

ETHICS IN THE MARKET PLACE

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A JEWISH PERSPECTIVE

By

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Preface

Jewish law, which encompasses the totality of public and private life, devotes considerable attention to commercial relations, including relations between buyer and seller, consumer and producer.

This book comprises two parts, both concerned with the area where law and commerce intersect, where law seeks to achieve a just balance between the opposing interests of the principals in the world of commerce and economics.

These studies were undertaken in connection with legislation prepared by the Israeli Ministry of Justice and the Israeli Knesset. The bills submitted to the Knesset show their connection with Jewish law, and this connection is based on these studies.

Part I, which deals with consumer protection, is based upon a study undertaken in preparation of a bill that developed into the Consumer Protection Law (1981). This law seeks to regulate an area as ancient as commerce itself, although this area's scope has grown and its problems have been greatly exacerbated in recent years. Part II, on the Market Overt (*takkanat hashuk*), is based on a study which was

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undertaken in preparation of the Sales Law (1968). Section 34 of this Law regulates the rights of a person who purchases property from one not permitted to sell that property.

Various economic and commercial developments in our time have exacerbated the questions discussed here, and these developments have greatly increased the need for attention to moral considerations that can guide us. Jewish sources, which originate with the Bible and continue throughout the generations to the present, had the wisdom to combine common sense born of experience with Judaism's traditional values of justice. It is on these foundations that we seek to base current practice.

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Introduction

Consumer protection is a matter that requires legislative regulation. Legislation in this area is particularly needed in our own time in view of developments in commerce and technology.

Products today are no longer simple items with known dimensions and familiar characteristics. The consumer, when coming to make his purchase, is confronted with complexity in both the product he wishes to purchase and the transaction by which he purchases it. He is not fully aware of the characteristics of the product, and he is incapable of understanding the full details of the various purchase plans he may be offered. The consumer may be offered a purchase-lease arrangement, payment in installments, and the like. He signs his name to a standard printed contract (filled with small print), and he has little choice but to accept the contract as it is. Moreover, at times, the consumer requires protection from increases in the price of essential goods. Such increases are usually caused by a shortage of the required product, but may also be caused by monopolistic practices or the activity of cartels. What measures can be taken in order to protect the consumer from such practices?

On the other hand, we must remember that legislative action meant to protect the consumer may conflict with the

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principle of free trade. What, then, is the extent of this freedom? When is it desirable for the legislator to intervene and restrict it, and what are the methods for imposing some measure of control upon commercial transactions?¹

An exhaustive discussion of the subject would properly be based upon an economic-historical study that would clarify the background for establishing various laws and enactments. The complete range of laws governing commerce and fair competition would also need to be analyzed. The present study does not presume to be nearly so extensive.

In Jewish law, consumer protection is rooted in prohibitions against overreaching and misrepresentation, regulation of weights and measures, and enactments for the prevention of unfair price increases and profiteering. In this study we shall discuss several aspects of consumer protection as reflected in Jewish legal sources in order to elucidate the basic trends of Jewish law in this area.²

¹ Concerning legal developments in this area, particularly as regards the United States of America, see *International Encyclopedia of the Social Sciences*, s.v. "Antitrust legislation"; and s.v. "Consumer sovereignty."

² See Rabbi Dr. L. Jung, *Business Ethics in Jewish Law* (New York, 1987). See also Solomon Goldman, "Jewish Ethics and Their Application to Modern Commerce and Industry," *Thirteenth Conference of Anglo-Jewish Preachers* (London, 1960), 17-23; Seymour Cohen, "Judaism and the World of Business and Labor," *Proceedings of the Rabbinical Assembly of America* 25 (1961) 17-44; Meir Tamari, "Jewish Law and Economic Laws," *Niv Hamidrasha*, Spring 1969, 127-132; Arthur Jay Silverstein, "Consumer Protection in Talmudic Law," *Commercial Law Journal*, July 1964, 279-282; Edward Zipperstein, *Business Ethics in Jewish Law* (New York, 1983); Aaron Levine, *Free Enterprise and Jewish Law* (New York, 1980) and: *Economics and Jewish Law* (New York, 1987). For further bibliography, see also Nahum Rakover, *Otzar haMishpat*, Part 1 (Jerusalem, 1975), 433-434; Part 2 (Jerusalem, 1990), 449-451; *The Multi-Language Bibliography*

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The Bible (Leviticus 25:14-17) contains a prohibition against *ona'ah* – fraudulent pricing or overreaching:

And if you sell anything to your neighbor or buy of your neighbor's hand, you shall not wrong one another. According to the number of years after the jubilee shall you buy of your neighbor, and according to the number of years of the crops he shall sell to you. According to the multitude of the years shall you increase the price thereof, and according to the fewness of the years you shall diminish the price of it; for a number of crops does he sell to you. And you shall not wrong one another; but you shall fear your God; for I am the Lord your God.

Elsewhere (Deuteronomy 25:13-16), the Bible discusses weights and measures:

You shall not have in your bag diverse weights, a great and a small. You shall not have in your house diverse measures, a great and a small. A perfect and just measure shall you have; that your days may be long upon the land which the Lord your God gives you. For all that do such things, even all that do unrighteously, are an abomination to the Lord your God.

Amos (8:4-7), too, prophesied concerning those of his contemporaries who engaged in unfair market practices:

Hear this, O you that would swallow the needy, and destroy the poor of the land, saying: "When will the new moon be gone, that we may sell grain, and the Sabbath, that we may set forth corn, making the *efah* small and

of Jewish Law (Jerusalem, 1990), 704-707. See also comprehensive articles on the subject by Itamar Warhaftig, "Haganat haTzarkhan leOr haHalakhah," *Tehumin* 1 (1980), 444-488; *Tehumin* 2 (1981), 470-492; *Tehumin* 3 (1982), 334-370; and *Tehumin* 4 (1983), 382-403.

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the *shekel* great and falsifying the balances of deceit; that we may buy the poor for silver, and the needy for a pair of shoes, and sell the refuse of the corn?" The Lord has sworn by the pride of Jacob: Surely I will never forget any of their deeds!³

The seriousness of overreaching and profiteering was emphasized by the Sages of the Talmud in their exposition of the passage from Amos:⁴

Concerning those who hoard fruit, lend money for interest, reduce the measures and raise prices, Scripture says, "When will the new moon be gone, that we may sell grain, and the Sabbath that we may set forth corn? Making the *efah* small and the *shekel* great and falsifying the balances of deceit." And [concerning these] it is further written in Scripture, "The Lord has sworn by the pride of Jacob. 'Surely I will never forget any of their deeds!'"⁵

The Talmud quotes R. Levi⁶ as declaring that "punishment for [false] measures is more rigorous than for forbidden sexual relations." This severity, the Talmud explains, derives from the fact that when a merchant consistently uses false measures, he is unable to repent for his wrongdoing, since he can never know the identity of all those he has wronged and therefore cannot make restitution.⁷

³ See also the apocryphal work *Wisdom of Ben Sira* (also known as *Ecclesiasticus*) 26:36; 27:1; and 42:4-5.

⁴ *Baba Batra* 90b.

⁵ See *Megillah* 17b.

⁶ *Baba Batra* 88b.

⁷ See Rashi ad loc., s.v. *Efshar leih biteshuvah*: "Repentance is effective [in achieving atonement] for forbidden sexual relations, if one makes proper repentance, as is written (Jeremiah 3:22), 'Return, you backsliding children. I will heal your backslidings.' It is also said (*Makkot* 23a) 'Anyone who has incurred the penalty of excision

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The Talmud also asserts that in his final judgment, man is first asked whether his business dealings were conducted in good faith.⁸

In Israel, comprehensive legislation enacted in recent years employs various methods for protecting consumers.⁹

[*karet*] who is flogged is thereby exempted from excision.' In the case of [defective] measures, however, where the offender steals from the many, he is unable to do [full] repentance, since repentance is dependent upon his returning what he has stolen, as is written (Leviticus 5:23), '... he shall restore what he took by robbery,' and he does not know to whom to restore it. And although it is said that [one who has stolen from the many restores what he has stolen by] contributing to public needs, this is not full repentance, since he does not restore [what he has stolen] to the injured party. Rather the Sages chose for him the best possible solution [under the circumstances]."

⁸ *Shabbat* 31a. And cf. *Sh. Ar.*, *Orah Hayyim* 156:1, s.v. *veYissa veyitten be'emunah*; and *Magen Avraham*, ad loc. Cf. *Tamid* 28a: "Rabbi says, 'What is a straight path for a man to choose...?' And there are those who answer, 'Let him take faith to the extreme.'" One early commentator explains this answer (in the commentary printed on the page of the Talmud ad loc): "Let him deal faithfully with people and not defraud them."

⁹ The following laws should be noted: Commodities and Services (Control) Law, 5718-1957, *Laws of the State of Israel [in English, hereafter LSI]*, vol. 12, pp. 24-40; *Hok Piku'ah Al Mehirei Mitzrakhim veSherutim*, 5756-1996, *Sefer haHukim* 5756, p. 192 ff.; Restrictive Trade Practices Law, 5719-1959, *LSI*, vol. 13, pp. 159-167; see also *Hok haHegbelim haSkiyim*, 5748-1988, published in *Sefer haHukim* 5748, p. 128 ff. This law replaces the Restrictive Trade Practices Law of 1959. On sale of dwellings, see Sale (Housing) Law, 5733-1973, *LSI*, vol. 27, pp. 213-216; and Sale (Apartments) (Assurance of Investment of Persons Acquiring Apartments) Law, 5735-1974, *LSI*, vol. 29, pp. 18-20. See also Consumer Protection Law, 5741-1981, *LSI*, vol. 35, pp. 298-311. Special regulations concerning banking services and insurance transactions were established in Banking (Service to Customer) Law, 5741-1981, *LSI*, Vol. 35, pp. 312-318; and the Insurance Business (Control) Law, 5741-1981, *LSI*, vol. 35, pp. 243-276,

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The law most directly concerned with our subject is the Consumer Protection Law, 1981.¹⁰ This law was intended to fill existing lacunae in the protection of consumers, both in civil and criminal areas. The law establishes a series of obligations and prohibitions whose common goal is to prevent deception of the consumer, to bring to his attention, as far as possible, full information on the nature of the transaction he is about to enter, and to give him the means to exercise his rights by claiming compensation where damage has been caused to him by another person's violation of regulations.¹¹

Based upon the first version of the present study,¹² which was undertaken in preparation of the Consumer Protection Law, the introduction to the original legislative bill points out that the law "is deeply rooted in the sources of Jewish law."¹³

see in particular chp. 5, Protection of Interests of Insured Persons, pp. 260-262. See also Standard Contracts Law, 5743-1982, *LSI*, vol. 37, pp. 6-12. See below, note 51, concerning weights and measures.

¹⁰ See previous note.

¹¹ See introduction to the legislative bill no. 1469, *Hatza'ot Hok*, 1980, p. 302.

¹² *Haganat haTzarkhan*, monograph no. 16 of *Sidrat Mehkarim uSekirot baMishpat halvri*, published by the Ministry of Justice, 1971.

¹³ The introduction to the legislative bill is quoted in Chapter 8.

Chapter One

FRAUDULENT PRICING

1. THE PROHIBITION AND ITS RESULT

The biblical term *ona'ah* – variously translated as overreaching or fraudulent pricing – is used in two different ways in Jewish legal sources. In the first use, the term refers to the prohibition itself:¹⁴

It is forbidden for a seller or a buyer to defraud his fellow, as is said (Lev. 25:14): “And if you sell anything to your neighbor or buy of your neighbor’s hand, you shall not wrong one another.”¹⁵

¹⁴ Maimonides, *M.T.*, *Mekhirah* 12:1. See also *Sh. Ar.*, *Hoshen Mishpat* 227:1.

¹⁵ See *Sefer haHinnukh*, commandment 337 (ed. Chavel, commandment 340): “Whoever defrauds another intentionally... violates this commandment.” See also *Resp. Maharit II*, *Hoshen Mishpat* 19: “The prohibition of overreaching applies to intentional overreaching” (con-

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In the second use, the term refers to the effect of the prohibited act upon the monetary rights of the victim vis-à-vis the perpetrator:¹⁶

Whether one overreaches knowingly or is not aware that there is any fraud [ona'ah] in this sale, he is obligated [to make restitution].

Protection against overreaching is granted to the consumer in the form of a monetary remedy: the defrauding merchant has to refund the difference between the market value of the item and the amount paid.¹⁷ Moreover, when the fraud

trary to *Encyclopedia Ivrit*, s.v. *Hafka'at she'arim*, where it is stated that both intentional and unintentional overreaching are prohibited by the Bible). As to monetary remedies, however, there is no difference between intentional and unintentional overreaching (Maimonides text at note 16). See also below, Sec. 2.

¹⁶ Maimonides, *M.T.*, *Mekhirah* 12:1. Cf. Sec. 2(a) of the Consumer Protection Law, 1981, which numbers among the basic things, concerning which any possible deception of the consumer is prohibited: "the regular or accepted price or the price demanded in the past." Section 32 of the same statute establishes a period of two weeks for cancellation of a transaction involving some form of deception.

¹⁷ It should be noted, however, that the time available to lodge a claim of overreaching was limited. See Maimonides, *M.T.*, *Mekhirah* 12:5: "How long does the aggrieved party have a right to retract and recover the amount of the fraud or to rescind the transaction? As long as it takes the said party to show the article to a merchant or to his relative. If he tarries longer, even if he has bought for two-hundred zuz an article worth only one hundred, the transaction is not rescinded." See also *Sh. Ar.*, *Hoshen Mishpat* 227:7.

Sefer haHinnukh, loc. cit. (above, note 15) stresses the time limit: "Concerning overreaching, the Sages said that it is not proper that the right to restitution or cancellation be unlimited... so that commerce will be possible among people." This, by the way, contradicts the assertion of Z. Warhaftig, *HaHazakah baMishpat halvri* (Jerusalem, 1964), 269, that Jewish law does not recognize limitation as an enactment for the public welfare.

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amounts to more than one sixth of the market value of the item, the seller may face cancellation of the entire transaction. On the other hand, when the difference between the market value and the amount paid is small – less than one sixth of the market value – there are no monetary consequences for overreaching.¹⁸ Thus, only transactions where the amount of overreaching was small were treated as final:¹⁹

¹⁸ See, however, *Arukh haShulhan, Hoshen Mishpat 227:2*, according to whom redress is restricted to overreaching of a sixth or more only on items where it is impossible to set prices with precision. However, on items, such as flour, bread, and salt, commonly sold at the same price by all shopkeepers, there is no presumption that the victim will waive his right to redress; thus, on items such as flour, bread, and salt, the seller will have to make restitution for overreaching of any amount. *Sh. Ar., Hoshen Mishpat 227:15* rules that “there can be a claim of overreaching on all chattels, even books, and even precious stones and pearls.” See also *Sema*, ad loc., 25. See also *Resp. Heshiv Moshe* (Teitelbaum) 102. Here the respondent rejects the questioner’s claim that there can be no claim of overreaching on wine, since wine has no fixed price. *Arukh haShulhan, Hoshen Mishpat 227:7*, on the other hand, rules that “there is no claim of overreaching on items which are not sold for the same price by all merchants. Concerning items upon which one person takes a large profit and another is satisfied with a small profit, a claim of overreaching against one who takes a large profit is not at all relevant, since this is the way of commerce, and there are those who do sell at such prices.” The author of *Resp. Porat Yosef* (Alfandari), *Hoshen Mishpat 11*, writes that “it is clear that overreaching is established not on the basis of the cost to the seller but on the basis of the market value as determined by the price at which other merchants sell the item at this time in this place.”

¹⁹ Maimonides, *M.T., Mekhirah 12:2-4*; see also *Sh. Ar., Hoshen Mishpat 227:2-4*.

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How much does the overreaching²⁰ have to amount to in order that he who committed it shall be obligated to repay it? A sixth of the value of the article... constitutes fraud in which the transaction is valid but the defrauder has to pay the entire difference to the aggrieved party. If the overreaching amounts to anything less than that, the defrauder is not obligated to repay anything, because it is the general custom to waive the right to frauds amounting to less than a sixth. If the overreaching amounts to anything more than a sixth..., the transaction is void and the aggrieved party may return the article and not buy it at all. The defrauder, however, may not retract²¹ if the aggrieved party wishes the transaction to stand....

It should be noted that the determination of one sixth as the minimum required for invoking monetary remedies applies only to the value of the item.²² If, however, the sale was transacted by size, weight, or number, and an error occurred, the seller must make up for his error, no matter how small. The same applies to defective merchandise:

If one sells commodities to another by measure or by weight or by number and has made even the slightest error, the difference must always be returned, because the laws of overreaching apply only to errors in money value, while in errors in quantity the difference must be

²⁰ See decision of Judge Silberg, Cr.A. 224/57, *Lieberman v. haYo'etz haMishpati* 12 P.D. 668, about the term "honayah".

²¹ For additional opinions on whether the defrauder may retract, see *Tosafot, Baba Metzia* 50b, s.v. *vellu*; and *Temim De'im* 160, ad fin.

²² *Hiddushei Ritba, Kiddushin* 8a, s.v. *Le'olam*, holds that the criterion is subjective. If the value to the purchaser is more than one sixth above the market value, there is no overreaching, provided that the value to the purchaser is not the result of some pressing need. See also *Resp. Radam* (Feder; published Prezmysl, 1873), *Hoshen Mishpat* 13, ad init.

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returned. Thus, if one has sold to another one hundred nuts for a *dinar* and it is found that there were one hundred and one or ninety-nine, the transaction is valid, but the amount of the error must be returned to the aggrieved party.... So too if one has sold [an item]... and a defect of which the purchaser was unaware is found on the purchased article, the purchaser may return the article even after the lapse of many years because this was a transaction in error....²³

The monetary regulations concerning overreaching comprise numerous details. Their place, however, is to be found within the civil law.²⁴ Unlike the monetary remedies which look essentially to the past, granting *ex post facto* remedies to the aggrieved consumer, the prohibition of overreaching protects the consumer by establishing a norm of behavior for the future. We now turn to a discussion of the prohibition.

2. SCOPE OF THE PROHIBITION

The scope of the prohibition is not identical to the scope of the monetary measures available in cases of overreaching. Whereas overreaching is not actionable in immovable property²⁵ or where the amount is less than one sixth of the

²³ Maimonides, *M.T., Mekhirah* 15:1. See also *Sh. Ar., Hoshen Mishpat* 232:1-3.

²⁴ See P. Dickstein, "Mehir Tzedek veOna'ah," *haMishpat halvri* 1 (1926), 15-55; I.S. Zuri, *Halr'urim* (London, 1935), 87-107 (particularly regarding the relationship of overreaching to transaction in error and the claim of defective merchandise); Ezra Zion Melamed, "Hitpat'hut Dinei haOna'ah biMekorot haMishnah vahaTalmud," *Yavneh* 3 (1942) 35-54. See also A. Grossman, "Dinei Ona'ah beSifrut haTana'im vahaAmora'im" (unpublished doctoral dissertation for the Hebrew University, Jerusalem, 1966).

²⁵ See Maimonides, *M.T., Mekhirah* 3:8; and *Sh. Ar., Hoshen Mishpat* 227:29.

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market value,²⁶ there are those who hold that the prohibition nevertheless applies to real estate²⁷ and to overreaching less than one sixth.^{28, 29}

3. BUYER AND SELLER

The prohibition of overreaching applies to both buyer and

²⁶ See text at note 18 above.

²⁷ See Nahmanides, Leviticus 25:15; *Aliyot deRabbenu Yonah, Shitah Mekubetzet, Baba Batra 77b*, s.v. *veYesh litmo'ah*; and *Sefer haHinnukh*, commandment 337 (ed. Chavel, commandment 340). See also *Sema, Hoshen Mishpat 227:51*, in the name of Rashal. See also below, note 181.

²⁸ See Nahmanides, *ibid.*; *Sefer haHinnukh, ibid.*; *Piskei haRosh, Baba Metzia 4:20*; *Sh. Ar., Hoshen Mishpat 227:6*; and R. Shne'ur Zalman of Liadi, *Shulhan Arukh haRav miLiadi, Hoshen Mishpat, Hilkhot Ona'ah uGenevat Da'at 3*; R. Moshe Tzvi Heller, *Ge'on Tzvi on Hoshen Mishpat*, loc. cit.; and *Arukh haShulhan, Hoshen Mishpat 227:6-7*.

