broke was his word. The *tayna* against him is that he is lacking in good faith, he is missing the *darga* of being a *baalei emunah*, where his word is trustworthy. When a person gives his word, it should be *kodesh kodoshim*. There are many *parshios* in the Torah that point to the *kidushas hadibbur* of a person. The person who goes back on his word is considered to be *m'chusar amana*.

#### EXCEPTIONS TO M'CHUSAR AMANA: CHANGING CIRCUMSTANCES

At the end of *siman* 204 in *Choshen Mishpat*, the *poskim* discuss the halacha of *m'chusar amana*. There is a *machlokes* among the *Rishonim* if a person who breaks a verbal agreement to buy or sell an item is always considered *m'chusar amana*.

There may be mitigating circumstances, with an instance of *trei tarii*. *Trei tarii* literally means that there are two markets or two prices, two *sheorim* to this item.

For example, if *Reuven* and *Shimon* make an agreement where *Reuven* would supply *Shimon* with 100 sacks of flour, at the price of \$2.00 a pound. Overnight, there was a flour shortage on the market, and the price of wheat went up to \$3.50 a pound, before the *kinyon* was performed. This is considered *trei tarii*, and if *Reuven* would break his verbal agreement with *Shimon* at this point, there is no *tayna* against him.

The *Shach* says that we *pasken* like the *Rema*,

that in the case of *trei tarii*, there is no *tayna* against a person who breaks a verbal agreement, and he is not *m'chusar amana*. No *kinyon* was performed, and he did not break his word because of lack of good faith. Rather, he broke his word because the conditions of the agreement changed, there was a different set of circumstances for the deal.

#### UNFORESEEABLE CIRCUMSTANCES

The *T'shuvas Chasam Sofer*, *Choshen Mishpat*, *Siman* 102 concurs. If there is a change in circumstances that alters the *metzios* of the deal, and a person goes back on a verbal agreement to buy or sell an item, there is no *tayna* of *m'chusar amana*.

For example, *Levi* is offered a job in the suburbs and he decides to sell his house in the city. *Levi* made a verbal agreement to purchase a house in the suburbs, and to sell his house in the city. Then, the company unexpectedly goes bankrupt and *Levi's* job offer is canceled. Now he has to go back on the verbal agreement to sell his house. *Levi* is going back on his word because the situation itself has changed, not because his word has no value. [This would also be the case if *Levi* had a sudden change of financial status.]

The *Piskei Chosen* points out that we cannot always use the rule of unforeseeable circumstances to remove the *tayna* of *m'chusar amana*.

For example, if someone makes a verbal agreement to buy a car for a certain price. The next day, he gets an offer to buy a car at a better price. If he were to break his verbal contract with the first person, he is considered a *m'chusar amana*.

In this case, the circumstances have not changed. When conducting business, it is understood that you could always get a better offer. But once you make a verbal agreement, even before the *kinyon*, you made a commitment. The fact that a second person offered a better priced car is not considered to be a different set of circumstances which would remove the *tayna* of *m'chusar amana*.

#### NO EXCEPTIONS FOR MI SHEPARA

However the halacha of *mi shepara* does not leave any room for loopholes or exceptions. *Mi shepara* applies to a person who breaks a completed *kinyon*, reneging on an existing contract. This is a more serious *avla*, and it carries the weight of the *klala*, a *mi shepara* from *Chazal*. It makes no difference if the price of the item went up or down, or if his financial or personal circumstances changed.

# MATTERS OF INTEREST

AVISSAR FAMILY RIBBIS AWARENESS INITIATIVE:

## Purchasing Items from the Store

A neighbor borrows money to go shopping at the local supermarket. The lender asks the borrower if they can buy an item for him as well, and adds another few dollars for the purchase.

Is the lender transgressing any prohibition of ribbis by imposing this request on the borrower?

