

“אל תונו איש את אחיו”-“ולא תונו איש את עמיתו”

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In this week's *parsha*, we are told the *issur* of אונאה two times. First the Torah tell us, “אל תונו איש את אחיו” (ויקרא כה: יד), and then a few *pesukim* later it states, “ולא תונו איש את עמיתו” (כה: יז). The Rambam and Chinuch explain that the first is an *issur* regarding *deenay mamonos*, forbidding one from *ona'a* in מקח וממכר.

There are three categories in this type of *ona'a*: overcharging פחות משתות (less than one sixth), overcharging at exactly a שתות, and overcharging by more than a שתות. The *halacha* by the first category is that the sale is valid and no refund is obligated, yet the Rosh deliberates whether there is no *issur* present in such a case and the Torah is telling us normative commercial practice or the *lav* exists even in such a case but one is not obligated to return any money because the buyer is *mochel bedi'eved*. When an item is sold for exactly a שתות more than it should have been, the *halacha* is that the deal remains valid but the buyer has the right to come and collect his refund. If the overcharge was more than a שתות, then the buyer may cancel the entire deal. (Some explain this as being similar to מקח טעות, but it is beyond the scope of this *shiur* to delve into the details of this *din*.)

The *gemara* in : בבא מציעא נח: characterizes the second אונאה of לא תעשה (“אל תונו איש את עמיתו”) as pertaining to אונאת דברים. There are many ways to describe אונאת דברים. Some Rishonim use the *lashon* of מצער, meaning any words which cause pain to another, and others use a *lashon* of בושה, embarrassing someone else. The Korban Aharon has an interesting *peshat*, that לא תונו is a term of fooling someone. Similar to tricking someone by overcharging them in a deal, fooling him with words by which he gets hurt or embarrassed is this *issur*. However, direct verbal assault would fall under a different *lav*, that of “ולא תשא עליו חטא”.

The Pnei Yehoshua (ב"מ דף נו), cited by the Minchas Chinuch in מצוה שלי"ז, asks a famous question: Where in the Torah does it state that the seller must return the money when he overcharged? The *pesukim* about אונאה state simply that one should not do it. Maybe he should just get an מקום לבין אדם and that's the end of it. After all, the buyer and seller agreed on the sale price. The *ikur* scenario of this *shayluf* is in the case where it was overpriced by a שתות, because the sale is valid but the buyer can collect a refund of the overcharge.

Pnei Yehoshua suggests that perhaps the reason one must refund his overcharge is because of the principle, “כל מילתא דאמר רחמנא לא תעביד אי עביד לא מהני”. This means that anything which is *assur* to do is not effective if performed. One example of this is a Kohen attempting to marry a *gerusha*, who is *assur* to him, and the *kiddushin* would not be effective according to this principle. Here to, where the *lav* is to overcharge, the money of the overprice never changed hands and is still rightfully the buyer's. This would require the seller to return that amount.

However, since this principle is a *machlokes* between Abaye and Rava, Pnei Yehoshua is not satisfied with this explanation. (Even if we were to *pasken* like Rava, it would still not help us understand the *lav* according to Abaye who obviously knows this *halacha*.) Another issue with this explanation is that, according to some, the *issur* of “אל תונו” is only if one violated it knowingly. If he didn't know he was overcharging for the deal then he has not transgressed the *lav*, and yet the *din* is that he must return it (רמב"ם הלכות מכירה יב, א). This shows that violating *lav* is not bound by having to return the money, and there must be another source for the *chiyuv* to return the money.

The Pnei Yehoshua instead suggest that maybe this *lav* is included under the broader umbrella of גזל. The Torah states by direct theft one must return the stolen items (“והשיב את הגזילה”). Perhaps by אונאה, the Torah is saying that one cannot overcharge (that this is not “business as usual”), and doing so constitutes *gezel*, which must be returned.

This idea is mentioned earlier by Rishonim and Acharonim. The Tur writes that one would not receive *malkus* for אונאה because it is included in גזל which makes it a לעשה or לאו שניתק לעשה.