Sefer haHinnukh, loc. cit., writes: "One who knowingly overreaches another by one sixth or more is in violation of this commandment, but the Sages permitted a merchant to profit less than a sixth, for the general welfare, so that people will find what they need readily available everywhere." Cf. *Sefer Hasidim 532*. According to *Sefer haHinnukh*, it appears that the exemption for overreaching of less than one sixth is an enactment of the Sages. The connection suggested in *Sefer haHinnukh* between the sixth that constitutes overreaching and the sixth that a merchant is permitted to profit requires clarification. See below, note 137. See Rema, *Sh. Ar., Hoshen Mishpat 232:18*; it does not necessarily follow from his remarks that there exists an opinion that the victim of fraud may defraud others.

²⁹ Does the prohibition of overreaching apply to less than one sixth of the market value when the buyer is aware of the difference between the market value and the price he pays? See R. Aharon Valkin, *Hoshen Aharon, Hoshen Mishpat 227:6*; and *Ha'amek She'elah on the She'iltot deRav Ahai, She'ilta 113:9*. See above, note 15, concerning the distinction between the prohibition and the monetary remedy when the overreaching was unintentional.

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seller. This is inferred³⁰ from the relevant biblical passage, which discusses both buying and selling (see introduction).³¹

4. SALE AND HIRE

The prohibition of overreaching applies not only to sale but to hire as well, given that the latter is regarded as a temporary sale.³² Maimonides writes:³³ “If one hires utensils or livestock, the transaction is subject to the law of overreaching because hiring is equivalent to a sale for a day.”³⁴

5. STIPULATION

Is the law of overreaching dispositive, in the sense that it can be being excluded by express stipulation? The Talmud reports the following difference of opinion between Rav and Shemu’el:³⁵

If one says to his neighbor, “I agree to this sale on condition that you have no claim of overreaching against me” – Rav said, “He nevertheless has a claim of overreaching against him. Whereas Shemu’el said, “He has no claim of overreaching against him.”

³⁰ See *Baba Metzia* 51a.

³¹ See text at note 16 above.

³² See *Baba Metzia* 56b. See also: *Hok L’Yisrael, Hire and Loan*, pp. 7, 94-95.

³³ Maimonides, *M.T., Mekhirah* 13:17; See also *Sh. Ar., Hoshen Mishpat* 227:35.

³⁴ Cf. the definition of “sale” employed in Section 1 of the Commodities and Services (Control) Law, 1957 and the definition employed in Section 1 of the Consumer Protection Law, 1981.

³⁵ *Baba Metzia* 51a.

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The law was decided in accordance with the opinion of Rav, though his opinion is construed restrictively:³⁶

If one says to another, "I will sell to you on condition that you have no claims of overreaching against me," the other nevertheless has claims of overreaching against him. This rule applies only in a sale where the buyer does not know the amount of the overcharge to which he should waive his right; and needless to say, this rule applies if one has said "on condition that there is no overreaching therein," since there is overreaching therein.

However, if the amount of the overcharge is known, then the aggrieved party has no claim for the difference because all stipulations made in monetary transactions are binding.

Thus, if the seller says to the buyer, "I know that this article which I sell you for two hundred *zuz* is worth one hundred only, but I sell it to you on condition that you have no claim of overreaching against me," then the buyer has no claim of overreaching. Similarly, if the buyer says to the seller, "I know this article that I buy from you for a *mina* is worth two hundred *zuz*, but I buy it on condition that you have no claim of overreaching against me," then the seller has no claim of overreaching.³⁷

³⁶ Maimonides, *M.T., Mekhirah* 13:3-4. See also *Sh. Ar., Hoshen Mishpat* 227:21.

³⁷ See Maimonides, *M.T., Mekhirah* 13:5; and *Sh. Ar., Hoshen Mishpat* 227:27, on a person whose business dealings are conducted in good faith. A discussion of this appears in *Resp. Galya Mesekhet* (by R. David, head of the rabbinic court of Novogradok), 1-4. See below, note 137.

Cf. *Resp. Havot Ya'ir* 163, who holds that merchants do not have the power to stipulate that they will excuse one another from the prohibitions of overreaching and improper competition (*hassagat gevul*).

Chapter Two

DEFECTIVE WEIGHTS AND MEASURES

1. THE PROHIBITION AND ITS SOURCE

In the introduction to the present study, we cited the biblical sources for the prohibition against using defective weights and measures.³⁸ Defective weights and measures are discussed by Maimonides in his Laws of Theft:³⁹

If one weighs with weights that are deficient by the standards agreed upon in his locality, or measures with

³⁸ See *Sifra*, Leviticus 19:35: “‘You shall do no unrighteousness in judgment’ – if this is referring to litigation, it is already stated. If so, why is it stated, ‘You shall do no unrighteousness in judgment, in length...’? To teach that one who measures out [merchandise] is considered a judge. For if one falsifies in measurement, he is called wicked, hated, loathsome, banned, and abominable. And he causes

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a measuring vessel deficient by the agreed standards, he violates a negative commandment, for Scripture states (Lev. 19:35), “You shall do no unrighteousness in judgment, in length, in weight, or in measure.”⁴⁰

Similarly in measurement of land, if one deceives another when measuring land, he violates a negative commandment, for when Scripture says, “You shall do no unrighteousness in judgment, in length,” *in length* refers to land measurement.⁴¹

five things: he defiles the land, desecrates the name of God, drives away the divine presence, brings war upon the Jewish people and causes them to be exiled from their land.” See also *Rut Rabbah* 1:2.

³⁹ Maimonides, *M.T., Genevah* 7:1. See also *Sh. Ar., Hoshen Mishpat* 231:1.

⁴⁰ Where one declares that the weight he is using is defective, and the other accepts it, does the prohibition apply?

See *Tosefta, Baba Batra* 5:8 (quoted according to the reading of Tzuckerman): “If one sells his fellow a *lagin* [= a vessel of a certain size] or half a *lagin* in quarters and eights, when [the purchaser] comes to finalize the account with [the vendor], he should not say to him: Fill up this measure for me; or: Forgo this *kortov* [= a small measure] in my favor. For the reliability of measures depends exclusively on what people accept, and the Almighty has put his stamp upon them.” *Magen Avraham* on the *Tosefta* comments: “The apparent inference is that even when [the consumer] accepts the use of defective measures, it is forbidden to use measures that are larger or smaller than the standard. And the reason may be that [the merchant] will subsequently cheat others, who will think that it is accepted custom in that place to use measures that are larger or smaller than the standard.” See also *Hasdei David* on the *Tosefta*, ad loc.: “Even if [the consumer] accepts it, [the merchant] violates a negative commandment, for the Bible specified, ‘Just balances... shall you have,’ and it is prohibited to keep a defective measure in one’s house, even if it is not used...” However, R. Avraham David of Buczacz, *Kesef haKodashim, Hoshen Mishpat* 231:3 raises the possibility that prior agreement or knowledge nullifies the prohibition.

⁴¹ Maimonides, *M.T., Genevah* 7:9. See also *Sh. Ar., Hoshen Mishpat* 231:16.

Defective Weights and Measures

2. POSSESSION OF DEFECTIVE WEIGHTS AND MEASURES

It is forbidden to keep a defective measuring device in one's possession, even if it is not being used:⁴²

Whoever keeps in his house⁴³ or in his shop a false measure or weight violates a negative commandment, for Scripture states (Deut. 25:13), "You shall not have in your bag diverse weights."

3. STANDARDIZATION OF WEIGHTS AND MEASURES

Standard weights and measures are not to be prescribed unless gradations are readily apparent.⁴⁴ Concerning this regulation, *Arukh haShulhan* writes:⁴⁵

The Sages established that measures should be so designed as to be recognizable at a glance, so there will be no mistakes and they will not be interchanged.

4. SEVERITY OF THE PROHIBITION

Maimonides codifies the penalty for false measure:⁴⁶

The punishment for unjust measures is more severe than

⁴² Maimonides, *M.T.*, *Genevah* 7:3. See also *Sh. Ar.*, *Hoshen Mishpat* 231:3. The source of this regulation is a statement made in the name of Rav, *Baba Batra* 89b. Cf. Rav's statement, *Ketubot* 19b, to the effect that it is forbidden to keep a promissory note that has already been paid and a deed of trust (*shetar amanah*) in one's house.

⁴³ R. Avraham David of Buczacz, *Kesef haKodashim* 231:3, holds that measures designated for home use only and which will never come into commercial use, may be kept in the home even if defective.

⁴⁴ See Maimonides, *M.T.*, *Genevah* 7:7; and *Sh. Ar.*, *Hoshen Mishpat* 231:4, 9; 227:18.

⁴⁵ *Arukh haShulhan*, *Hoshen Mishpat* 231:4. See also 231:9.

⁴⁶ Maimonides, *M.T.*, *Genevah* 7:12. See also *Sh. Ar.*, *Hoshen Mishpat* 231:19. See above, Introduction.

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the punishment for immorality, for the latter is a sin against God only, the former against one's fellow man.⁴⁷ If one denies the binding character of the commandment relating to measures, he denies in effect the Exodus from Egypt which was the basis of the commandments;⁴⁸ but if one acknowledges the commandment relating to measures, he thereby acknowledges the Exodus from Egypt, which rendered all the commandments possible.⁴⁹

⁴⁷ But see above, note 7.

⁴⁸ I.e., the declaration at the beginning of the Decalogue, Exodus 20:2.

⁴⁹ See below, Chapter 5, concerning supervision of weights and measures; and Section 3 in that chapter, on the authority of the residents of a town to make stipulations concerning weights and measures. See also below, Chapter 7, on sanctions. Cf. *Pekudat haMishkalot vehaMiddot*, no. 2, 1947 (*Official Gazette* no. 1563, of 15 March 1947); and Section 2(a) of the Consumer Protection Law, 1981, which lists "measurements, weight, shape, and components of any commodity," among the essential elements of a transaction, concerning which it is prohibited for the seller to perform any act likely to mislead the consumer.

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MISREPRESENTATION AND FRAUD

1. THE PROHIBITION

Jewish law takes a very strict approach to misrepresentation and fraud in commerce. In the *Tosefta*⁵⁰ we read: “There are seven types of thief. First and foremost among them is one who misrepresents.”

Maimonides writes:⁵¹

⁵⁰ *Tosefta, Baba Kama* 7:8. See also Saul Lieberman, *Tosefet Rishonim*, ad loc. The *Tosefta* quoted continues: “[Not only is one who misrepresents considered first and foremost,] he is also considered as though he would deceive God Himself if only he could.” In his *Menorat haMa'or*, R. Yitzhak Aboab (ed. Preese Horev – Katznellenbogen, p. 116), writes: “The punishment for misrepresentation is greater than for theft of property....”

⁵¹ Maimonides, *M.T., Mekhirah* 18:1. See also *Sh. Ar., Hoshen Mishpat* 228:6.

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It is forbidden to deceive people in buying and selling or to deceive them by creating a false impression.... If one knows that an article he is selling has a defect, he must inform the buyer about it.⁵² It is forbidden to deceive people even by words.^{53, 54}

⁵² Cf. Section 2(a) of the Consumer Protection Law, 1981, according to which, "A dealer shall do nothing – by act or omission... likely to mislead a consumer as to any matter material to a transaction." Cf. also Section 4: "A dealer shall disclose to the consumer – (1) any defect or qualitative inferiority or other feature known to him that materially diminishes the value of the commodity."

⁵³ Regarding the source of this prohibition, opinions are divided. One school holds the prohibition to be biblical (see *Hiddushei Ritba*, *Hullin* 94a; *Sefer Yere'im* 255 [124 in *Yere'im haShalem*]; *Kiryat Sefer* on Maimonides, *M.T.*, *Mekhirah* 18). The other school holds it to be rabbinic (see *Sefer Mitzvot Katan* 262; *Shulhan Arukh haRav miLiadi*, *Hoshen Mishpat*, *Hilkhot Ona'ah uGenevat Da'at* 12).

It is the opinion of Ritba, loc. cit., in the name of the *Tosafot*, that in misrepresenting, one violates Leviticus 19:11, "You shall not steal." This is the opinion of *Sefer Yere'im* as well. According to *Hiddushei Rashal* on *Tur Hoshen Mishpat* 227, it appears that the violation is of Leviticus 25:17, "And you shall not wrong one another; but you shall fear the Lord your God; for I am the Lord your God" (Rashal's opinion is also cited by *Sema*, *Hoshen Mishpat* 227:51).

See also *Sefer Hasidim* (ed. *Mekitzei Nirdamim*) 1431: "Why is misrepresentation forbidden? Because it is written in Psalms (15:2) concerning him who 'shall sojourn in Your tabernacle': '...and speaks truth in his heart.'" In *Makkot* 24a, we find concerning Psalms 15:2, "...and speaks truth in his heart": "Like R. Safra." Rashi, ad loc., s.v. *Rav Safra*, explains that the incident referred to is related in *She'iltot deRav Ahai* (36) as follows: R. Safra had an item to sell, and someone came before him when R. Safra was reciting *Shema* (part of the liturgy). The man offered a certain amount of money, but R. Safra, engaged in prayer, did not answer. Taking R. Safra's silence for a refusal, the man raised his bid. After completing the recitation of *Shema*, R. Safra told the buyer that he could have the item for the first price offered, since, had he not been engaged in prayer at the time of the first offer, he would have agreed to sell it for that price.

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The prohibition applies even where the purchaser suffers no economic loss as a result of the misrepresentation.^{55, 56}

See also *Bayit Hadash, Hoshen Mishpat* 228:6, ad fin.

Concerning overreaching, see *Tur Hoshen Mishpat* 227, ad init., “It is forbidden to overreach..., and violators are not flogged, since [the violation] is included under Leviticus 19:13, ‘...you shall not rob,’ and restitution is possible...” (at the beginning of Chapter 231, *Tur* also mentions defective weights and measures in the context of robbery). But see *Sema, Hoshen Mishpat* 231:1; see also *Perishah, Hoshen Mishpat* 228:5; *Mateh Shimon, Hoshen Mishpat* 227, *Hagahot haTur* 1; and *Hukkat Mishpat* (Rabinowitz-Te’omim), *Mekhira, Kuntres Aharon* 2.

⁵⁴ R. Shimon Sofer, *Hit'orerut Teshuvah* I:118, discusses whether the prohibition of misrepresentation is included among the Noahide commandments binding upon non-Jews and concludes that it is.

⁵⁵ See *Resp. Rivash* 403; *Levush Ir Shushan* 228:6; *Sema, Hoshen Mishpat* 228:7; *Bayit Hadash, Hoshen Mishpat* 228:7; *Divrei Hamudot on Piskei haRosh, Hullin* 7:80; *Knesset haGedolah, Hoshen Mishpat* 228, *Hagahot haTur* 21; *Shulhan Arukh haRav miLiadi, Hoshen Mishpat, Hilkhot Ona'ah uGenevat Da'at* 12; and *Arukh haShulhan, Hoshen Mishpat* 228:3.

⁵⁶ See Maimonides, *M.T., De'ot* 2:6 (quoted below, note 68). *Yad haMelekh*, ad loc., comments that it is the opinion of Rashi and Maimonides (as opposed to *Tur* and *Shulhan Arukh*) that the prohibition of misrepresentation is violated only when the other person does not discover the truth and remains with the false impression that was conveyed to him. If, however, the truth becomes known to him, there is no violation.

See Rabbenu Yonah Gerondi, *Sha'arei Teshuvah* 3:184. According to the commentary *Zeh haSha'ar*, ad loc., Rabbenu Yonah (and this is the opinion of Rashi and Maimonides as well) holds that the prohibition of misrepresentation is not violated unless the person conveying the false impression speaks. If there is no speech, it is the person who receives the false impression who is responsible for his own deception. According to the opinion of the *Tosafot*, *Rosh*, and *Shulhan Arukh*, however, one need not speak to violate the prohibition of misrepresentation.

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2. MODES OF MISREPRESENTATION

A number of prohibitions regarding commercial transactions have been established on the basis of the prohibition of misrepresentation:

A. Dressing-up Goods

Goods may not be dressed-up so as to mislead the customer to think they are better than they really are:⁵⁷

One should not dress up... an animal or old vessels so that they appear new;^{58, 59} but he may dress up new ones by polishing, ironing, or beautifying them all they require.⁶⁰

⁵⁷ Maimonides, *M.T., Mekhirah* 18:2. See also *Sh. Ar., Hoshen Mishpat* 228:9.

⁵⁸ According to *Shulhan Arukh*, *ibid.*, "It is forbidden to soak meat in water so that it will look whiter and thus fatter." *Sema*, *ad loc.*, 16, comments: "This applies only where this is not the custom; however, if it is the custom of the butchers to soak the meat so that it will appear whiter, it is permitted, for there is no misrepresentation here, since everyone knows that it is the way of the butchers to soak the meat." *Shulhan Arukh haRav miLiadi*, *loc. cit.*, 19, adds: "But one who is careful will refrain from this, for in any case there is a danger that the purchaser will think that the meat really is fatter."

⁵⁹ Cf. Section 6 of the legislative bill, *Hatza'at Hok Halikhot haMis'har*, 1972: "Designing the appearance or packaging of a commodity, or giving an outward appearance to a business so as to mislead, directly or indirectly, concerning the commercial description will be considered a misleading description." See also Section 6(a) of the Consumer Protection Law, 1981: "Where the misleading act is found in the design of the commodity or its packaging – on or in conjunction with the packaging – the producer, importer, packer, and designer shall also be regarded as infringing the provisions of section 2."

⁶⁰ According to *Shulhan Arukh haRav miLiadi, Hoshen Mishpat, Hilkhos Ona'ah uGenevat Da'at* 18, new goods "may be beautified in every way, even if their price rises more than the cost of the improvement, since there is no mistake or fraud here – one who pays a higher price

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It is permitted to remove waste from grain in order to make its appearance more pleasing, but it is forbidden to remove waste from the top and leave it at the bottom.⁶¹

B. Mixing Different Grades

It is forbidden to mix merchandise of higher quality with merchandise of lower quality and to sell the entire mixture as the former. If, however, the nature of the mixture is readily apparent, it is permitted, since there is no deception:⁶²

If the taste of each of the wines can be distinguished, it is permissible to mix them anywhere, because everything which can be distinguished will be detected by the purchaser and it is therefore permissible.

C. False Description

It is forbidden to attribute to an article a quality it does not possess:⁶³

on account of the enhanced appearance [of a new item] does so by his own consent.”

⁶¹ See Maimonides, *M.T., Mekhirah* 18:4: “It is permitted to sift crushed beans, but one must not sift the beans at the top of the bin only, because the purpose is to deceive the eye and make it seem as though all the beans in the bin have been sifted.” See also *Sh. Ar., Hoshen Mishpat* 228:17.

⁶² Maimonides, *ibid.*, 18:5. See also *Sh. Ar., Hoshen Mishpat* 228:1. But see *Shulhan Arukh*, *ibid.*, 14, with regard to mixing wine with water: “Where it is the custom that whoever purchases tastes it in advance, it is permitted to mix in all cases; but if not everyone tastes [before purchasing], it is not [permitted to mix].” In other words, even if the mixture may be readily detected by its taste, it is forbidden to mix unless it is customary to taste the wine before purchasing. See also R. Yisrael Matityahu Auerbach, *Alfei Yisrael (mahadurah tinyana)*, on *Shulhan Arukh*, ad loc., 11; and R. Yisrael Kohen Bishkovitz, *Kuntres Bat Ayin* 7, p. 82.

⁶³ Maimonides, *M.T., Mekhirah* 18:3. See also *Sh. Ar., Hoshen Mishpat* 228:6.

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One must not sell to a non-Jew meat of an animal not slaughtered according to ritual law under the impression that it is meat from an animal slaughtered according to ritual law, although to the non-Jew, the two are the same.⁶⁴

D. Concealment of Health Hazards by False Description

No product that is hazardous to health may be sold by concealing the hazard through false description. According to the Talmud:⁶⁵

A man should not sell his neighbor shoes made of the hide of an animal that died, [representing them] as made of the hide of a living animal which was slaughtered; there are two reasons: first, because he is deceiving him, and secondly, because of the danger.

Rashi explains:⁶⁶

A shoe made of the hide of an animal that died without being slaughtered: the hide is not as strong as that of an animal that was slaughtered.