Possibly. The *Yerushalmi* actually uses such a case as an example of *ribbis devarim*. However, the *Taz* explains that this prohibition only applies when done in a manner which creates "pressure" on the borrower to comply. Since this can be the case many times, the lender must be extremely careful to phrase the request in a way which will not create a pressure on the borrower to fulfill it.



An example of such pressure might be when the lender requests the borrower go to a different store "on their way" to the supermarket, or if the borrower had not planned on coming back home until much later. Or if he asks him to purchase something heavy which the borrower will have to shlep back. Another example quoted in *Shulchan Aruch*, is where the lender asks the borrower to stand outside and see if their friend is coming. These cases warrant extra care in order to avoid the issue of *ribbis devarim*.

If the borrower has done similar favors for the lender in the past, it would be permitted in any case. If he had *not* done so before, although he definitely *would* have, had he been asked,

it should not be done (except in a soft-spoken manner which does not create pressure).

It goes without saying that the lender is forbidden to make the loan conditional on his request being fulfilled (i.e., "My father doesn't really want me to lend money, but if you get this for me, I guess I can lend you the money for a day or two...").

If the lender *pays* the borrower for the *tirchah* (effort) of purchasing the item for him, it would be permitted.

## YOU DAILY LIVING

### Weekly Questions

#### LAWS RELATED TO BRACHOS



In a recent Halacha Yomis you mentioned that according to many opinions the bracha on cloves is borei minei b'samim. Can you please explain why? On which other spices does one recite borei minei b'samim?

The bracha "borei minei b'samim" is recited on spices that don't fit into any of the other categories. On aromatic fruit, we say the blessing "Hanosain raiyach tov b'peiros" (who placed

aroma in fruit). On aromatic tree branches, we say the blessing "borei atzei b'samim" (who created aromatic trees). On aromatic plants and herbs, we say the blessing "borei isvei b'samim" (who created aromatic grasses). The bracha on musk (which comes from an animal) is "borei minei b'samim". This is because it does not fit into any of the other categories (Shulchan Aruch OC 216:2).

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- דף ק"כח Fundamentals of Tumas Ohel : Part 4

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conquered by another, the new king assumes *melech* status (Chulin 60b), and it would seem that he would take ownership of the country's receivables, including such debts as bank deposits.

But although Venezuela has operated as a dictatorship for some time, Maduro insists it is a democracy, which means he admits the country's assets belong not to him but to the Venezuelan people. This makes him an *apotropos* or trustee, in whose possession the assets sit while beneficial ownership is retained by the people. It would appear that an *apotropos* can enjoy *muchzak* status just like an owner, so in our case, should Citgo's banks continue to allow Maduro access to the funds?

Not necessarily. Even if Guaido hadn't mounted a challenge to Maduro's rule, the Gemara says (Gittin 14a) that one holding a deposit may withhold it from an untrustworthy trustee. So a U.S. bank holding Citgo funds would have the

right to deny Maduro access by arguing that his regime has demonstrated it can't be trusted to use the funds in the best interests of the owners, the Venezuelan people. It could then legitimately retain the money until a trustworthy *apotropos* is in office.

\* \* \*

This case is not without precedent in U.S. history. After the communist revolution in China under Mao Zedong, the Bank of China found itself with two feuding boards of directors. The Nationalist government, based in Formosa (now Taiwan), laid claim in 1949 to \$626,860 held in the United States at Wells Fargo. The bank, citing the conflict, refused the withdrawal request. The courts deferred to the State Department, which didn't recognize the Communist takeover, so the Nationalists got the money in 1952. It might take three years, but Guaido should have some petrodollars headed his way.

(continued from front pg.)



Mishna Berura:

If so, how does this help, if no *netilas yadayim* is

needed for less than a *kezayis*?

Response - Ultimately, we must agree with the *Tur* and be *machmir* (even if we don't understand). Therefore, less than a *kezayis* of fruit or vegetable dipped in liquid also renders one *chayav*.

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