There is a third answer to this question of where do we know that overcharged monies must be returned to the buyer. The פסקי הרי"א, R. Yeshaya Acharon, is a Rishon who, I believe, is the grandson of the תוס' רי"ד, also known as R. Yeshaya HaRishon. In his *sefer* on בבא מציעא he has קונטרס הראיות. In ראייה ט' he says a huge *chiddush*. He says that one could explain אונאה as being a *din*, not an *issur*. It is not comparable to גזל. גזל is always *assur* no matter what, but there is no *issur* to overcharge. The whole *din* of אונאה is strictly that if one overcharged by a שתות or more, then the buyer may demand a refund of that money. It is דינא, not איסורא. In fact, the Mishna gives a time frame which the buyer must come back to ask for the refund by. If he does not come before that time elapses, then it is considered forgiven. The Torah only wrote "אל תנו" in order to obligate the seller in returning that אונאה money.

I would just like to point out why the Ri'az describes אונאה as being a "different type of *lav*," which appears to be *shver* because it sounds like he is saying it is no *lav* at all! It must be that the *lav* is returning the money. If the seller does not return it, then he has violated the *lav*. This means that a seller can try to overcharge for the sale and if the buyer does not collect, then he has committed no wrong.

According to this Ri'az, the entire *halacha* of אונאה is to return the money of the overcharge. This then answers the Pnei Yehoshua's question before it can even be asked.

With this Ri'az, I would like to venture to answer a big *kushya*. If we look at the BeHaG (whom all Rishonim accept as direct *mesorah*) where he records the *lav* of אונאה, he cites the *pasuk* of "ולא תנו איש את" *עמיתו*". Earlier, we said from the Gemara that this *pasuk* refers to אונאת דברים, not overcharging. I have a friend who wrote a *sefer* on *Hilchos Ona'a* and he asked this question but did not have an answer. This same question can be asked on the Orchos Chayim (רא"ה מלוניל), another Rishon, who starts off *Hilchos Ona'a* by citing the same *pasuk* as the BeHaG. (Just as an interesting aside, in some editions of the SMaK there is a *hagaha* in *Hilchos Ona'as Mamon* which has a *remez* in the Torah for the amount of אונאה which one is *chayiv*. The *sofay teivos* of "ולא תנו איש את עמיתו ויראת" spells out "שתות". Another example of following the BeHaG to use the *pasuk* of אונאת דברים for אונאת ממון.)

I would like to suggest a big *chiddush*. Perhaps the first *pasuk*, "אל תנו איש את אחיו", tells us only that if one overcharged then the buyer has a right to demand a refund, but not necessarily that one cannot overcharge in the first place. The second *pasuk* of "ולא תנו איש את עמיתו" is the *pasuk* forbidding fooling another person. Only there do we learn that it is actually *assur* for the seller to engage in overcharging.

With this, the BeHaG is actually being more *machmir* than the Ri'az because Ri'az learns the second *pasuk* is only discussing אונאת דברים and there is a *hetter* to overcharge (with the caveat that if the buyer wants a refund, the seller must comply). Yet, they are partially learning like the Ri'az in that the first *pasuk* does not necessarily mean אונאה is *assur*.

The item which is left *shver* is the Gemara's *lashon* in בבא מציעא, in explaining why אונאה is said twice in the Torah, is that the first time is teaching us אונאת ממון and the second time is to teach אונאת דברים. This is clear for the Ri'az because his *chiddush* is just to say that there is no actual *issur* of overcharging in the first *pasuk* (it is just saying to give the refund) and the second one is an added *issur* for אונאת דברים. According to my *pshat* in the BeHaG, the Gemara should have really said that the first *pasuk* is the directive of returning the overcharge and the second is the actual *issur* in overcharging. Why, then, did the Gemara say that the second *pasuk* is for אונאת דברים?

This question is a good one and I am not sure what to answer. Perhaps I can suggest that the second *pasuk* is a general *issur* in fooling people, which includes fooling them through overcharging. This general umbrella is referred to as אונאת דברים. I later found a similar *pshat* in the Or Hachaim Hakadosh at the end of פסוק ט"ו.

Even so, it is still a good *kushya* and we will have to leave off with דבר הלכה.