And he explains the danger as follows:⁶⁷

The animal may have died of a snake bite, the venom of which was absorbed by the hide [with possible danger to whoever wears the shoes].^{68, 69}

⁶⁴ Cf. Section 2(a) of the Consumer Protection Law, 1981.

⁶⁵ *Hullin* 94a.

⁶⁶ Rashi ad loc., s.v. *Sandal*.

⁶⁷ Rashi ad loc., s.v. *haSakkanah*.

⁶⁸ See Maimonides, *De'ot* 2:6: "We must deceive no one, not even an idolater. A man, for example, must not sell an idolater meat from an animal that has died naturally, as if it were meat of an animal ritually slaughtered.... Even a single word of temptation or deception is forbidden. A person should always cherish truthful speech, an upright

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E. Changing Marks of Origin

Altering markings that indicate an item's place of origin⁷⁰ may also be included under the prohibition of misrepresentation:⁷¹

There are two types of deception. One is deception in the body of the merchandise, where it is sold as quality merchandise from a particular place, when in fact it is merchandise from somewhere else.⁷²

spirit, and a pure heart, free of all frowardness and perversity." See also *Sh. Ar., Hoshen Mishpat* 228:8.

⁶⁹ On one occasion, owing to the spread of disease in his locale, R. Eliahu Klatzkin, *Resp. Imrei Shefer* 63, prohibited the early slaughter of meat prior to the holiday of Rosh haShanah in order to ensure the freshness of meat. He concludes: "And we must protest against those butchers of whom it is suspected that in their love of profit trample the fundamentals of health and hygiene. And we are obliged to promulgate the directives of physicians, to be careful of cleanliness and purity, not to drink water that has not been boiled, eat raw fruit, or go out on an empty stomach."

⁷⁰ Section 2(a) of the Consumer Protection Law, 1981 establishes that a dealer shall do nothing likely to mislead a consumer regarding any matter material to a transaction and lists (subsections 6-8) among such matters: the identity of the producer or the performer of the service, the name or commercial appellation of the commodity or service, and the place of production of the commodity.

⁷¹ *Arukh haShulhan, Hoshen Mishpat* 227:1.

⁷² And further on: "Or if it is slightly damaged and this is not apparent to the purchaser, or if one sells an item as new when in fact it is old.... This type of fraud is forbidden even when there is no overreaching in the price, and this applies with even greater force when there is overreaching in the price."

Chapter Four

PROFITEERING BY HOARDING AND WITHHOLDING SALE

1. HOARDING ESSENTIAL ITEMS

A. The Prohibition

In order to prevent drastic rises in the price of essential items, it was forbidden to hoard them:⁷³

Fruit [and] other items that are life's necessities, such as wines, oils, and the various kinds of flour, must not be hoarded;⁷⁴ but spices, cumin, and pepper may be hoarded.

⁷³ *Baba Batra* 90b.

⁷⁴ See *Dikdukei Soferim*, ad loc.; and *She'iltot deRav Ahai Gaon*, 32, on

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As mentioned,⁷⁵ Amos 8:4-7 was interpreted as referring to those who hoard fruit.

B. Hoarding One's Own Produce

On the other hand, the prohibition against hoarding applied only to commodities purchased in the market place, whereas it was permitted to hoard one's own produce.⁷⁶ In this connection, Maimonides rules:⁷⁷

It is forbidden to hoard produce that comprises necessities of life in the Land of Israel⁷⁸ as well as in all places where Jews are in the majority....

This prohibition applies only to one who buys from the market. It does not apply to one who stores what he has raised;⁷⁹ one is permitted to store his own....

the reading "otzeri," beginning with the Hebrew letter *ayin* rather than *alef*. Could it be that "ein otzerin" (with an *ayin*) means that it is forbidden to refrain from selling? See also Section 2 of the present chapter.

⁷⁵ See Introduction.

⁷⁶ *Baba Batra* 90b.

⁷⁷ Maimonides, *M.T.*, *Mekhirah* 14:5. See also *Sh. Ar.*, *Hoshen Mishpat* 231:24.

⁷⁸ This is the reading of *Tosefta*, *Avodah Zarah* 4 (5):1; *Baba Batra*, MS. Hamburg, loc. cit. (above, note 76); Rif and *Yad Ramah* on *Baba Batra*, loc. cit. This was apparently the reading of *Maggid Mishneh*, *Hilkhot Mekhirah* 14:2 as well.

⁷⁹ Maimonides employs the language of the Talmud, *Baba Batra*, loc. cit. The phrase, *oseh adam et kabo otzar* – one is permitted to store his own – is explained by Rashbam on *Baba Batra*, ad loc.: "What he gathers from his own fields..., that is to say, the small quantity that God grants him. The only prohibition is against buying in the marketplace for the purpose of hoarding. For one's own family's needs, however, he may purchase what he does not have in his own fields." In *Sefer haMikkah vahaMinkar* 60, we find: "But of one's own produce, one may even gather [enough] for ten years." *Beit haBehirah*, *Baba Batra*, ad loc., comments: "One is permitted to store as much as he

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This applies only to fruits that are necessities of life; but spices such as cumin and pepper may be stored in the Land of Israel and taken from place to place just like other spices.⁸⁰

wishes of what he gathers of his own produce, for this does not drive up prices." From here it appears that if by storing one's own produce rather than selling it prices are driven up, storage of one's own produce will also be prohibited.

⁸⁰ It is prohibited to export necessities from the Land of Israel: "One must not take out of the Land of Israel fruit [and] things which are life's necessities, such as wines, oils, and various kinds of flour. R. Yehudah ben Betira permits it in [the case of] wine, since [by doing so], one diminishes levity. And just as it is not permitted to take out of the Land of Israel into a foreign country, so it is not permitted to take out of the Land of Israel to Syria. And Rabbi permits this from one province to another" (*Baba Batra* 90b; see also Maimonides, *M.T., Mekhirah* 14:8; *Sh. Ar., Hoshen Mishpat* 231:26).

The source of this regulation is the *Tosefta, Avodah Zarah* 4 (5):2: "One must not carry out to Syria things which are life's necessities, such as wines, oils, and various kinds of flour. Rabbi says, 'I say that one may take wine to Syria, since [by doing so], one diminishes levity.' Just as it is not permitted to take [such goods] to Syria, so it is not permitted to take them from one province to another. R. Yehudah permits [taking such goods] from one province to another."

See Gedalliah Allon, *The Jews in Their Land in the Talmudic Age* (Jerusalem, 1980): "It is incorrect to say that the country did not produce enough oil for export.... The conclusion is based on a misunderstanding of the rule quoted in *Tosefta, Avodah Zarah* 4:2.... It is fairly certain that the rule stems from a time of abnormal scarcity, most probably the period following the Bar Kokhba Rebellion, when the country was badly depleted. Cf. *TJ Pe'ah* 7:1 (20a)...." See also Allon's remarks on "from one province to another," *ibid.*, pp. 145-146.

Does the prohibition against export of necessities apply outside the Land of Israel where Jews constitute a majority of the population? *Sema, Hoshen Mishpat* 231:44, discusses this question without rendering a decision. The author of *Resp. Maharshakh* II:27, p. 17, holds

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C. Hoarding for Personal Use

“One is permitted to purchase for his own household if he has no produce from his own fields.”⁸¹

D. In a Year of Drought

In a year of drought,⁸² it is forbidden to hoard even one's own produce. It is permitted to store no more than is sufficient for household use. In *Baba Batra*, we find:⁸³

In the years of drought, one must not hoard even a *kav* [=a unit of measure] of carobs, because he thereby brings a curse upon the market prices.

The *Tur* rules:⁸⁴

Every person may store that which he grows, and in a

that the prohibition does not apply outside the Land of Israel, and that outside the Land of Israel there is no prohibition against exporting from one province to another.

See R. Shimon Sofer, rabbi of Erlau (Eger, Hungary), *Hit'orerut Teshuvah* II:22: “On whether it is permitted to establish beehives in the Land of Israel in order to produce large quantities of honey for export in order to support those living in the Land of Israel.” See also *ibid.*, III:40, concerning “One who lives outside the Land of Israel and owns a field in the Land of Israel, if the produce belongs to him – whether it is permitted to take it from the Land of Israel, at least, what he requires for his own needs.”

⁸¹ Rashbam, *Baba Batra* 90b, s.v. *Et kabo*. See *Arukh haShulhan, Hoshen Mishpat* 231:24; *Ha'amek She'elah* on *She'iltot deRav Ahai* 32:7. *Shulhan Arukh haRav miLiadi, Hoshen Mishpat, Hilkhot Middot uMishkalot veHafka'at She'arim* 18, permits purchase of no more than a one-year supply for one's own household (see *Kuntres Aharon*, ad loc., 2).

⁸² Cf. Section 2 of the Commodities and Services (Control) Law, 1957, according to which the statute applies only when a state of emergency exists.

⁸³ *Baba Batra* 90b.

⁸⁴ *Tur Hoshen Mishpat* 231:29.

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year of drought, one may store no more than is needed for his own household.⁸⁵

E. Storage for Sale at the Lowest Rate

In the tractate *Baba Batra*, after the *baraita*'s remarks concerning the seriousness of hoarding produce,⁸⁶ the Talmud asks⁸⁷ who may be considered a hoarder of fruit. R. Yohanan answers: "a person such as Shabbetai the fruit hoarder."⁸⁸ The talmudic discussion then goes on to describe the practices of the Sage Shemu'el and his father.⁸⁹ Shemu'el, it seems, hoarded produce in order to sell it cheaply when prices were high. Shemu'el's father, however, sold all his produce when prices were low, and the Talmud comments that the father's action was superior to

⁸⁵ In *Sh. Ar., Hoshen Mishpat* 231:24, we find: "In a year of drought, one may not store more than his family needs for the year." According to the comment of Rashbam, *Baba Batra* 90b, s.v. *veLo yakhnis mishelo*, the authorization to store one's own produce is limited to a one year supply.

Ha'amek She'elah, loc. cit. (above, note 81), 4, notes that it may be inferred from *Shulhan Arukh* that the prohibition of storing produce during a year of drought applies only to necessities, whereas according to *She'iltot deRav Ahai*, prohibition applies to all items. The author of *Ha'amek She'elah* asserts that the opinion of Maimonides is close to that of Rav Ahai.

⁸⁶ See text at note 4 above.

⁸⁷ *Baba Batra* 90b.

⁸⁸ See below.

⁸⁹ On Shemu'el's involvement in consumer protection, cf. Shemu'el's regulation cited below, Chapter 5, Section 4, concerning restriction of profits and the measures taken by Shemu'el against those who sold pots and those who sold myrtle. Concerning the incident where Shemu'el quotes the regulation that market officers are not appointed to supervise prices (*Baba Batra* 89a; see below), cf. *TJ Baba Batra* 5:5, 15a, that attributes the same incident to Rav. *Hullin* 94a states

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the son's, because once a low market price is reached the price remains low, whereas if the price rises as a consequence of the hoarding, it rarely comes down again.⁹⁰

Rashbam⁹¹ explains that Shemu'el hoarded his own produce, and did not purchase produce for hoarding when the price was low. Had he done so, the price would have risen, defeating his aim of bringing prices down. Concerning Shabbetai the fruit hoarder, however, Rashbam⁹² explains that he was one who hoarded fruit "in order to sell to the poor at a high price; however, hoarding fruit when it is cheap in order to sell to the poor cheaply when the price is high is permitted, although it may temporarily cause an increase in price."

R. Menahem haMe'iri⁹³ summarizes the talmudic discussion:⁹⁴

If it is his intention to spare them the price increase, that is to say, he hoards with the intention that when the price rises, he will sell to them at the lower price, so they will see and learn from him – it is permitted. Nevertheless, the best policy is simply to sell one's produce immediately at the early [i.e., low] price, because when sales begin, the price is low due to the large number of sellers, and one earns whatever he earns. All this applies only to one who purchases produce in the mar-

that according to Shemu'el, it is forbidden to deceive others (see above, Chapter 3).

⁹⁰ "Word was sent from there [the Land of Israel]: 'The father's [action] is superior to the son's.' What is the reason? Prices that have become lower remain so."

⁹¹ Rashbam, *Baba Batra*, ad loc., s.v. *Shemu'el*.

⁹² Rashbam, *ibid.*, s.v. *Kegon Shabbetai*.

⁹³ R. Menahem haMe'iri was born in 1249 and died in 1315.

⁹⁴ *Beit haBehirah*, *Baba Batra*, ad loc., s.v. *Asur le'adam*.

Profiteering

ketplace. One who gathers his own produce, however, is permitted to store it for as long as he wishes, for this does not constitute profiteering.

The qualification that the prohibition applies only to a person who hoards for the purpose of selling at a high price is not codified into law by Maimonides or *Shulhan Arukh*.⁹⁵ Netziv of Volozhin⁹⁶ explains that even though the prophet Amos refers to hoarding for the purpose of selling at a high price, the prohibition was expanded to any hoarding, since this causes harm to the poor.⁹⁷

2. WITHHOLDING SALE

It is forbidden⁹⁸ for a merchant to delay and refrain from selling⁹⁹ what he has¹⁰⁰ for this may cause prices to rise. Nor should he delay his entry into the marketplace.¹⁰¹

⁹⁵ *Shulhan Arukh haRav miLiadi, Hoshen Mishpat, Hilkhoh Middot uMishkalot veHafka'at Sha'arim*, 18, however, rules that "it is forbidden to purchase... in order to sell later when prices are high."

⁹⁶ *Ha'amek She'elah*, loc. cit. (above, note 81), 3.

⁹⁷ Cf. Section 7 of the Commodities and Services (Control) Law, 1957, which authorizes the minister "to order the acquisition of controlled commodities if he is of the opinion that it is necessary to do so in order to prevent hoarding...."

⁹⁸ R. Hai Gaon, *Sefer haMikkah vechaMimkar* 60.

⁹⁹ On compelling a person to perform an essential service, see Tosefta, Baba Metzia 11:27: "If a person is a bath attendant for the community, or a barber for the community, or a baker for the community, and he is the only member of his profession there, and the time of the festival comes, and he wants to go to his home – [the other residents] have the power to restrain him, until another takes his place. But if he made a stipulation in the court with them, or if in the past they have wronged him, he has the right to do as he wishes." See Ze'ev Falk, "Ke'en Dinei Mis'har baHalakhah," *Dinei Yisrael* 1 (1970), 53; and Zerah Warhaftig, "Bitzu'a Hozim baAyin – baMishpat hafvri

Chapter Four

A qualification of the prohibition against refraining from selling may be inferred from the *She'iltot* of Rav Ahai Gaon:¹⁰²

Jews are forbidden to hoard fruit.... Rather, when there is a profit of one sixth, one must sell, as Shemu'el said, "One who profits may not profit more than a sixth."

In other words, the obligation to sell applies only when it is possible to earn the permitted profit.¹⁰³

3. CREATING PANIC

It is forbidden¹⁰⁴ to frighten people by saying "Grain is scarce in the world."

vehaYisre'eli," *Sinai* 44 (1959), 144. S. Warhaftig, *Dinei Avodah baMishpat halvri* (Tel Aviv, 1969), 129-130, considers the Tosefta just quoted as a source for compelling compliance with a labor contract, but this assertion is doubtful. Cf. Section 12 of the Commodities and Services (Control) Law, 1957.

¹⁰⁰ See above, note 74.

¹⁰¹ Is a seller permitted to refuse to sell an item designated for sale and declare, "To this person I wish to sell, but to this person I do not wish to sell"; or may he be compelled to sell? This question is discussed by R. Ya'akov Alfandari, *Resp. Mutzal meEsh*, pt. 2 (an appendix to *Resp. Rav Yosef*, by R. Yosef Katzbi), 39; it is also discussed by R. Eliahu Yisrael, *Resp. Kol Eliahu* II:19; and by R. Yosef Alkalai, *Amar Yosef* (Salonika, 1831), "Kuntres Leket Yosef," p. 105, s.v. *Nistapek*. See also R. Hayyim Palache, (1788-1869), rabbi of Izmir, *Ginzei Hayyim, ma'arekhet mem*, 27. See below, note 135.

¹⁰² *She'iltot deRav Ahai* 32.

¹⁰³ Cf. Section 22 of Commodities and Services (Control) Law, 5718-1957, *LSI*, vol. 12, pp. 24-40: "A person shall not unreasonably refuse to sell any controlled commodity which he has in stock at the price displayed as provided in section 21"; and Section 3 of the legislative bill, *Hatza'at Hok Halikhot haMis'har*, 1972.

¹⁰⁴ *Sefer haMikkah vahaMimkar*, loc. cit.

Chapter Five

PRICE CONTROL AND CONSUMER BOYCOTTS

1. PRICE CONTROL

In the Talmud, we find varying opinions on whether it is desirable to impose price controls.¹⁰⁵ While the *baraita* that treats the subject establishes that “market officers¹⁰⁶ are appointed to [supervise] measures, but no such officers are appointed for [supervising] prices,”¹⁰⁷ it is followed by the

¹⁰⁵ See *Baba Batra* 89a.

¹⁰⁶ On the institution of “market officers” (*agardemin*), See Saul Lieberman, “Roman Legal Institutions in Early Rabbinics and in the *Acta Martyrum*,” *JQR* 35 (1944-45) 37, 52; D. Sperber, “leGilgulo Shel ‘Heshbon,”” *Tarbiz* 39 (1970) 96; and H.Z. Dimitrovsky, “He’arot Al LeGilgulo Shel Heshbon,” *ibid.*, 317 (in the name of Prof. S. Lieberman).

¹⁰⁷ The *Tosefta*, *Baba Metzia* 6:14 records the custom in Jerusalem:

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opinion that “market officers are appointed to [supervise] both measures and prices. on account of deceivers.”

In Babylonia, the question of price controls was subject to a disagreement between the Exilarch and the Sages. The Babylonian Talmud¹⁰⁸ tells that the Exilarch appointed market officers to supervise prices as well as measures. The Jerusalem Talmud¹⁰⁹ relates that the Amora, Rav, was appointed as market officer by the Exilarch and that since he administered punishment for infractions concerning weights and measures but not for infractions of price controls, the Exilarch had him imprisoned.¹¹⁰

An explanation of the opinion that market officers are not appointed to supervise prices may be found in the commentary of Rashbam:¹¹¹

Market officers are not appointed to supervise prices and prevent merchants from selling high: it is logical that this is not necessary, for if one wants to sell at a high price, another who needs money will sell more cheaply, all the buyers will go to him, and the first will be forced to sell cheaply.

According to Rashbam's explanation, this opinion holds that there is no need to interfere with the forces of the free market.

“There was a market officer in Jerusalem, and they [sic] did not supervise prices but rather measures only.”

¹⁰⁸ *Baba Batra* 99a.

¹⁰⁹ *TJ Baba Batra* 5:5, 15a.

¹¹⁰ See M. Beer, *Rashut haGolah beBavel biYmei haMishnah veHaTalmud* (1970), 129ff. Menahem Elon, “haMa’asar baMishpat halvri.” *Sefer Yovel lePinhas Rosen* (Jerusalem, 1962), p. 176, nt. 5, sees this as an instance of administrative detention, contrary to the view of Gedalliah Allon, *Mehkarim beToledot Yisrael*, vol. 2, p. 289, n. 7.

¹¹¹ Rashbam, *Baba Batra*. ad loc. s.v. *veEin Ma’amidin*.

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Concerning the opinion that market officers to supervise prices are needed because of the existence of deceivers, Rashbam offers several explanations:¹¹²

On account of deceivers who wait until one sells his merchandise cheaply, and then they sell high.

On account of deceivers who sell high, declaring they have added to the quantity, or those who place the better quality wheat on top and wheat of poorer quality on the bottom, or various other kinds of deception.¹¹³

The law as codified¹¹⁴ is that prices must be supervised, and¹¹⁵

if anyone raises market prices or hoards fruit in the Land of Israel or anywhere that Jews are in the majority, it is equivalent to his lending money for interest [which is strictly forbidden].¹¹⁶

¹¹² Ibid., s.v. *Mipenei harama'im*.

¹¹³ Further on, Rashbam comments: "And we find in *Yoma* 9a that they appointed market supervisors [*parhedrin*] who would strike shop owners and tell them to sell at low prices."

¹¹⁴ See Maimonides, *M.T., Mekhirah* 14:1 (see text at note 182 below); and *Sh. Ar., Hoshen Mishpat* 231:20, where this regulation is recorded together with the restriction of profit (see below, Section 4): "The court is obliged to appoint officials to supervise prices, so that [sellers] will not profit as much as they wish. For one is not permitted to profit more than one sixth on necessities."

The author of *Resp. Galya Masekhet* 4:3 explains: "Concerning food that a person must purchase to sustain himself, his agreement [to a high price] is not complete, since he is to some extent under duress."

Cf. Section 12(a)(1) of *Hok Piku'ah Al Mehrei Mitzrakhim veSherutim*, 5756-1996, *Sefer haHukim* 5756, p. 192 ff.: "The ministers may prescribe by order a price or a maximum price for a controlled commodity or service."

¹¹⁵ Maimonides, *M.T., Mekhirah* 14:7. See also *Sh. Ar., Hoshen Mishpat* 231:25.

¹¹⁶ *Sema*, ad loc., 43, comments: "Meaning that he violates the verse

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2. SUPERVISION OF PRICE LOWERING

In the tractate *Baba Metzia*, in the context of overreaching and misrepresentation, we find the following disagreement between R. Judah and the Sages concerning sale at less than the market rate:¹¹⁷

R. Judah said: "A shopkeeper must not distribute parched corn or nuts to children, because he thereby accustoms them to come to him"; the Sages permit it. "Nor may he sell below the market price"; but the Sages say: he is to be remembered favorably.¹¹⁸

The law was decided according to the opinion of the Sages both as regards distribution of parched corn and nuts and as regards selling below the market price.¹¹⁹

A shopkeeper is permitted to distribute parched corn or nuts to children... in order to accustom them to come to him; and he may sell below the market price in order to increase the number of his customers, and the merchants of the market cannot prevent him, for this is not considered deception.¹²⁰

Nevertheless, the law permitting sale below the market

(Leviticus 25:36), 'that your brother may live with you' [which opens with the prohibition of taking interest]."

¹¹⁷ Mishnah, *Baba Metzia* 4:12.

¹¹⁸ On the opinion of the Sages, the Talmud (*Baba Metzia* 60a) comments: "What is the Sages' reason [for holding that one who reduces the price is to be remembered favorably]? Because he eases the market." Rashi, ad loc., explains that hoarders will see that prices are low and will feel compelled to sell low.

¹¹⁹ Maimonides. *M.T., Mekhirah* 18:4. See also *Sh. Ar., Hoshen Mishpat* 228:18; and *Resp. Lehem Rav* 216.

¹²⁰ See Ramah's opinion, below, note 124, concerning why reduction of prices might be considered deception.

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price was restricted in a number of ways.¹²¹ The author of *Arukh haShulhan* restricts this regulation to situations in which sale below the market value will not affect competition adversely:¹²²

It seems to me that this applies only to grain, where if one sells cheaply all others will sell cheaply, thus, the owners of large supplies will sell cheaply (Rashi).¹²³ But drastically lowering the price of merchandise is completely forbidden, for this destroys commerce and causes loss to others (as demonstrated in the *Baba Batra* 91a); and I found that an important authority has written this.... It is permitted to do only what others are also capable of doing.^{124, 125}

¹²¹ See, for example, *Resp. Panim Me'iroi* I:78; and *Erekh Shai* on *Hoshen Mishpat* 156:5. See also discussion of *Panim Me'iroi's* view in *Resp. Havalim baNe'imim* II:113.

¹²² *Arukh haShulhan*, *Hoshen Mishpat* 228:14. See also *ibid.*, 156:11; 227:7; and 231:20.

¹²³ See above, note 118, and Rashi's comments cited there. However, R. Shalom Taubes, *Resp. She'elat Shalom (mahadura kama)* 13, basing himself on Rashi and the Talmud, shows that the Sages' main reason is not "because he eases the market," and that even where this reason does not apply, the Sages will yet permit selling below the market price. The reason, "because he eases the market," according to R. Taubes, pertains only to the Sages' declaration, "he is to be remembered favorably." Nevertheless, R. Taubes agrees that where prices are reduced in such a way that damage to others is certain, such as where one merchant is taxed, and his competitor can reduce his prices because he is not, the reduction of price is considered improper competition (*hassagat gevul*) and is forbidden.

¹²⁴ On the question of whether market officers are appointed to supervise prices, R. Me'ir haLevi Abulafia, *Yad Ramah, Baba Batra* 91a, explains that all agree that market officers are appointed to protect against the raising of prices and that the disagreement concerns whether market officers also prevent merchants from selling under the established market price. This, R. Abulafia explains, is clear from the wording of the Talmud's statement that market officers are ap-

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3. ESTABLISHMENT OF MINIMUM PRICES BY ASSOCIATIONS OF MANUFACTURERS AND SUPPLIERS OF SERVICES (CARTELS)

The legality of the establishment of minimum prices by associations of manufacturers and suppliers of services is also discussed in Jewish law. A detailed discussion of the authority of various bodies to enact regulations is beyond the scope of the present study. Here we confine ourselves to two main points: (1) Jewish law recognizes the possibility of price setting by associations of manufacturers and suppliers of merchandise and services; (2) such price fixing

pointed “to [supervise] both measures and prices, on account of deceivers.” If this opinion concerned only raising of prices it would have stated that market officers are appointed to supervise prices “on account of those who raise prices.” Since it states that market supervisors are appointed “on account of deceivers,” it includes within the market supervisors’ jurisdiction those who, by selling at lower prices, accustom the public to buy from them, while they cheat purchasers in weight or measurement or by including produce of lower quality, more than offsetting the amount by which they lower the price. Concerning the appointment of market officers to prevent the raising of prices, however, it is clear from the talmudic discussion in *Yoma*, according to which market supervisors (*parhedrin*) “would strike shop owners and tell them to sell at low prices,” that market officers prevent the raising of prices.

R. Abulafia rules in accordance with the opinion that market officers are not appointed to prevent the lowering of prices, since this would cause a loss to customers. He bases this finding on the ruling that the law is decided in accordance with the opinion of the Sages – that one who lowers prices is “remembered favorably.”

¹²⁵ Cf. Section 3 of the legislative bill, *Hatza’at Hok Halikhot haMis’har*, 1972: “And these acts are contrary to honest commercial practices: ...(7) any act which constitutes unfair competition or defrauding the public.”

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must be approved by communal authority. In *Tosefta, Baba Metzia*, we find:¹²⁶

The townspeople may compel each other to build a synagogue and to purchase a Torah scroll and the books of the Prophets. And the townspeople may stipulate prices, measures, and the wages of workers. They are permitted to impose penalties.

Here the *Tosefta* teaches that the residents of a town may not only make stipulations among themselves but enforce them as well.

Although the passage discusses the residents of a town,¹²⁷ it is cited in *Baba Batra* in connection with an agreement among artisans:¹²⁸

There were butchers who made an agreement with one another that if one of them slaughtered an animal on another's day, the skin of his slaughtered animal should be torn up. One of them actually did slaughter on another's day, and the others went and tore up his slaughtered animal's skin. Those who did so were summoned before Rava, and he condemned them to make restitution. R. Yemar ben Shelemiah thereupon called Rava's attention to [the passage of the *Tosefta* that says] that the townspeople may impose penalties for breach of their regulations. Rava did not deign to answer him. Said R. Papa, "Rava was quite right not to answer him; this regulation holds good only where there is no distinguished man in the town, but where there is a distin-

¹²⁶ *Tosefta, Baba Metzia* 11:23. See also Ze'ev Falk, "Ke'en Dinei Mis'har baHalakhah," *Dinei Yisrael* 1 (1970), 53.

¹²⁷ Rashi, *Baba Batra* 8b, s.v. *veAl haShe'arim*, interprets this passage of the *Tosefta* as dealing with price ceilings: "The price of wheat and wine – that they not be sold this year for more than such and such an amount."

¹²⁸ *Baba Batra* 9a.

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gished man, they certainly have not the power to make such stipulations without his approval.”

The requirement that such agreements be approved by a “distinguished man” is explained in several sources as based upon the need to protect customers against increases in price.¹²⁹

A far-reaching opinion on consumer protection can be found in the writings of R. Menahem haMe’iri. HaMe’iri holds that artisans do not have the authority to stipulate prices even with the approval of a distinguished man, since such practices cause a loss to the townspeople.¹³⁰

It appears to me that the members of a particular trade are not permitted to set prices for their work without permission of the townspeople, since the townspeople would otherwise be forced to take an unfair loss.¹³¹

¹²⁹ See *Hiddushei Ramban: Hiddushei Ritba*; and Ran on *Baba Batra* 9a. Nahmanides asserts that such agreements require approval of a distinguished man even if it is clear at the time they are made that they cause no loss. It is not clear, however, whether according to Nahmanides a distinguished man has the authority to approve an agreement that will cause a loss to the townspeople. See the comments of R. Menahem haMe’iri cited below. See also *Yedei David* (Karaso; Salonika. 1867) 72.

¹³⁰ *Beit haBehirah. Baba Batra* 9a. See also the comment of the editor, Avraham Sofer, p. 59, nt. 3. Nevertheless, from R. haMe’iri’s wording, it appears that his opinion is far reaching, as we have written. See above, note 129. ad fin.

¹³¹ Various approaches to the present topic may be found in the following sources. R. Yosef ben Lev (1500-1580), in his responsa, I:115, s.v. *uKevav hashavti*, ad fin., asks: “Why should members of a particular trade be permitted to pass their own enactment where there is no distinguished man? Is there not a danger they will make an enactment for their own advantage and benefit and by their agreement cause damage to the townspeople?” He concludes that the matter “requires further study.”

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Who is the “distinguished person” with authority to approve agreements? There are a number of opinions. There are those who define “distinguished person” as the head of the community. Others hold that the distinguished person is the distinguished scholar of the town. A third opinion holds that the distinguished person must be both – a distinguished scholar and the head of the community.¹³²

R. Avraham di Boton (1545-1588), on the other hand, does not share R. Yosef ben Lev’s doubts. In his responsa, *Lehem Rav* 216, R. Avraham Di Boton quotes the opinion of R. Yosef ben Lev and comments: “Why should they not have the power to do this? Are they slaves that they cannot rule over themselves to enact that which suits them where this obligates no one else?”

Cf. *Resp. Mabit* I:237. Mabit points out that the townspeople can respond to an agreement among tradesmen by organizing a consumer boycott (see below, Section 5). Referring to R. Yosef ben Lev, Mabit comments: “Concerning the point which he asserted requires further study..., we can say that since the enactment binds only [the tradesmen], and since they cannot compel others to observe it, if it brings damage to the townspeople, they too can pass an enactment not to buy from them, or they can bring other tradesmen.”

¹³² A description of the distinguished person as the head of the community is cited in the name of R. Yosef ibn Migash by Ran and *Hiddushei Rashba* on *Baba Batra* 9a, and by *Maggid Mishneh*, *Mekhirah* 14:11. See also *Nimmukei Yosef* on Rif, *Baba Batra* 9a (not as in Menahem Elon, “leMabutan shel Takkanot haKahal baMishpat haIvri,” *Mehkerei Mishpat leZekher Avraham Rosenthal* [Jerusalem, 1964], 39, n. 111). However, in *Resp. Rashba* V:125 and in *Shitah Mekubetzet*, *Baba Batra* 9a, R. Yosef ibn Migash is cited as holding that the distinguished person must be both a scholar and head of the community (but see *Shitah Mekubetzet*, *Baba Batra* 8b, s.v. *veKhen nidvat*). See also *Beit haBehirah*, *Baba Batra* 9a. In several responsa of Rashba, the distinguished person is described as the most distinguished scholar of the town (See *Resp. Rashba* IV:185; and see Menahem Elon, op. cit., 38, n. 110). In *Yad Ramah*, on *Baba Batra* 9a, 103, we find: “This distinguished person must be a scholar and head of the community.... But a head of the community who is not a

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The requirement that agreements among artisans be approved is codified by Maimonides:¹³³

Artisans may make an agreement among themselves that one should not work on the day the other does, or the like, and that they will impose such-and-such a penalty upon him who violates the agreement. This rule applies only in a place where there is no distinguished sage to set the affairs of the locality in order and to make the life of its inhabitants prosper. However, if there is a distinguished sage there, the agreement of the residents is of no effect; nor may anyone inflict a penalty upon or cause a loss to him who does not accept the agreement unless he consented to the agreement and it was made with the approval of the sage. Hence, whoever has caused a loss based upon an agreement made without the approval of the sage – must pay for the loss he caused.^{134, 135}

scholar or a scholar who is not head of the community, although they make their stipulation without his approval, the stipulation is valid.”

¹³³ Maimonides, *M.T., Mekhirah* 14:10-11.

¹³⁴ *Sh. Ar., Hoshen Mishpat* 231:28, rules: “Artisans are permitted to pass enactments concerning their trade, such as deciding among themselves that one will not work on the day that the other one works, and so forth, and that whoever violates the stipulation, will be punished in such and such a manner (Rema: And this authorization for artisans to pass enactments among themselves, refers to all of them together, but two or three by themselves may not). Where does this apply? In a country where there is no important scholar who is head of the community. But if there is such a person, their stipulation or that of all the townspeople is of no effect, and they cannot punish or penalize one who did not uphold the stipulation unless it is undertaken with the consent of the scholar (Rema: However, if there is no loss to others, they can enact anything they wish among themselves).”

Cf. Sections 19(b), 25, and 31 of The Restrictive Trade Practices Law, 1959, concerning cartels and monopolies.

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4. RESTRICTION OF PROFITS

The regulation restricting profits was established by Shemu'el:¹³⁶ "Shemu'el said..., One who profits may not profit more than one sixth."^{137, 138} Rashbam explains:¹³⁹ "It

¹³⁵ An association of manufacturers may not only cause losses to consumers; such an association may cause losses to competing manufacturers as well. Such a question is discussed by R. Hayyim Palache in his *Ru'ah Hayyim, Hoshen Mishpat* 231:2. The case is one of a person previously employed by another who wishes to become an independent manufacturer of that which his former employer produces. The other manufacturers, however, refuse to allocate him the raw material they purchase cooperatively. Since the aspiring manufacturer is unable to purchase the entire amount for himself and therefore he has no choice but to purchase cooperatively, he is effectively restrained from entering the field. R. Hayyim Palache believes that in strict law, the other manufacturers cannot be compelled to include him in their division of raw material. "However," he writes, "on the basis of Deuteronomy 6:18, 'And you shall do that which is right and good in the sight of the Lord'; the principle that where one benefits and the other suffers no loss, we compel the potential benefactor; and Leviticus 25:36, '...that your brother may live with you'; it is proper to compel them [to allocate a share to the newcomer]. And life is like a wheel that turns [one who is up today is down tomorrow], and 'Let not the rich man glory in his riches' (Jeremiah 9:22)." See above, note 101.

¹³⁶ *Baba Batra* 90a.

¹³⁷ There exists another reading of this passage: "...profits on sales must not be less than one sixth." See *Baba Batra* (ed. Shraga Abramson), alternate readings for folio 90b, line 941, and additional comments on p. 210. See comments of *Sefer haHinnukh*, above, note 28; and above, note 37.

¹³⁸ I.e., one sixth of the final sum (*milbar*), which is one fifth of the seller's cost (*milgev*). So, for instance, if an article cost the seller thirty, he may sell it for thirty six. His profit, six, is one sixth of the selling price and one fifth of his cost (See *Shulhan Arukh haRav miLiadi, Hoshen Mishpat, Hilkhoh Middot uMishkalot veHafka'at Sha'arim* 17).

¹³⁹ Rashbam, *Baba Batra*, ad loc., s.v. *vehaMistaker*.

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is an enactment of the Sages that no one profit more than this.”

Maimonides rules accordingly:¹⁴⁰

We have already explained that he who does business on trust and says, “My profit is such and such an amount,” is not subject to the law of overreaching, and even if he says, “I bought this article for a *sela* and am selling it to you for ten,” it is legitimate. The courts are obligated, however, to fix market prices and put officers in charge thereof, to the end that each merchant should not make all the profit he desires; indeed, the courts of law should fix a sixth as his profit and the seller should thus not profit more than a sixth.

This regulation, however, was restricted to necessities:¹⁴¹

This rule applies only to articles that are necessities of life, such as wines, oils, and various kinds of flour.¹⁴² However, for spices such as costus root, frankincense, and the like, no market price is fixed and one may make as much profit as he desires.¹⁴³

¹⁴⁰ Maimonides, *M.T., Mekhirah* 14:1. See also *Sh. Ar., Hoshen Mishpat* 231:20.

¹⁴¹ Maimonides, loc. cit., 2. See also *Shulhan Arukh*, loc. cit.

¹⁴² There are various opinions on the definition of “necessities of life.” See *Maggid Mishneh* on Maimonides, loc. cit.; *Kesef Mishneh* on Maimonides, loc. cit.; *Sema* on *Shulhan Arukh*, loc. cit., 36. See also *Kesef haKodashim* on *Shulhan Arukh*, loc. cit., 20: “Where oil is plentiful, it is not considered a necessity of life with regard to whether one may profit more than one sixth...”

¹⁴³ Cf. *Teshuvot haGeonim Sha'arei Tzedek* 4:6:28 (Jerusalem, 1966), p. 184: “That which Shemu’el said, ‘Any profits on sales must not exceed one sixth.’ applies only to the necessities of life, that is to say the products which it is forbidden to hoard. And that which you write, ‘profits on sales may not be less than one sixth’ (see above, note 137), we have never heard of this.”

In *Sefer haMikkah vahaMimkar* 60, Rav Hai Gaon writes: “As to

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Shulhan Arukh imposes additional limitations upon the restriction of profits:¹⁴⁴

(1) When does this apply? When one sells all his merchandise together with no additional labor, but a shopkeeper who sells his merchandise a little at a time – we estimate his labor and his expenses and he is permitted a profit of one sixth on them as well.¹⁴⁵

other things [i.e., items that are not “necessities of life”], it is permitted to profit from them even by several times their cost, as long as [the transaction] does not constitute an evasion of the prohibition of usury.... And if a person needs something from another, and the second person knows that the first has a need for it, he may not raise the price and profit more than a sixth.” From here, it appears that although there is no restriction of profit on items that are not necessities, it is nevertheless forbidden to raise the price as a consequence of another’s need for the item.

Cf. Section 12(b) of *Hok Piku’ah Al Mehirei Mitzrakhim veSherutim*, 5756-1996: “The ministers may prescribe by order a maximum profit that may be derived from the sale of a commodity or from the performance of a service.”

¹⁴⁴ *Sh. Ar.*, *Hoshen Mishpat* 231:20.

¹⁴⁵ *Ibid.* The source for this ruling is *Piskei haRosh*, *Baba Metzia* 3:16. Cf. the opinion of R. Yitzhak son of R. Me’ir (Rivam), *Tosafot*, *Baba Batra* 91a, s.v. *Had amar*. However, Rashbam, *Baba Batra* 90a, s.v. *vehaMistaker*, comments on Shemu’el’s regulation and explains: “Such as a shopkeeper who purchases large quantities of wine and produce from a supplier in order to sell a little at a time – he may not profit more than one sixth.” Nevertheless, even Rashbam agrees that where there is much labor involved, it is permitted to add to the amount of profit. See Rashbam, *Baba Batra* 91a, s.v. *beVeitzim*: “It appears to me that since eggs are not exactly necessities, and since there is much labor and little profit for a poor man to travel from village to village purchasing eggs, they have permitted a profit greater than one sixth.” Cf. *Beit haBehirah*, *Baba Batra* 91a (ed. Avraham Sofer), p. 417: “One who profits may not profit more than one sixth, after his expenses have been calculated.” See also *Beit haBehirah*, *Baba Metzia* 40b: “They calculate his cost, his ex-

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In other words, all this is considered part of the principal, and he is permitted to profit one sixth on all, and this results in a greater amount than if he had profited one sixth only on the principal [before his labor and expenses were added].¹⁴⁶

(2) When does this [i.e., the restriction of profit to one sixth] apply? When the market value has not risen. When the market value has risen, however, he may sell it at the higher price.¹⁴⁷

(3) All this applies only where there is a court that compels merchants to sell at a uniform price. If, however, each one sells for as much as he can,¹⁴⁸ he is not obliged to sell cheaply.¹⁴⁹

penses, and spoilage, and when they have calculated everything, he is permitted a profit of one sixth, no more and no less [cf. note 137 above]. And if there is a great deal of labor involved in this merchandise, the worth of his labor is calculated as the court sees fit." See also *Bah, Hoshen Mishpat* 231:26.

¹⁴⁶ *Sema, Hoshen Mishpat* 231:37. But see R. Menahem Mendel Ish-Horowitz, *Shoshanat Ya'akov, Hoshen Mishpat* 231:20.

¹⁴⁷ *Sh. Ar., Hoshen Mishpat* 231:20.

¹⁴⁸ According to *Arukh haShulhan, Hoshen Mishpat* 231:20: "However, if the court knows that by its action [compelling the obedient] all others will be compelled [indirectly, not to exceed the court approved price], the court should compel those who are obedient." See also R. Shemu'el haLevi Vozner, *Shevet haLevi* (Benei Berak, 1980) IV:1:4: "The authorities have written that this applies where the other merchants who drive up the prices are not Jewish and are not bound by the Jewish courts. For if they are Jewish, they are obliged to obey.... and if they do not obey, woe unto them in this world and in the next. Many are they who, in our sinfulness, do not follow Jewish law in these matters, even the best among us!"

¹⁴⁹ According to the opinion of Rashba cited by the *Tosafot, Baba Bâtra* 91a, s.v. *Had amar*, the law limiting profit to one sixth applies only to one who has purchased the merchandise he sells; one who sells his own products (with the exception of eggs, concerning which there is a special limitation), however, may profit more than one sixth. This

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5. CONSUMER BOYCOTTS

Another method of combatting profiteering may be found in an enactment requiring consumers to refrain from purchasing a particular item until its price is lowered. Clearly, this method was applied where it was impossible to compel merchants to sell according to a fixed price. In the Mishnah and Talmud, we find precedents for controlling prices by warning merchants that if they do not lower prices, legislation will be passed that will cause a decrease in demand.

In the tractate *Keritot*,¹⁵⁰ the Mishnah tells of Rabban Shimon ben Gamli'el's campaign against those who speculated in pigeons, which were required for sacrifice in the Temple:

It once happened in Jerusalem that [a pair of] pigeons cost a golden *dinar*. Rabban Shimon ben Gamli'el said, "By this Temple! I will not rest this night before [a pair of pigeons is [sold at a silver] *dinar*!'"

After making his declaration, Rabban Shimon ben Gamli'el enacted a regulation exempting persons from sacrificing pigeons under certain circumstances. The Mishnah concludes: "And that very day [the price of a pair of] pigeons stood at two quarters [of a silver *dinar*]."¹⁵¹

distinction was not codified as law, however. See R. Menahem Mendel Ish-Horowitz, op. cit. (above, note 146), 22.

¹⁵⁰ Mishnah, *Keritot* 1:7.

¹⁵¹ Rav Hai Gaon, *Sefer haMikkah vahaMimkar* 60, ad fin., after discussing the raising of prices, cites the regulations of the Mishnah, *Gittin* 4:6 concerning redemption of captives, Torah scrolls, *mezuzot*, and *tefillin*: "And we must mention in this section that it is forbidden to redeem captives... for more than their value, in order that the nations of the world not hold Jews for high amounts of ransom. The same applies to Torah scrolls, *tefillin*, and *mezuzot*, so that they will not steal them and sell them back for more than their worth, as we have

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The Talmud tells of Shemu'el who warned merchants that if they would not sell pots according to their real worth, he would permit the use of old pots after Passover.¹⁵² Shemu'el also warned those who sold myrtle for the holiday of Sukkot that if they would not sell unblemished myrtle branches according to their worth, he would rule in accordance with the opinion of R. Tarfon that it is permissible to use blemished myrtle branches.¹⁵³

The precedent of the Mishnah in *Keritot* was employed by R. Moshe Mitrani (a distinguished authority in 16th century Safed) in a responsum concerning various blemishes (*hazazit* and *patomet*) that disqualify the citrons used for Sukkot. The responsum opens with R. Moshe Mitrani's declaration:¹⁵⁴

I have acted zealously against those who aggrandize themselves, adding to the price of citrons used in performance of the religious precept [of the four species].

After permitting what had previously been accepted as prohibited, R. Mitrani concludes:

learned in *Gittin*: 'Captives should not be redeemed for more than their value, to prevent abuses.... Neither should scrolls of the law, *tefillin*, or *mezuzot* be bought from heathens for more than their value, to prevent abuses.'" Cf. Section 11 of *Hok Piku'ah Al Mehirei Mitzrahim veSherutim*, 5756-1996.

¹⁵² *Pesahim* 30a: "For Shemu'el said to the hardware merchants, 'Charge an equitable price for your pots, for if you do not, I will teach that [the law is] in accordance with R. Shimon.'" Rashi, ad loc., explains that R. Shimon ruled that old pots could be used after Passover.

¹⁵³ *Sukkah* 34b: "Shemu'el said to those who sold myrtle, 'Sell at the normal price, for if you do not, I will teach that [the law is] in accordance with R. Tarfon.'" R. Hayyim Palache, *Lev Hayyim II, Orah Hayyim* 75, p. 40b, discusses the significance of Shemu'el's leniency concerning the myrtle branches.

¹⁵⁴ *Resp. Mabit* III:49.

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Thus, there will be found many citrons that are ritually fit and far less expensive than before, such that every poor person can afford to buy one and fulfill his obligation without having to use the communal citron. And this is similar to what we have learned in the first chapter of the tractate *Keritot* that pigeons were selling for a *dinar* and poor women refrained from bringing the sacrifice, and Rabban Shimon ben Gamli'el entered the court and declared....

Rabban Shimon ben Gamli'el's action in his campaign against speculators served also as the basis for a responsum by R. Menahem Mendel Krochmal, rabbi of Nikolsburg (Moravia) in the seventeenth century.¹⁵⁵ Non-Jewish merchants had been raising the price of fish, which Jews regularly bought in honor of the Sabbath. Realizing that the Jews continued to buy, the fishmongers continued the practice until the Jews passed a regulation prohibiting the purchase of fish for two months. R. Menahem Mendel Krochmal was asked whether this constituted a breach of the honor due the Sabbath. Citing the *mishnah* in *Keritot* mentioned above, R. Krochmal notes that even with regard to a biblical precept a lenient approach was taken in order to spare expense and,

therefore, if purchasing fish in honor of the Sabbath drives up the price, then it is proper to enact a regulation that no one may purchase fish for several weeks, in order that the price come down.¹⁵⁶

¹⁵⁵ *Resp. Tzemah Tzedek* (R. Menahem Krochmal) 28.

¹⁵⁶ This responsum is cited by *Magen Avraham, Orah Hayyim*, 242:1: "If the non-Jews raise the price of fish, it is proper to prohibit the purchase of fish [for the Sabbath]." See also *Resp. Divrei Hayyim II, Hoshen Mishpat* 24: "Although the opinion of *Tzemah Tzedek* (Krochmal) can be refuted, as *Peri Megadim* has already shown, all

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A similar decree was promulgated in Izmir by R. Hayyim Abulafia.¹⁵⁷ His declaration is quoted by R. Hayyim Palache:¹⁵⁸

I have seen that in the shops where Jews and non-Jews sell fish together, they raise the price on the eve of the Sabbath and on the eve of holidays when the Jews purchase fish in honor of the Sabbath and holidays – the Jewish merchants teaching the non-Jewish ones to raise the price by one fifth.... Thus, I have decreed a ban against purchasing more than eight pieces, as in the case of Rabban Shimon ben Gamli'el.... And it is certainly proper, in order to crush the fangs of the wicked, not to purchase fish for a year or two until the price returns to its proper level.

The validity of an enactment prohibiting purchase and meant to prevent a rise in prices is discussed by R. Mordekhai haLevi, rabbi of Cairo in the seventeenth cen-

admit that concerning rabbinic obligations, it is permitted to enact such regulations. So have *Peri Megadim* and *Eliahu Rabbah* ruled, and who will come after them [to overturn their rulings]?" Various sources relevant to R. Menahem Mendel Krochmal's ruling are listed by R. Refa'el Hayyim Binyamin Peretz, *Zokhrenu leHayyim* I (Salonika, 1867), *Orah Hayyim* 300, *Hilkhos Shabbat* 20:1, p. 13a; and *ibid.*, II (Izmir, 1877), *Orah Hayyim* 7, p. 19b. See also R. Aharon Alfandari, *Yad Aharon*, *Orah Hayyim* 242; R. Hayyim Pontrimoli, *Tzaphit biDevash* (Salonika, 1848) 36, p. 59; R. Hayyim Palache, *Lev Hayyim*, *loc. cit.*; *idem*, *Ru'ah Hayyim*, *Orah Hayyim* 242; and R. Eliahu Lehrman, *Devar Eliahu* (Warsaw, 1884) 7.

¹⁵⁷ R. Hayyim Abulafia was born in Hebron, ca. 1660. He subsequently moved to Jerusalem and later to Safed. In 1720, he was appointed chief rabbi of Izmir. He later moved to Tiberias where he died in 1744.

¹⁵⁸ *Ru'ah Hayyim*, *Orah Hayyim*, 242, p. 41a.

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ture. The facts of the case are summarized at the beginning of his response:¹⁵⁹

I was asked by merchants here in Egypt, all of whom went to purchase bolts of linen to send to France, and in the past, the price of the bolts was fixed and known, and the sellers, owners of the cloth, upon seeing that they had many buyers, raised the price by more than a fourth, and if each one pays the price, all will be harmed.

In order to overcome this development, the buyers enacted a regulation:

And when the merchants [i.e., merchants purchasing the bolts of linen] saw this, they came together and stipulated among themselves not to pay a higher price, and they arranged for there not to be a large number of buyers and employed an agent who would be their exclusive buyer and record all transactions, and afterward, the purchase would be divided among them, each one according to the share he had paid. And all agreed to this, and they wrote an agreement with full validity and a fine imposed upon all violators....

[Unfortunately] all the merchants agreed to this with but one exception, who turned a rebellious shoulder and refused to agree.

The question, then, is “whether the merchants can compel the [rebellious] individual to obey their enactment.”

In his response, R. Mordekhai haLevi discusses the validity of “townspeople’s agreements” and “tradesmen’s agreements” (see above, Section 3) at some length. His conclusion is that the merchants’ enactment under discussion

¹⁵⁹ *Resp. Darkhei No'am, Hoshen Mishpat 38.*

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is valid, and that the merchants can compel the individual merchant to obey.¹⁶⁰

Two different lines of reasoning are employed by R. Mordekhai haLevi in arriving at his conclusion. The first makes recourse to the authority to pass such enactments; the second to torts:

Here they approach him as a tortfeasor who damages the property of another, for he ruins the transaction of all the tradesmen, and even he is forced to take a loss, since he raises the price. And even when one benefits while the other sustains no loss, a person may be compelled [to confer the benefit]; all the more so that where one causes loss to others and himself, he can be compelled [to desist]. To what is this comparable? To one who drills a hole in the hull of a ship and declares, "I am drilling in my own place." Such a person is certainly evil, for he destroys himself and all the other passengers.

We hear of another enactment prohibiting the purchase of fish priced too high, in a query addressed to R. Yehudah Ayash (Algiers, 18th century). R. Ayash was asked¹⁶¹ if it was permitted to circumvent the regulation by using a non-Jewish agent who appears to be purchasing the fish for his own use. R. Ayash responds that this is prohibited for a number of reasons. He further concludes that under the circumstances, a gift would be equivalent to a purchase, and, thus, if someone receives fish in violation of the enactment, "it is obvious that he must throw it to the dogs." He also rules that "although that individual protested the ban when it was imposed, there is no need to take this into

¹⁶⁰ See also *Resp. Mahit* I:237; and R. David Karaso, *Resp. Yedei David* (Salonika, 1867) 72.

¹⁶¹ *Resp. Beit Yehudah. Yoreh De'ah* 32.

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consideration, since he must accept the will of the majority.”

This prohibition against eating fish on the Sabbath, enacted for the purpose of lowering the price, served as a precedent for employing similar measures for the purpose of lowering the price of other goods.

An issue of the newspaper *HaLevanon* of the year 1875 contains a protest against the high price of citrons imported from Corfu, Greece, for use on the holiday of Sukkot, and a demand that a prohibition be imposed on their purchase until the price is lowered.¹⁶² In fact, the rabbis of Kovno did impose a prohibition on the citrons “until their ritual fitness is satisfactorily established, and until the growers and merchants abandon their evil practice of extorting Jewish money with so cruel a price.”

The prohibition was signed by R. Yitzhak Elhanan Spektor, rabbi of Kovno, R. Tzvi Hirsch Halberstadt, and R. Aharon son of R. Meshulam Zalman, as well as by “all the community’s dignitaries.” The text of the prohibition follows:¹⁶³

When it became completely clear that the growers and merchants of Corfu had banded together to raise the price of citrons one hundred times the previous rate, to extort money from our Jewish brethren who seek citrons of high quality; after they learned from experience that our Jewish brethren are willing to spend large amounts of money in order to fulfill the precept [of the four species on the holiday of Sukkot] in the best way possible, and are willing to add even more than a third to the

¹⁶² *HaLevanon*, 11 (1875), nos. 7, 35, 36.

¹⁶³ *Ibid.*, no. 39, (19 May 1875). Reproduced also in *Toledot Yitzhak* (Warsaw, 1897; reprint Israel, 1971), 72. See also C. Karlinsky, “haRishon leShoshelet Brisk,” *Hadarom*, no. 41 (Nisan, 1975), 113-115.

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price: who knows? perhaps they will again double the price, and the growers and merchants of other lands will learn from them how to cause loss to the Jews.

For this reason, we the undersigned, with the agreement of all the community's dignitaries, have decided to promulgate a prohibition binding upon all of us in our community this year against using citrons from Corfu to fulfill the precept of the four species, until their ritual fitness is satisfactorily established, and until the growers and merchants abandon their evil practice of extorting Jewish money with so cruel a price. [We are obligated, rather,] to fulfill the precept of the four species with citrons from places where a presumption has been established that the citrons are ritually fit in all respects.

[We further declare] that the purchase and sale of citrons in our community will be supervised by respected members of the community who will be chosen for this task with the agreement of all, to ensure that the price will not be unduly raised, and if there is an increase in profit, it will be donated to some worthy charity!

It is our strong hope that other Jewish communities will also be motivated to prohibit the citrons of Corfu in order to prevent the loss of Jewish money in great amounts...

Kovno, 2 Iyar 5635 [=7 May 1875].

A similar prohibition is found in a document dating from 1882 and signed the rabbis of the community of Tzanz (Nowy Sacz, Poland) headed by R. Yehezkel Shraga Halberstam (head of the rabbinic court of Sieniawa, Poland). Here the prohibition is against purchasing citrons from Trieste, Italy.¹⁶⁴

¹⁶⁴ *Toledot Kol Aryeh* (Kleinwardein, 1840), "Kitvei Kodesh" 19, p. 153.

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Concerning what we have heard, that the Amalekites have agreed among themselves to raise the price of citrons: We have, therefore, decided to warn the merchants living currently in Trieste not to set the price higher than last year, and we wrote a warning to them that our Jewish brethren will not purchase from anyone violating this instruction. And if the Amalekites do not leave the price as is, the Jews will purchase from Corsica, Genoa, and the Holy Land....

Similar prohibitions were established in Jerusalem against those who raised the prices of fish and eggs. In a notice from the year 1902,¹⁶⁵ the members of the rabbinic courts of Jerusalem prohibited the purchase of fresh eggs, because

not only do [the merchants] drastically raise the price and cruelly strike anyone who tells them to lower it, they also curse and blaspheme our religion in public.

In another notice,¹⁶⁶ it was announced by a rabbinic court that those who sell eggs are permitted to sell no fewer than six eggs for a *grush* (a particular coin) and that buyers are not permitted to buy fewer than six eggs for a *grush*. The notice concludes: "And we are confident that for the good of our holy city and the good of the poor, no one will violate this enactment."

A query concerning the validity of an enactment that prohibited the purchase of meat due to its high price was addressed to R. Yosef Sha'ul Nathanson,¹⁶⁷ rabbi of Lvov in the nineteenth century.

The text of the prohibition is reproduced in *Divrei Yehezkel heHadash*, in *Divrei Yehezkel* (Ramat Gan, 1975), 74.

¹⁶⁵ The notice is reproduced in *leSha'ah uleDorot* 1 (Jerusalem, 1971), p. 28.

¹⁶⁶ *Ibid.*, p. 29 (undated).

¹⁶⁷ R. Yosef Sha'ul Nathanson was born in 1808 and died in 1875. The

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The question opens as follows:

In our city a great confusion has developed, because the butchers who sell meat in our community have raised the price of meat and are selling it higher than anywhere in the surrounding area. And we saw that this was dishonest and unjust, and we thought to band together and resolve that no one will purchase meat from these butchers until they sell it according to the price in the surrounding area.

The problem was that the local rabbi did not approve the enactment, and the question arose whether the enactment was, therefore, invalid. It was also asked if the enactment was invalid because not all the city's residents had been present when it was enacted.

R. Nathanson validates the enactment, rejecting both claims against it. In his opinion, the rabbi's approval is not necessary when the rabbi has a personal interest in the matter. Furthermore, there is no need for all the city's residents to act together, since the requirement that all concerned be present applies only to a court of law. R. Nathanson continues: "In my humble opinion, the majority can compel the minority [to observe the boycott], since it is for the benefit of all."¹⁶⁸

responsum appears in *Resp. Sho'el uMeshiv (mahadura tinyana)* IV:89.

¹⁶⁸ This principle is relevant to enactments under the "right of residence" for the protection of tenants. These enactments establish that if a landlord removes a tenant from his property because someone else has offered to pay higher rent, no one may take up residence in that property for a given period. See the enactments listed at the end of *Resp. Maharam ben Barukh* (ed. Prague). See also M. Simiatitsky, "Hezkat haKehillah bePolin," *haMishpat haIvri*, 5 (1937), 199-253; M. Molkho, "Takkanat Hezkat Batim Hatzerot veHanuyot beSaloniki," *Sinai* 38 (1951), 296-314; *Encyclopedia Ivrit*, s.v.

Chapter Six

RESTRICTION OF RESALE OF ESSENTIAL GOODS

One reason for high prices of many products is the fact that the product is sold by the producer to various agents and middlemen rather than directly to the consumer. Accordingly, Jewish law has imposed restrictions on the activities of such agents.

Two kinds of restrictions can be placed on such activity: One is to prohibit it altogether and require that goods be sold directly to the consumer. The second is to restrict the number of middlemen between the producer and the consumer.

In the tractate *Baba Batra*, we find:¹⁶⁹

Hezkat hayishuv; Louis Finkelstein, *Jewish Self-Government in the Middle Ages* (1924), 31, 181; L. Rabbinowitz, *The Herem Hayyishub* (1945); and S. Zeitlin, "The Herem Hayyishub," *JQR*, 37 (1946-47), 427-431.

¹⁶⁹ *Baba Batra* 91a. See *Tosefta, Avodah Zarah* 4 (5):1.

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In the Land of Israel,¹⁷⁰ it is not permitted to make a profit [as middleman] in things which are the necessities of life, such as wines, oils, and the various kinds of flour. It has been said of R. Eliezer ben Azaryah that he used to make a profit in wine and oil. In [the case of] wine, he held the same opinion as R. Yehudah [that it is desirable that the price of wine be high, in order to decrease consumption and consequent levity];¹⁷¹ in [the case of] oil? In the place of R. Eliezer ben Azaryah, oil was plentiful.¹⁷²

Further on, we find the statement that it is forbidden to “profit twice on eggs.” On the meaning of “twice,” there is a disagreement between Rav and Shemu’el. One holds that what was purchased for one *dinar* may not be sold for two. The other holds that there may not be two agents, that the first merchant who purchases the eggs must sell them to the consumer and not to another merchant.

Regulations concerning resale are codified by Maimonides:¹⁷³

Profit should not be made twice in the sale of eggs.

¹⁷⁰ See R. Elimelekh Bar-Sha’ul, “Mis’har beEretz Yisrael biDevarim sheYesh Bahem Hayyei Nefesh,” *Mitzpeh*, 166-171.

¹⁷¹ See above, note 80.

¹⁷² See *Tosefta, Kelim, Baba Batra* 2:2: “In the locality of R. Elazar ben Azaryah... in Tzipori”; and *Tosafot, Hagigah* 25a, s.v. *beGalila shanu*: “There they have much oil.”

¹⁷³ Maimonides, *M.T., Mekhirah* 14:3-4. R. Ya’akov Castro, *Erekh Lehem* 231:23 writes: “And now that [the Land of Israel] is not ruled by Jews, we can be lenient, except in the case of wine, since the Muslims do not drink it...” R. Shemu’el Vozner, *Resp. Shevet haLevi*, IV:1:4, considers whether today one who purchases eggs from a merchant is obliged to sell them at his own cost. R. Vozner discusses whether it is permitted to charge twice the value of eggs, noting that under current conditions, where eggs are bought and sold in large quantity, and there is no longer a need to go from place to

Restriction of Resale of Essential Goods

Only the first merchant shall sell them for a profit. He who buys from him may sell them only for the price he paid.¹⁷⁴

It is forbidden to trade¹⁷⁵ in the Land of Israel with articles that are necessities of life. Each seller should bring these from his barn and sell them directly so that he may sell them at a low price. In places where there is an abundance of oil, it is permitted to make a profit on it [by resale].

The prohibition of profit by resale has a number of limitations:

(1) As we have seen, in R. Elazar ben Azaryah's region there was an abundance of oil, and, therefore, there was no prohibition of profit by resale. Thus, Maimonides rules that "in places where there is an abundance of oil, it is permitted to make a profit on it." Moreover, "although¹⁷⁶ this was

place buying a few eggs at a time for resale, the basis for the opinion permitting sale of eggs at twice their cost no longer exists.

¹⁷⁴ See *Arukh haShulhan, Hoshen Mishpat* 231:22: "Our Sages have said that profit may not be made twice on eggs, rather the first merchant may sell them at a profit, and he who buys from him must sell them at his own cost. The reason is that in the case of eggs, the first buyer must go from house to house, buying them one by one, and selling them, and if one who purchases them from him also takes a profit, the price of their purchase will rise very high.... In our time, when eggs are brought to the marketplace in the manner of all other merchandise, their status is the same as that of all other foodstuffs."

¹⁷⁵ R. Elimelech Bar-Sha'ul, *op. cit.* (above, note 170), 166, notes a subtle difference between the wording of the passage in the Talmud and in the codes, *Mishneh Torah* and *Shulhan Arukh*. This difference, he contends, reflects the codifiers' interpretation that, in order to prevent the concentration of large quantities of grain from many growers in the hands of one merchant, the law does not even permit merchants to purchase grain from the grower.

¹⁷⁶ *Beit haBehirah, Baba Batra* 91a, s.v. *Ein mistakrin*. His comments

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mentioned only with regard to oil, it applies to all commodities.”¹⁷⁷

(2) Profit by resale of wine may be permitted in order to restrict levity.¹⁷⁸

(3) In his interpretation of these regulations, Rashbam¹⁷⁹ restricts the prohibition to sale of the unprocessed commodity. Thus, “it is permitted to purchase wheat and produce bread [for sale], since value is added; it is forbidden, however, to sell it as it is [that is to say] in the form that the ultimate consumer would purchase it, since the original owner can also sell it without adding value.”¹⁸⁰

refer to the Talmud and not to Maimonides. See also *Yad Ramah, Baba Batra* 91a:154.

¹⁷⁷ *Arukh haShulhan, Hoshen Mishpat* 231:23: “Outside the Land of Israel, this is permitted even where Jews are the majority, because outside the Land of Israel, where there is ample land and [therefore] yields are large, the Sages were not concerned that such activity would cause prices to rise.”

¹⁷⁸ *Yad Ramah, Baba Batra* 91a. writes that the law is established according to the opinion of R. Elazar ben Azaryah with regard to resale of wine and with regard to resale of products in abundant supply.

¹⁷⁹ Rashbam, *Baba Batra* 91a, s.v. *Ein mistakrin*. See also R. Elimelech Bar-Sha’ul, op. cit. (above, note 170). 166.

¹⁸⁰ See I. Dorion, “Herut Sotzialit beYisrael,” *Yavneh, Kovetz Akadema’i Dati* 2 (1949), 152.

Chapter Seven

SUPERVISION AND PENALTIES

As we saw above in chapter five, there is an obligation to supervise prices as well as weights and measures. Moreover, one who violates directives in these areas may expect to be punished¹⁸¹ by a monetary fine or even more severe measures. Maimonides rules:¹⁸²

¹⁸¹ Concerning punishment for overreaching, see Maimonides, *M.T.*, *Mekhirah* 12:1: “Though he who overreaches thus transgresses a negative commandment, he is not punished with lashes since the fraud can be remedied by restitution.” But see *Tosafot*, *Baba Metzia* 61a, s.v. *La'avor*. R. Moshe Tzvi Heller, *Ge'on Tzvi*, *Hoshen Mishpat* 227:1 rules according to the opinion of the *Tosafot* that one who overreaches is punished by flogging. See also R. Aharon Valkin, *Hoshen Aharon*, *Hoshen Mishpat*, loc. cit.

R. Yehudah Ayyash, in *Afra deAr'a* on R. Yisrael Ya'akov Algazi, *Ar'a deRabbanan* 1:13, asks why, according to the opinion of Nahmanides that the prohibition of overreaching applies to immovable property although the obligation of restitution does not (see

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It is the duty of the court¹⁸³ to appoint inspectors in every province and in every district to visit the shops, adjust balances and measures, and fix prices. If they find anyone with an inaccurate weight or measure or a faulty balance, they have the right to flog him according to his power of endurance, and to fine him whatever sum the court thinks fit, in order to ensure conformity. If anyone forces up the price and sells at a high price, they may flog him and compel him to sell at the market price.

And this indeed has been the practice of Jewish communities throughout history.¹⁸⁴ The courts have supervised

above, note 27), one who overreaches in the sale of immovable property should not be liable to flogging. He goes on to suggest, with some hesitancy, that perhaps since in the sale of chattels there is no punishment of flogging, the punishment does not apply to any violation of the prohibition, even one concerning immovable property. Indeed, Maharsham, *Ein haRo'im*, s.v. *Ona'ah*, cites sources supporting such a line of reasoning – that where certain violations of a particular prohibition are excluded from the punishment of flogging, all violations are excluded. See also Maharsham, *Mishpat Shalom* 227:1.

¹⁸² Maimonides, *M.T.*, *Genevah* 8:20. See also, *ibid.*, *Mekhirah* 14:1; *Sanhedrin* 1; and *Sh. Ar.*, *Hoshen Mishpat* 231:21: “It is permitted to flog and administer suitable punishment to whoever drives up prices and sells for more than is proper.”

¹⁸³ In *Shulhan Arukh haRav miLiadi*, *Hoshen Mishpat*, *Hilkhot Middot uMishkalot veHafka'at She'arim* 16 we find: “It is the duty of the heads of the community.”

¹⁸⁴ See *Pinkas Medinat Lita* (Dubnow, 1925), regulation no. 142, enacted in the year 1628: “All communities are obliged to appoint persons to supervise weights and measures.” See also regulation no. 821, enacted 1687; regulation no. 512, enacted 1720; and regulation no. 564, enacted 1761. See below, note 185; and *Pinkas Va'ad Arba haAratzot* (ed. Halpern), 258, n. 1; and *Takkanot Medinat Mehrin* (ed. Halpern), 87, n. 5.

Of course, it was not always possible in every Jewish community of

Supervision and Penalties

weights and measures and even imposed sanctions upon violators.¹⁸⁵

the Diaspora to supervise weights and measures: "And it is in no way appropriate at this time for us to take over responsibility from the heads of the community for the Jewish legal system. And we have no structure whatsoever for placing persons in charge of the administration of the community. It is, therefore, impossible at present to appoint persons to supervise weights and measures, prevent the raising of prices, and supervise other aspects of commerce, as detailed in Chapter 231 [of *Sh. Ar., Hoshen Mishpat*]. And when the heads of the Jewish people and their leaders arrange to have the power and the authority, with the consent of assembled scholars, to establish the regulations of this country in accordance with their view of the shortcomings of this generation and in accordance with the varying needs of the country at different times, and the power to punish and expropriate property as we find in the book of Ezra [7:26], there will surely be established for the Jewish people all proper arrangements in the most suitable manner" (R. Avraham David of Buczacz, *Kesef haKodashim, Hoshen Mishpat* 231:2).

In his *Ru'ah Hayyim, Hoshen Mishpat* 231:1. R. Hayyim Palache, complains: "From time immemorial, each year inspectors were appointed, and well did they supervise prices, weights, spoilage, and so forth. Now, however, to my great regret, there are none to seek and none to ask. The inspectors are appointed, but they supervise not at all. And this is the reason for high prices and diminished livelihoods."

¹⁸⁵ See *Pinkas Medinat Lita*, regulation no. 741, enacted 1629, which grants authority to deprive those violating standards of weights and measures of their livelihood: "Concerning weights and measures which in our sinfulness, every person establishes his own measures... and injustice has become rampant, and no one has taken it upon himself to change this. So in every community, they are obliged to appoint honest and distinguished persons to carefully supervise and correct this injustice. And let them do all that is necessary to compel these people who use defective measures and to punish and fine them with both monetary and corporal penalties, even to the extent of depriving them of their business and livelihood, so that the rest of the Jews will not commit such injustices." See *ibid.*, regulations 70 and

Chapter Seven

The following is the text of a notice issued in Jerusalem in 1934:¹⁸⁶

94, enacted 1623, concerning penalties and imposition of a ban against purchasing certain goods.

¹⁸⁶ Printed in *LeSha'ah uleDorot* 3 (Jerusalem, 1976) p. 60.

Supervision and Penalties

STERN WARNING

BY THE RABBINIC COURT OF ALL THE ASHKENAZI COMMUNITIES

It has come to our attention that there is great transgression concerning weights and measures among a number of shopkeepers. Not only are they guilty of the severe prohibition of theft, they are also in violation of (Lev. 19:35), "You shall do no unrighteousness in judgment" and (Deut. 25:15), "A perfect and just measure shall you have." And it is forbidden even to possess defective weights and measures. Our Sages have declared (*Baba Batra* 98b) that the penalty for false measures is extremely rigorous. It was as punishment for false weights that we were set upon by Amalek (*Tosafot, Kiddushin* 33b, quoting the *Midrash*). And it is established in *Shulhan Arukh, Hoshen Mishpat* 231 that the court is obliged to supervise weights and measures.

WE THEREFORE WARN EVERY SHOPKEEPER AND SELLER OF MILK AND OIL WITH THE FULL SEVERITY OF THE LAW OF HIS OBLIGATION TO BE PRECISE IN WEIGHTS AND MEASURES AND TO MAKE CERTAIN THAT THEY DO NOT LACK EVEN THE SMALLEST AMOUNT.

And it is well known that the ounce recognized in Jerusalem contains seventy-five dirhams.

And he who heeds our words will live in security and all his business dealings will be blessed and the blessings of G-d will rest on him.

The Rabbinic Court of All the Ashkenazi Communities of the Holy City of Jerusalem, 25 Sivan 5694 [=8 June 1934].

Pinhas Epstein
Gershon Yehuda Zilberman
David haLevi Jungreis

The above declaration requires no reinforcement. Although it is superfluous, I add my signature

Yosef Tzvi Dushinsky

אזהרה חמורה

מטעם הרה"ג הבד"צ לכל מקהלות האשכנזים שליט"א

כאשר שמענו כי רבה המבשלה בענין המדות והמשקלות אצל כמה חנונים, אשר המדות והמשקלות אינן שלימות. ומלבד שנכשלים כאיסור גזל החמור, עוד עוברים על לאו ה', לא תעשו עול במשפט" ונו"י, איפת צרק והין צדק יהי לבם". ואסור אפילו להשתות. וחז"ל אמרו: כבי"ח פ"ח ע"ב קשה עונשן של מדות וכו'. ועל עון זיוף המשקלות בא עמלק (חוס קדושין ל"ג ע"ב בשם המדרש) ומבואר בשו"ע ח"מ סי' רל"א שמוטל על הבד"צ להשגיח על המדות והמשקלות.

אי לזאת הננו להזהיר בזה בכל חומר הדין לכל החנונים ומוכרי חלב ושמן שידקדקו אחר מדותיהם

ומשקלותיהם אם אינן חסרות אפילו משהו ח"ו.

וידוע מכבר כי האונסע של ירושלים היא מחזיקה חמשה ושבעים דהם.

ושומע לדברינו ישכן במח ויתברך בעסקיו ומשאו ומתנו ועליו תב"ט.

הבד"צ לכל מקהלות האשכנזים רפעי"ק ירושלים ת"ו. כ"ה סיון תרצ"ה.

מס פנחס ב"גוי זל עפשטיין
מס גרשון יהודא זלבערמאן
מס דוד הלוי יונגריץ

דברי הנ"ל א"צ חזוק ולהערפה באעה"ח

יוסף צב"י דושינסקיא

The original notice (translation on previous page)

Chapter Eight

CONCLUSION

As we have seen, the foundations of consumer protection are laid already in the Bible, in the prohibition of overreaching and the prohibition of false weights and measures. The severity of violations involving deception and exploitation of consumers is emphasized in the words of the prophet Amos, and later in the pronouncements of the Sages of the *Mishnah* and Talmud.

In Jewish law, the conception of “overreaching” has two aspects. One is the monetary remedy to the injured consumer: return of the difference between the price paid and the recognized value of the item, or cancellation of the transaction. The other aspect is the prohibition itself, which creates a norm of behavior.

Protection was broadened when it was determined that the prohibition includes not only overreaching involving monetary loss but also misrepresentation that entails no monetary loss. Not only was it forbidden to misrepresent the article by dressing it up to make it appear of better quality than it is in fact, or by giving a false description of the

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article; it was forbidden as well to change the mark of the article's origin or to conceal any danger that may be present.

The prohibition of defective weights and measures was interpreted as extending even to possession of defective weights and measures not being used. In order to protect consumers and prevent them from confusing two different weights close to each other in weight and similar in appearance, it was also established that the gradations between weights and measures must be readily apparent.

Concerning control of prices, we found various opinions. One opinion held that no supervision should be imposed on prices. The explanation advanced for this opinion was that there is no need to interfere with free trade, since competition will provide the necessary regulation. The other opinion held that supervision should be imposed and that matters should not be left to free competition, lest consumers find themselves at the mercy of dishonest merchants who claim to supply higher quality merchandise in exchange for higher prices. The law was ultimately decided in accordance with the opinion that favors supervision of prices.

With regard to lowering of prices, the Mishnah contains two opinions. The law as codified is that one who lowers prices is considered praiseworthy. A recent legal authority, however, ruled that this regulation must be restricted such that price lowering not be permitted if it interferes with free competition among merchants.

The establishment of minimum prices by associations of manufacturers and suppliers of services (cartels) involves special problems, as a result of the losses that may be caused to consumers by such agreements. For this reason, it was established that such agreements are not binding un-

Conclusion

less approved by a communal authority who will review the agreement and withhold his approval unless the agreement causes no loss to consumers.

In addition to supervision of prices, special regulations were established to prevent drastic rises in price. Thus it was forbidden to hoard essential items, to refuse to sell them, and to create panic among consumers. A number of distinctions were made, however, in this context: between hoarding merchandise purchased and hoarding one's own produce; between hoarding for the purpose of selling high and hoarding for the purpose of selling low or for personal consumption; between a normal year and a year of drought.

The amount of profit permitted on essential items was also regulated. Moreover, in the Land of Israel, profit by resale of essential items was restricted to prevent increases in price caused by the profit of middlemen. Penalties were also established for "whoever drives up prices and sells high." Consumer boycotts for the purpose of preventing merchants from raising prices are also recorded in the sources. These were supported by some of the leading legal authorities and were sometimes instituted at their behest.

As mentioned, Israeli law was fortified by the enactment of the Consumer Protection Law of 1981.¹⁸⁷ The introduction to the original legislative bill submitted in 1980,¹⁸⁸ points out the roots of that legislation in Jewish legal sources. The introduction reads as follows:

The law proposed herein is deeply rooted in the sources of Jewish law, which grant extensive protection within the framework of laws concerning overreaching and

¹⁸⁷ See text at note 10 above.

¹⁸⁸ *Hatza'ot Hok* 1469, 1980, p. 302.

Chapter Eight

misrepresentation. The basis of these laws is in Scripture: “And if you sell anything to your neighbor or buy of your neighbor’s hand, you shall not wrong one another” (Lev. 25:15), and “You shall do no unrighteousness in judgment in length, in weight, or in measure” (Lev. 19:35). The seriousness of acts such as overreaching, driving up prices, and so forth was emphasized by our Sages in *Baba Batra* 90b: “Concerning those who hoard fruit, lend money for interest, reduce measures and raise prices, Scripture says (Amos 8:4), ‘When will the new moon be gone, that we may sell grain, and the Sabbath that we may set forth corn? Making the *efah* small and the *shekel* great and falsifying the balances of deceit.’ And concerning these it is further written in Scripture (Amos 8:7), ‘The Lord has sworn by the pride of Jacob, Surely I will never forget any of their works!’” The Talmud (*Baba Batra* 85b) also quotes R. Levi as declaring that “the punishment for [false] measures is more rigorous than that for forbidden sexual relations.” The term *ona’ah* – overreaching – has two aspects in Jewish sources. The first refers to the actual prohibition. The second establishes the monetary right of the injured party vis-à-vis the one guilty of overreaching. The gradations between standard weights and measures must be readily apparent.

Jewish law takes a very strict approach to misrepresentation and fraud in commerce. In the *Tosefta* (*Baba Kama* 7:2) we read: “There are seven types of thief. First and foremost among them is one who misrepresents.” Among other regulations, it is prohibited to dress up goods so as to mislead the customer to think they are better than they really are. It is forbidden to attribute to an article a quality it does not possess. No product which is hazardous to health may be sold by concealing the hazard through false description. Altering markings that indicate the place of manufacture may

Conclusion

also be included under the prohibition of misrepresentation.

Moreover, Jewish law established regulations concerning hoarding, price supervision, setting minimum prices, and restricting profit by resale of essential items....

The present study has not sought to discuss all problems involved in consumer protection.¹⁸⁹ However, it would seem apparent from the sources cited here that protection of consumers was a problem that occupied Jewish legal authorities in all periods. We have also seen the methods employed by Jewish law in protecting consumers. It seems possible, therefore, to follow in the footsteps of the authorities of Jewish law in our attempt to solve some of the problems that occupy modern society in this area.

¹⁸⁹ On the granting of monopolies and the conflict with the interest of consumers, see Nahum Rakover, *Zekhut haYotzerim baMekorot haYehudiyim (Copyright in Jewish Sources)*, Jerusalem, 1991. Cf. the Restrictive Trade Practices Law, 1959, *LSI*, vol. 13, pp. 159-167.

Part Two

MARKET OVERT

Purchase of Stolen Goods

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Introduction

The problem of stolen property sold to innocent purchasers has bothered societies over the ages.¹ Strict justice would demand that the property belongs to its original owner, with the unfortunate result that the innocent purchaser loses the money he paid for the property. The need to protect such innocent purchasers, who are usually private consumers, from this loss brought the sages to enact the *Takkanat haShuk* (the Market Enactment), which recognizes the purchaser's ownership of the property. As we shall see, another means of protecting the purchaser is available if the owner has despaired of retrieving the stolen property; the Market Enactment was needed to protect the purchaser when the original owner did not despair of retrieving his property.

The earliest meaning of the term *Takkanat haShuk* is the granting of legal force to a sale executed by a person who is not the owner of the item sold and who was, there-

¹ On the methods of protecting innocent purchasers used in various legal systems, see Daniel E. Murray's comparative study, "Sale in Market Overt," *International and Comparative Law Quarterly* 9 (1960), 24-52.

Introduction

fore, not permitted to sell it. This is the meaning of the term as used in the Talmud.²

Over time, however, the term came to refer to a broad range of regulations instituted by the Sages for the purpose of facilitating commerce. So, for instance, the Sages established that a husband is responsible for debts incurred by his wife. They attributed this regulation to the Market Enactment.³ Similarly, the power of a person who is duly authorized to collect a debt owed to another was explained by the Sages on the basis of the Market Enactment⁴ “so as not to pose difficulties (lit.: to close the door) before the market.”⁵ The present study deals with *Takkanat haShuk* in its original sense, which relates to the sale of stolen property.⁶

² See *Baba Kama* 115a.

On market overt in Jewish law, see also M. A. Bloch, *Sha'arei Torat haTakkanot* Part II, 2:107 (p. 312) and 3:143 (p. 219). See also sources cited by *Pahad Yitzhak*, s.v. *Takkanat haShuk*. For a comprehensive review of the topic, see Z. Warhaftig, *HaHazakah baMishpat halvri* (Jerusalem, 1964), pp. 135-163. Of the literature on the subject subsequent to the first publication of the present study as monograph no. 25 of *Sidrat Mehkarim uSekirot baMishpat halvri*, published by the Ministry of Justice, 1972, the most significant is U. Struzman, “Takkanat haShuk baMishpat halvri: Mashma'utah veHiyyuniyyutah,” *Dinei Yisrael*, 9 (1978-1980), 7-50. See also “The Ordinance of Market Overt,” in M. Jung, *The Jewish Law of Theft* (Philadelphia, 1929), 90-99.

³ See Ra'avan, *Baba Kama* (ed. Ehrenreich), p. 191; and *Resp. Maharik* 192. See also B. T. Schereschewsky, *Dinei Mishpahah* (3rd edition, Jerusalem, 1984), 277.

⁴ *Hiddushei Ritba. Shevu'ot* 33b; Cf. R. Tam ibn Yihye, *Resp. Ohalei Tam* 189: “This is also a market adjustment – that the door not be closed to those engaged in commerce, and this is for the general welfare.”

⁵ See also *Niderei Zerizin*, additions to Chapter 225:35:6, on sale of promissory notes: “According to several authorities, the sale of promissory notes is recognized as valid only by virtue of rabbinic legisla-

Chapter One

BACKGROUND AND TRENDS

1. CHANGE OF DOMAIN AND DESPAIR OF RECOVERY

A. The Meaning of the Law

Jewish law takes various approaches to protection of a person who purchases property from one who is not entitled to sell it. One method is the provision that when property is transferred from one domain to another – even if the transfer, in and of itself, has no legal status – the transfer will be validated if accompanied by the owner's despair of recovering the property. In this way, ownership is transferred

tion.... The Sages enacted it, and it is a market adjustment for the general welfare.”

⁶ On sale by a person who is not the owner of the property sold where there is no theft, see the appendix to the present study.

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to the purchaser.⁷ According to Maimonides, it makes no difference whether the original owner's despair of recovery precedes or follows the property's change of domain.⁸ If we add to this regulation Jewish law's presumption that under normal circumstances, when property is stolen, its original owner despairs of recovering it,⁹ we find that in the majority of cases where chattels are stolen, there are both transfer of domain and despair of recovery. Since in combination these two factors amount to a change of ownership, one who purchases property from a thief will usually be protected.

B. Custom and Foreign Law

In actuality, the law concerning the purchaser's acquisition of ownership on the basis of transfer of domain and the

⁷ See Maimonides, *M.T.*, *Genevah* 5:3; *Sh. Ar.*, *Hoshen Mishpat* 356:3. However, according to Maimonides, where the purchase was from a known thief, the purchaser, having acquired the article, is obliged to pay the original owner the cost of the item, because the law of market overt does not apply where merchandise is sold by a known thief; See also the opinion of *Shulhan Arukh*, loc. cit. But see Rema's comments, ad loc.; and comments of the other standard commentators.

Hazon Ish, *Hoshen Mishpat* 16:10, writes that the *Gaon* of Vilna (*Hoshen Mishpat* 353:13) seems to hold that the validity of the purchase of stolen property, where there has been transfer of domain accompanied by the owner's despair of recovery, is a rabbinic enactment, meant to ensure that the purchaser will not lose. The purchaser is, therefore, entitled to compensation only for the price he has paid.

See Warhaftig, op. cit. (above, note 2), 110-116 concerning the connection between the validity of purchase of stolen property (under the circumstances described) and *takkanat hashavim*.

⁸ Maimonides, *ibid.* See also *Shulhan Arukh*, *ibid.*, but see Rema, ad loc.; and *Shakh*, *Hoshen Mishpat* 353:4.

⁹ See *Baba Kama* 68b; Maimonides, *M.T.*, *Gezalah veAvedah* 6:3; *Tur Hoshen Mishpat* 368:2; and Rema's comment on *Sh. Ar.*, *Hoshen Mishpat* 368:1. See also *Arukh haShulhan*, *Hoshen Mishpat* 368:2.

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owner's despair of recovery was altered, to some extent, as a result of custom and foreign law, which does not recognize transfer of ownership under such circumstances.

In a question addressed to Rav Sherira Gaon, we learn of a custom by which a person who purchases an item and later discovers it to be stolen returns it to the original owner and is compensated for his expenses. The questioner describes the custom as follows:¹⁰

...it is our custom and the custom of our fathers that if someone loses movable property by loss, theft, or brigands, and another Jew finds it in the possession of a non-Jew and purchases it, not knowing that it originally belonged to a fellow Jew, if the original owner recognizes his property [and demands its return], he returns the purchaser's expenses, that is to say, the purchase price only. And now, you seek to change our custom, though the majority of communities do not wish to change the custom, for brigands and thieves are quite common in our regions..., and for this reason have our fathers conducted themselves in the way mentioned....

In his responsum, Rav Sherira Gaon discusses the custom:

If this is indeed the custom, then all are obliged to abide by it and not deviate, as we say, "From where is it known that custom is binding? From Deuteronomy 19:14, 'You shall not remove your neighbor's landmark which they of old time have set...'" And this applies with even greater force where the custom is of great utility, preventing conflict and other problems. You should, therefore, continue to act in accordance with

¹⁰ *Teshuvot haGeonim Sha'arei Tzedek* 4:1:20 (ed. Jerusalem, 1966, p. 73), also printed in *Otzar haGeonim, Baba Kama*, responsa, 404.

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your custom, and not deviate from the practice of your fathers and forbears...^{11, 12}

The procedure described was codified by Rema in his comments on *Shulhan Arukh*: “It is the current custom, based on the law of the land, to return all stolen property, even after despair of recovery and change of domain.”¹³

Elsewhere, Rema writes:¹⁴

Theft by a non-Jew is normally accompanied by the owner’s despair of recovery. Therefore, a person who purchases [an item] from a thief would not have to return it unless it is known that the owner has not despaired of recovery, for the purchaser acquires it by virtue of change of domain and the original owner’s despair of recovery, as explained above, Chapter 353. However, it has become customary to return all stolen property, and one should not deviate from the custom as explained above, Chapter 356. And there is no difference between robbery and theft; in all cases, the purchaser returns the stolen property to its original owner and is compensated. So it appears to me.

C. Immovable Property: The Sikarikon Enactment and Compensation

In immovable property, matters are somewhat different,

¹¹ See also *Teshuvot Rabbenu Gershom Me’or haGolah* (ed. Eidelberg) 67, concerning lost property. See also *Terumat haDeshen* 309.

¹² Rav Sherira Gaon adds: “One who purchases stolen property from brigands, if he wishes to fulfill his religious obligation, he must return it to its original owner.” Rav Hai Gaon, *Sefer haMikkah vahaMimkar* 32, ad fin., holds the same opinion. See also *Tashbetz* II:136, ad fin.; and *Sh. Ar.*, *Hoshen Mishpat* 369:5.

¹³ *Sh. Ar.*, *Hoshen Mishpat* 356:7. *Shakh*, ad loc., 10, explains the practice on the basis of custom and legislation. See also *Ketzot haHoshen*, ad loc., 5; and *Piskei Din Rabbaniyim*, vol. 1, 170-171.

¹⁴ Rema, *Sh. Ar.*, *Hoshen Mishpat* 368:1.

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given the principle that immovable property cannot be stolen.¹⁵ However, the purchaser of stolen real estate is granted rights of property in the Law of *Sikarikon*.¹⁶ The term *sikarikon* refers to expropriation of lands without compensation by the prevailing non-Jewish authorities. The Mishnah establishes that the purchase of such property is valid, though the purchaser, in addition to the price he pays the expropriating authority, must pay one quarter of the property's value to the original owner. R. Yitzhak bar Sheshet (Rivash) explains this enactment:¹⁷

...Although, in law, the expropriation of land [by *sikarikon*] is not valid, if we were to rule that such property is to be seized from the purchaser [who purchased from the *sikarikon*] with no compensation, Jews would never purchase expropriated property, [Jewish] land would remain in the hands of the *sikarikon* who had expropriated it, and the original owner would have no benefit. As a result of the enactment, however, the original owner receives the benefit of being paid one quarter of the land's value by the purchaser, or if the original owner can pay the purchase price, he compensates the purchaser, who must then give up his title to the land.

Rivash goes on to rule¹⁸ that where the Law of *Sikarikon* does not apply, the purchaser must be compensated in re-

¹⁵ *Sukkah* 30b; See responsum of R. Me'ir of Rothenburg cited in *Resp. Rashba* I:105; and *Resp. Rivash* 290.

¹⁶ See Mishnah, *Gittin* 5:6; *Gittin* 55b, and 58b; Maimonides, *M.T.*, *Gezalah veAvedah* 10:3; *Sh. Ar.*, *Hoshen Mishpat* 236:1. See also A. Gulak, "Sikarikon," *Tarbiz* 5 (1934), 23-27; commentary of Hanoch Albeck to Mishnah, *Gittin* 5:6 as well as Albeck's Additional Notes *ibid.*

¹⁷ *Resp. Rivash* 290.

¹⁸ *Ibid.*

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turn for giving up his title to the property, and Rema, in his comments on *Shulhan Arukh*, cites this decision as authoritative.¹⁹

2. PROTECTION BY THE MARKET ENACTMENT

A. *The Meaning of the Enactment*

The other approach taken by Jewish law to protection of the purchaser of stolen property was the provision that although where the original owner has not despaired of recovery, the purchaser must return the stolen item, the purchaser is entitled in such cases to compensation from the owner, as will be explained. This is the Market Enactment for sale in market overt (*Takkanat haShuk*).

The Market Enactment is explained in *Hilkhot Re'u*:²⁰

What is the Market Enactment? If someone purchases an item from a known thief, and the original owner discovers this, he may seize the item without compensation, for we say to the purchaser, "You caused your own loss. You should not have purchased from one known for his transgressions." If, however, it is certain that he purchased from one not known to be a thief, the original owner must give the purchaser his purchase price before taking the item, and this is the law of market overt. For if we were to say that whenever someone loses something and finds it in the possession of another, he is permitted to take it without payment, no one would ever purchase anything from anyone; people would say to themselves, "the owner will come and seize it."

¹⁹ Rema, *Sh. Ar.*, *Hoshen Mishpat* 236:1.

²⁰ *Hilkhot Re'u*, pp. 66-67 (also printed in *Otzar haGeonim, Baba Kama*, responsa, 311). Cf. Rav Hai Gaon, *Mishpetei Shevu'ot* 2:19: "The Market Enactment provides that whenever someone purchases an item and it is discovered to be stolen, he returns it and is compensated."

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Denial of the legal value of a purchase made under normal circumstances may prevent people from purchasing, for fear of the risk involved.²¹ The Market Enactment was aimed at correcting this situation.²²

B. Moral Basis

It has been argued²³ that the enactment is based on moral considerations, and that it is not merely an enactment for encouraging commerce. Justice, according to this approach, requires that an innocent person who in good faith purchases an item from a thief be compensated by the original owner for the price he paid for the item.

It may be asked, however, why justice requires granting preference to the purchaser over the original owner? What greater value has the “good faith” of the purchaser than the “good faith” of the owner, whose item was illegally sold by another? Why should the original owner lose his property to the innocent buyer? The logic is more compelling, however, when the enactment is explained in accordance with the sense of the Hebrew terminology, *Takkanat haShuk*,

²¹ R. Hayyim Rosenberg, *Resp. Peri haHayyim* (Bilgoray, 1934) *Hoshen Mishpat* (mahadura I), 22, s.v. *veNireh lehasbir*, emphasizes the point: “The Sages enacted the law of market overt for the benefit of purchasers and vendors. Otherwise no one would ever buy anything, and no one could ever sell.”

²² This also seems to be the approach of R. Yehonatan of Lunel on Rif, *Baba Kama*, chap. 10 (ed. Friedman, p. 388): “If you were to say that [the item must be returned to its original owner] without compensation, you would close the door before all who purchase in the market place, for they can say, ‘What was our sin and what was our transgression when we purchased this item publicly? Why should we lose our money?’” This also seems to be the approach of R. Yeshayahu Aharon, *Piskei Riaz*, *Baba Kama* 10:4:1; and of R. Me’ir son of Barukh of Rothenburg, below, note 63.

²³ Z. Warhaftig, *op. cit.* (above, note 2), 135.

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which means “Market Enactment,” but implies “market adjustment.” It is an enactment for the good of the community – for the benefit of commerce, which benefits all.

C. The Relationship between the Enactment and Return of Expenses as a Legal Right

It is possible to locate the buyer’s right to compensation not only in legislation, but also in the right of one who returns lost property to be compensated for expenses incurred. This is the opinion of the *Tosafot*,²⁴ who ask what need there was for an enactment: “The purchaser is entitled to his expenses in any case, since he can claim that it was his intention in purchasing the article to restore it to its rightful owner.” The *Tosafot* answer that the enactment covers instances where the original owner could have recovered the item on his own and instances where the purchaser did not purchase the item directly from the thief.²⁵

While for the *Tosafot* the basis of compensation to one who purchases property where the owner could not have obtained it is not the Market Enactment, we find that another authority does link the two. In a responsum,²⁶ R. Shimon son of Avraham writes that where an original owner would have been able to recover his stolen property

²⁴ *Tosafot, Baba Kama* 114b. s.v. *haMakir*.

²⁵ The purchaser’s status as one who restores lost property and the consequent obligation to compensate him for his expenses is codified by Rema in his comment on *Sh. Ar., Hoshen Mishpat* 356:2: “If the purchaser declares, ‘I meant it for [the owner’s] benefit,’ he is believed, and the original owner must compensate him, although the seller was known to all as a thief.” Cf. *Shakh*, ad loc., 8; *Be’ur haGra*, ad loc., 9; *Ketot haHoshen*, ad loc., 3; *Hazon Ish, Hoshen Mishpat, Baba Kama* 16:14; and *Resp. Havot Ya’ir* 209.

²⁶ *Resp. R. Yitzhak Or Zaru’a uMaharam ben Barukh*, published by Y.Z. Kahane, *Sinai* 24 (1949), no. 104, p. 311.

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from the person who stole it, but recovers it from an innocent purchaser, the Market Enactment does not apply. Only where the owner would have been unable to recover is the purchaser entitled to restitution, like one who rescues property from brigands. Hence, his view is that the right to restitution of one who restores lost property or rescues property from brigands, is based upon the Market Enactment, and does not emerge from the law itself (as the *Tosafot* hold).²⁷

D. Rescue of Books as the Basis for the Enactment

A clear application of the Market Enactment with intention to encourage the rescue of merchandise may be found in connection with stolen books:²⁸

The *Tosafot* have written that from here we learn that books stolen from Jews and sold to other Jews should be restored to their original owners [by the purchaser] in return for the price paid... In any case, he must pay the price on the basis of the Market Enactment so that people will not refrain from buying [books] from

²⁷ R. Shimon's opinion further on in the responsum requires clarification, for he writes that although the original owner despairs of recovery, the item must be returned to him. He supports this finding with reference to the law of *Sikarikon* which he cites "for purpose of analogy only." R. Shimon's opinion is also referred to by *Rabbenu Gershom*, *Resp. Rabbenu Gershom Me'or haGolah* (ed. Eidelberg) 67: "R. Shimon's ruling is that one who purchases from a thief is protected by the Market Enactment, and that he swears how much he paid and collects that sum...; for if he returned it on his own, he would be as one who returns lost property and collect his expenses without having to swear." Cf. *Tosafot*, *Baba Kama* 58a, s.v. 'I Nami; *Mordekhai*, *Baba Kama* 10:163, ad fin., and 167; and *Resp. Rosh* 95:2.

²⁸ *Hiddushei Ritba*, *Baba Metzia* (ed. Halperin, London, 1962), 24b, s.v. *Shani nehar biran*.

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thieves and [the books] will not languish in the thieves' possession.²⁹

3. PROTECTION BY THE "NOTIFICATION" ENACTMENT

An additional means of protecting a person who purchased property that does not belong to the seller is a regulation enacted in Spain concerning notification of the community. According to this enactment, whenever a person sells land or gives it as a gift, the buyer or the seller (or the donor or recipient, as the case may be) is entitled to request that it be announced in the synagogue for four consecutive Sabbaths that anyone with a lien or other encumbrance on the property come forward and notify the principals, and that anyone who does not come forward thereby forfeits whatever rights he has in the property in question.³⁰

²⁹ *Resp. Maharam ben Barukh* (ed. Prague), 289 (also quoted in *Mordekhai, Baba Kama* 10:151). contains a responsum concerning "one who left his books in a certain city and fled, and the books remained in the possession of the ruler." The ruling is that "if someone else purchased them, [the original owner] must return [to the purchaser] the price he paid." The responsum continues: "And if the Jew does not purchase them, it is clear that the ruler will not pay attention to them and dispose of them [in a fashion not befitting holy books]. They certainly will not be returned [to the original owner] for free, and this will be a desecration of holy books. Therefore, where the books were purchased at their true price [and not ransomed for an exorbitant amount] the purchaser must be compensated." But Cf. Maharam ben Barukh's responsum, *ibid.*, 909, where it is ruled that, since the Market Enactment does not apply to purchases from a known thief, the purchaser must return the stolen property without being compensated. See also *Mordekhai, Baba Kama* 10:163; and R. Mordekhai Ya'akov Breisch, *Resp. Helkat Ya'akov* 1:156.

³⁰ See sources cited in *Encyclopedia Talmudit*, s.v. *Hakhrazah* (2), section 6, "Takkanat Hakhrazah." See also S. Shiloh, "Al Shetei Takkanot biSefarad." *Sinai* 61 (1967), 291-297; *Sh. Ar., Hoshen Mish-*

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THE MAIN PRINCIPLES OF THE ENACTMENT

Compared with the Israeli Law

We now turn to a discussion of the main principles and scope of the Jewish Market Enactment as compared with section 34 of the Israeli Sale Law, 1968.³¹ It is of interest to note that in the original legislative bill,³² the marginal heading of this section read “Acquisition in Good Faith,”

pat 104:2; the decision of Judge Kister in Misc. 362/59 *Hirschberg v. Schmerling*, 22, P.M., 58, p. 62 (the reference to Ritba, *Ketubot* 100b there, should be corrected to *Ketubot* 100a; the reference to *Sema* on *Hoshen Mishpat* 109:3, subsection 6, should be corrected to 109:3, subsection 10; and the reference to *Sh. Ar.*, *Hoshen Mishpat* chapter 107:2, to 104:2.).

³¹ *Sale Law*, 5728–1968, *Laws of the State of Israel (Authorized Translation)* [hereafter *LSI*], vol. 22, 5728–1967-68, 107ff.

³² *Hatza'ot Hok* (Legislative Bills) No. 579 of 5725, p. 98.

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but was changed to the term used in Jewish law, *Takkanat haShuk*. In presenting the bill for its third and final reading before the Knesset,³³ Moshe Una, chairman of the Law Committee, noted that the law of sale in market overt “is recognized in Jewish law, and the committee has adopted the accepted Hebrew term, *Takkanat haShuk*.”³⁴

The relevant section of the Israeli statute reads as follows:

Where any movable property is sold by a person who carries on the sale of property of the kind of the thing sold, and the sale is made in the ordinary course of his business, ownership passes to the buyer free of every charge, attachment or other right in the thing sold if the seller is not the owner thereof or is not entitled to transfer it as aforesaid, provided that the buyer buys and takes possession of it in good faith.

The section relates to the following factors: (1) the transaction (sale); (2) the item (movable property); (3) the seller (a person who carries on the sale of property of the kind of the thing sold); (4) the manner of the sale (the sale is made in the ordinary course of his business); (5) the remedy (ownership passes to the buyer if the seller is not the owner thereof or is not entitled to transfer it as aforesaid); (6) the buyer (provided that the buyer buys and takes possession of it in good faith). We now proceed to an analysis of each of the factors.

1. THE TRANSACTION

The Market Enactment is meant to protect a purchaser who

³³ *Divrei haKnesset* (Record of the Proceedings of the Knesset), 19 June 1968, vol. 52, p. 2348.

³⁴ See decision of Judge Silberg C.A. 8/59, *Goldman v. Goldman*, 13 P.D. 1085, at 1089.

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has paid money for property.³⁵ Nevertheless, the protection is not restricted exclusively to such cases. One who loans money (in good faith) on the basis of a stolen pledge will be similarly protected.³⁶ “If the thief gives the stolen object as a pledge...,³⁷ the owner must pay the lender and may in turn bring suit against the thief....”

If the thief pays his debt with the stolen object, the lender is not protected, because he did not lend with intent to acquire the particular object.³⁸

If one steals an object and pays a debt or an account with it, there is no benefit of market overt, rather the owner may take the stolen property without payment, and the original debt remains against the thief.³⁹

³⁵ “If one steals an object and sells it..., the rule is that the article is restored to its owner, but he must, in the interest of market overt, restore to the purchaser the price he paid the thief. The owner may then proceed against the thief” (Maimonides, *M.T.*, *Genevah* 5:2; see also *Sh. Ar.*, *Hoshen Mishpat* 356:2). See also *Arukh haShulhan*, *Hoshen Mishpat* 356:15: “The Sages established that the original owner must pay the purchaser only if the latter paid the seller. If, on the other hand, the purchase was made on credit, the original owner takes the item without payment, and the purchaser does not pay the seller.”

On gifts, it would seem obvious that the market enactment does not apply, since the recipient paid nothing for it, and the enactment affects only what was paid. But see *Shakh*, *Hoshen Mishpat* 356:4; *Arukh haShulhan*, *Hoshen Mishpat* 356:5; *Gidulei Terumah* on *Sefer haTerumat* 49:13:10, ad fin.; and *Mayyim Kedoshim* (Salonika, 1852) 7, 46a.

³⁶ Maimonides, *M.T.*, *Genevah* 5:6; see also *Sh. Ar.*, *Hoshen Mishpat* 356:7.

³⁷ “...whether for more than its value or less...” (Maimonides, *ibid.*; see also *Shulhan Arukh*, *ibid.*; *Shakh*, ad loc., 9; and *Arukh haShulhan*, *Hoshen Mishpat* 356:16).

³⁸ Maimonides, *ibid.*; *Arukh haShulhan*, *ibid.*, 15.

³⁹ Concerning sale by governmental authorities, see *Divrei Geonim* 111:3.

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This applies only when the particular pledge was given without comment.⁴⁰ “When, however, the borrower says, ‘Lend me on the basis of this particular object,’ this is certainly the sort of pledge protected by the law of market overt.”

Section 34 of the Sale Law grants protection to sales. Pledges are dealt with in section 5 of the Pledge Law of 1967:⁴¹

Where movable property is pledged while in the possession of the pledgor and has been deposited as specified in section 4(2) or the pledge thereof has been registered as specified in section 4(3), the pledge shall be effective in all respects even if the pledgor was not the owner of the property or was not entitled to pledge it, provided that the creditor acted in good faith and the property came into the hands of the pledgor with the sanction of the owner thereof or with the sanction of a person entitled to have possession thereof.⁴²

2. THE ITEM

To what sort of property does the Market Enactment apply? It applies only to movable property,⁴³ “The Market Enact-

⁴⁰ *Sh. Ar., Hoshen Mishpat* 356:9.

⁴¹ *Pledge Law, 5727-1967, LSI*, vol. 21, 5727/1966-67, 44-49.

⁴² The provision that protection is extended only if “the property came into the hands of the pledgor with the sanction of the owner thereof, etc.” was not part of the original bill. See section 21 of the bill, *Hok Dinei Mishkun*, in *Hatza'ot Hok* No. 635 of 5725, p. 71. The provision was added by the Law Committee (see *Divrei haKnesset*, vol. 49, p. 2150).

⁴³ See *Arukh haShulhan, Hoshen Mishpat* 356:17, ad fin.: “Know that the Market Enactment applies to all objects, including books.” Concerning the theft of cash – as when one steals and pays a debt with the cash (see above, Section 1) – see R. Yitzhak Adarbi, *Resp. Divrei*

The Main Principles of the Enactment

ment does not apply to immovable property.”⁴⁴ The Sale Law also applies only to movable property.

3. THE SELLER

Protection of sales in market overt according to Jewish law is not restricted to those normally engaged in selling.⁴⁵ However, if one purchases property from a known thief, the enactment does not apply.⁴⁶ Israeli law, on the other hand, restricts its protection to sales by one “who carries on the sale of property of the kind of the thing sold.”

4. MANNER OF THE SALE

According to Israeli law, protection applies if the sale is made in the ordinary course of the seller’s business. In Jew-

Rivot 157; and the distinction between stolen money and other money, suggested by R. Hayyim Yitzhak Krishpin, *Mayyim Kedoshim* (Salonika, 1852) 7, p. 46, s.v. *Ela defash*; and the responsum of R. Hayyim David Hazan cited in the same work. Concerning books, see above, Chapter 1, Section 2, D.

⁴⁴ *Arukh haShulhan*, *ibid.*, 5, q.v. also regarding animals. See also Warhaftig, *op. cit.* (above, note 2), 151-152. See also *Sema*, *Hoshen Mishpat* 360:6; and the comment of *Ba'er Hetev*, *ad loc.*, 2. See above, Chapter 1, Section 1, C.

⁴⁵ See Maimonides, *M.T.*, *Genevah* 5:2; *Sh. Ar.*, *Hoshen Mishpat* 356:2; and *Arukh haShulhan*, *Hoshen Mishpat* 356:2. See *Resp. Rashba* II:286, *ad fin.*, concerning one who borrowed money against his wife’s garment and then lost the sum in a game of chance. Rashba rules that the wife is not entitled to seize the garment from the creditor on the claim that her husband removed it from her possession without her consent: “And you are correct in contending that here too the Market Enactment applies. If they enacted the protection even for an item mortgaged by a thief, the enactment certainly applies to a husband who mortgages his wife’s garment.” See below, Section 7, concerning purchase from an artisan.

⁴⁶ See below, Section 6.

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ish law, although the law is called the Market Enactment⁴⁷ and its aim is to protect sales executed in public and not in private,⁴⁸ it was never stipulated that the sale must be in the actual marketplace or in the course of ordinary business.⁴⁹ Nevertheless, the manner of sale may be relevant in establishing the purchaser's good faith.⁵⁰

5. THE REMEDY

A. *The Nature of the Remedy*

As mentioned above, Jewish law distinguishes between cases in which the original owner despairs of recovery and cases in which he does not. In the former instance, the purchaser's acquisition of the stoleu item is valid.⁵¹ In the latter, by virtue of the Market Enactment, the purchaser is entitled to the return of his money.⁵² Maimonides rules:⁵³

If one steals an object and sells it and the owner has not abandoned hope of recovery, and subsequently the thief is discovered and witnesses say, "The article that this man sold he stole in our presence," the rule is that the article is restored to its owner, but he must, in the interest of market overt, restore to the purchaser the

⁴⁷ See *Baba Kama* 115a; Maimonides, *M.T.*, *Genevah* 5:2; and *Sh. Ar.*, *Hoshen Mishpat* 356:2.

⁴⁸ Cf. Rashi, *Baba Kama* 115a, s.v. *Takkanat haShuk*: "Since he bought publicly in the market place, he did not realize that it was stolen...." See also *Sema*, *Hoshen Mishpat* 356:5; and *Arukh haShulhan*, *Hoshen Mishpat* 356:2.

⁴⁹ Cf. *Sefer haNer*, p. 55: "And we have seen one source that explained that they considered him as though he had purchased it in the marketplace."

⁵⁰ See below, Section 6.

⁵¹ See above, Chapter 1, Section 1, A.

⁵² See above, Chapter 1, Section 2, A.

⁵³ Maimonides, *M.T.*, *Genevah* 5:2; see also *Sh. Ar.*, *Hoshen Mishpat* 356:2.

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price he paid the thief.⁵⁴ The owner may then proceed against the thief.⁵⁵

The enactment, then, does not go so far as to grant the purchaser ownership of the article in question. It protects him, rather, by ensuring the return of the price he paid.⁵⁶

⁵⁴ "...whether he buys something worth one hundred for two hundred, or something worth two hundred for one hundred, he can recover this sum from the owner and must then return the stolen property, this being due to the Market Enactment for protection of sales in market overt..." (Maimonides, *ibid.*, 7; see also *Shulhan Arukh*, *ibid.*, 8). But see the unique opinion of R. Yeshayahu Aharon (Riaz) in his rulings on *Baba Kama* 10:4:5: "Whether he buys something worth one hundred for two hundred' – it appears to me that in such a case he pays him no more than the real worth of the object."

⁵⁵ If the purchaser sold the article to a second purchaser for more than he himself paid, the original owner must compensate the second purchaser for the entire price he paid. He may then collect from the thief what he was paid by the first purchaser and from the first purchaser the difference between what he paid the thief and what he received from the second purchaser. See Maimonides, *M.T.*, *Genevah* 5:9; and *Sh. Ar.*, *Hoshen Mishpat* 356:10.

Concerning the Market Enactment as it affects interest on an item held as a pledge, see *Terumat haDeshen*, responsa, 309; Rema's comment on *Sh. Ar.*, *Hoshen Mishpat* 356:7; and *Be'ur haGra*, *Hoshen Mishpat* 356:19.

⁵⁶ The purchaser is also entitled to hold the item until he receives compensation from the original owner. See *Tur Hoshen Mishpat* 356:4. This opinion may also be found in *Shitah Mekubetzet*, *Baba Kama* 115a, s.v. *Zil shari*, in the name of Ramah; see also *Sha'arei Teshuvot leMaharam ben Barukh* (ed. Berlin, 1891) 138, p. 208; and below, note 60. But see Rashi, *Baba Kama*, 115a, s.v. *Rav Papa*, and s.v. *veRabbi Yohanan*. It appears that according to Rashi, the purchaser is not entitled to hold the item until compensated. For a discussion of Rashi's opinion, see R. Refa'el Yitzhak de Ma'ayo, *Shorshei haYam* (Salonika, 1815) III, *Hilkhos Genevah*, 5, s.v. *'I asu takkanat hashuk leloke'ah min haganav*, p. 5a. *Resp. Avnei Nezer*, *Yoreh De'ah* 375:2 rules according to Rashi.

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The Israeli Sale Law⁵⁷ takes a different approach and establishes that the purchaser acquires ownership in all cases.⁵⁸ It should be emphasized that the enactment in Jewish law applies also when the thief is known and it is possible to proceed against him. The burden of litigation devolves upon the original owner, and not upon the purchaser. In actuality, this point was subject to a disagreement among Sages of the Talmud. Rav held that it is the purchaser who must proceed against the thief, and that his purchase is not protected in cases where the thief is known and available for litigation, whereas R. Yohanan held that the enactment applied to such cases as well. As stated, the final ruling is that protection is granted even where the thief is known.

B. Custom

Although Jewish law establishes that once the owner despairs of recovery, the item need not be returned to him, it should be noted that this is not the established custom. In his comments on *Shulhan Arukh*, Rema writes: "It is the current custom, based on the law of the land, to return all stolen property, even after despair of recovery and change of domain."⁵⁹ Still, the owner would have to compensate the buyer, because of the Market Enactment.

⁵⁷ Though section 13 of the Pledge Law permits the original owner to redeem the item by payment of the debt to the creditor.

⁵⁸ The approach of Jewish law to protection exists in a number of countries, including: France, Switzerland, the Canadian Province of Quebec, Brazil, Chile, Mexico, Argentina, and Japan – see Murray's summary, op. cit. (above, note 1). Murray believes that guaranteeing the purchaser compensation is a legal solution superior to granting him ownership as in Germany, Spain, and Portugal.

⁵⁹ Rema on *Sh. Ar.*, *Hoshen Mishpat* 356:7. See also *Shakh*, *Hoshen Mishpat* 356:10; and *Arukh haShulhan*, *Hoshen Mishpat* 356:16. See above, Chapter 1, Section 1, B.

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C. Encumbrance

The enactment for protection of sales in market overt has implications also for sale of movable property used to secure a debt. According to the original principle of law, if a movable item is pledged as security,⁶⁰ it remains encumbered even if sold, and the creditor is entitled to seize the item in payment, should the debtor default.⁶¹ Custom, however, altered this practice. According to custom, even if a debtor pledges movable property as security for his debt, the property does not become encumbered. If the property is transferred to another, the creditor cannot seize the property in payment.

Rabbenu Asher son of Yehi'el (generally known as Rosh)⁶² testifies⁶³ to the existence of this custom and explains its basis.

From the day I arrived in this country, I saw that in their promissory notes they secure debts with both movable and immovable property. [This being the case,] how can anyone ever buy movable property from someone else? [For this reason,] I wished to put an end to the practice, but they told me that although they write this in the promissory notes, still, in order to protect sales in market overt, it is the custom throughout the country not to allow creditors to seize movable property that the debtor has sold or given away.⁶⁴

⁶⁰ Together with immovable property.

⁶¹ See *Baba Batra* 44b.

⁶² R. Asher son of Yehi'el was born in Germany, ca. 1250. He moved to Spain as an adult, and he died there in 1327.

⁶³ *Resp. Rosh* 79:4. See also, *ibid.*, 5.

⁶⁴ See *Resp. Rosh* 78:5. Warhaftig, *op. cit.* (above, note 2), 147, discusses this responsum and asserts that the implication of Rosh's opinion is that, where there appears to be some sort of fraud, the Market Enactment does not apply. But the true sense of Rosh's ruling is that,

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The custom is quoted as law in *Shulhan Arukh*:⁶⁵

Today, although it is the practice to write in promissory notes that the debt is secured with both movable property and immovable property, in order to protect sales in market overt, movable property that the debtor sold, gave away, or mortgaged is not seized.

6. THE PURCHASER

The Israeli Sale Law places two demands upon the purchaser: “provided that the buyer buys and takes possession of it in good faith.” The first requirement is that the purchaser had taken possession of the item. The second is his good faith.

A. Possession

Must the purchaser take possession of his purchase⁶⁶ in order to be protected in Jewish law by the Market Enactment? R. Yosef Sha’ul Nathanson believes that possession is not necessary, and even if the purchaser acquired the item by means of one of the effective modes of acquisition without

where there is fraud, the Market Enactment does not apply, because transfer of the property is not recognized and thus the property still belongs to the original owner (not that in spite of the transfer, the Market Enactment does not apply).

⁶⁵ *Sh. Ar., Hoshen Mishpat* 60:1. See also *ibid.*, 113:3; and Warhaftig, *op. cit.* (above, note 2), 152-153.

⁶⁶ The Market Enactment applies even if the item is in the possession of a bailee. See *Tashbetz* II:178: “If the law would have been [if the owner would have sued the bailor – the purchaser] that the bailor must swear how much he paid and be compensated for that amount, then the book remains in the possession of the bailee, and the court directs the bailor to swear how much he paid. After the bailor swears, he [the original owner] deposits the amount with the bailee and recovers his book.”

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taking possession, he is protected. His reasoning is that otherwise, the whole aim of the enactment will be frustrated.⁶⁷

For he believed that as long as the item is in the possession of the seller, the enactment does not apply. But this is not logical. Wherever one person transfers ownership to another by one of the effective modes of acquisition, the Market Enactment applies. Otherwise, no one would ever wish to purchase anything, and this is exactly the point of the enactment. Should every person who purchases something have to take possession immediately?

Concerning a stolen item that returned to the possession of its original owner, *Shakh* rules that⁶⁸

if the stolen item returns to the original owner's possession after it was sold, the original owner is not obliged to compensate the purchaser for the price he paid, although it is known that he purchased the item before it was restored to the owner's possession. The Market Enactment is not applicable here since the item is now in the hands of the original owner....

Shakh's ruling is taken by *Netivot haMishpat*⁶⁹ to refer to a case where the item was restored to the original owner's possession before the purchaser managed to take possession of purchase. Under such circumstances, the original owner can claim,

I rescued my object from the thief for myself. What concern is it of mine that you acquired it from the thief? Your acquisition is invalid.

⁶⁷ *Resp. Sho'el uMeshiv (mahadurah talita'a)* I:151.

⁶⁸ *Shakh, Hoshen Mishpat* 356:4.

⁶⁹ *Netivot haMishpat*, 356, *be'urim* 1. See also *Arukh haShulhan, Hoshen Mishpat* 356:4; and *Resp. Peri haHayyim (mahadura I, Bilgoray, 1934), Hoshen Mishpat* 22, s.v. *vehaNireh lefi aniyut da'ati*.

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However, if the purchaser has already taken possession and paid the purchase price to the thief, then even if the original owner manages to seize it from the purchaser, he is obliged to compensate the purchaser under the Market Enactment. The owner's seizure is certainly not effective to exempt him from the obligation to compensate the purchaser.⁷⁰

B. Good Faith

Sales in market overt are not protected if the purchaser knows that the item is stolen.⁷¹ The purchaser's good faith is a necessary condition for the enactment to apply. Therefore, if circumstances are such that it is apparent that the purchaser knew that the item was stolen, he will not be entitled to compensation. According to the author of *Arukh haShulhan*,⁷² if the original owner suspects that the purchaser knew the item was stolen, he can compel the purchaser to accept upon himself a ban of excommunication should the truth be that he knew. Moreover, if the original

⁷⁰ If, however, the item is stolen from the purchaser and sold to a second purchaser, the original owner compensates the second purchaser only, and the first purchaser has no rights under the Market Enactment. See *Resp. Maharam ben Barukh* (ed. Prague) 88.

⁷¹ See Rav Hai Gaon, *Sefer haMikkah vahaMimkar* 30 (ed. Vienna, p. 63b): "Similarly, if he purchases from someone who is not a known thief, but the purchaser knows that he stole it, it is proper that the purchaser return the item to its original owner and that the purchaser proceed against the thief who sold it to him." For arguments in support of this ruling, see responsa of R. Hayyim Yitzhak Krishpin and R. Hayyim David Hazan in *Mayyim Kedoshim* (Salonika, 1852) 7. See also *Arukh haShulhan, Hoshen Mishpat* 356:2: "and the huyer did not know that it was stolen"; and *Arukh haShulhan's* remarks, *ibid.*, 6 and 11, quoted below.

⁷² *Arukh haShulhan, Hoshen Mishpat* 356:2. The word "excommunication" ("herem") is missing in the source, probably out of fear of the Gentile authorities, but obviously this is the correct reading.

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owner claims to be certain that the purchaser knew, he can compel the purchaser to swear he did not know.

Moreover, anyone purchasing from a known thief is not protected:⁷³

If, however, the thief was a notorious one, the Sages did not apply the rule of market overt and the owner need not pay the buyer anything, but the latter may bring the thief to trial and exact from him the money he paid for the stolen object.⁷⁴

Protection is denied this purchaser because he should have suspected that the object was stolen.⁷⁵

⁷³ Maimonides, *M.T., Genevah* 5:2. See also *Sh. Ar., Hoshen Mishpat* 356:2.

⁷⁴ There is, however, an opinion that, even where the seller is a known thief, the purchaser is protected and must be compensated for his purchase unless he knew for a fact that the particular item in question was stolen. Where the purchaser did know the item to be stolen, he must return it to the original owner, and he is not compensated (Rema, *Sh. Ar., Hoshen Mishpat*. 356:2). In practice, however, although the purchaser did not know that the particular item was stolen, if he purchased it from a known thief, he is not protected by the Market Enactment. See *Shakh, Hoshen Mishpat* 356:6; and *Arukh haShulhan, Hoshen Mishpat* 356:6.

⁷⁵ *Arukh haShulhan, Hoshen Mishpat* 356:6. But see the responsum of R. Shimon son of Avraham quoted above, Chapter 1, Section 2, C. From that responsum, it can be inferred that the Market Enactment does not apply to purchase from a known thief, not because of a lack of good faith, but rather because the original owner could have recovered the item himself and, therefore, the purchaser is not entitled to compensation for expenses undertaken for the purpose of rescuing the article.

Chapter Two

R. Yosef ibn Migash⁷⁶ was asked about the following case:⁷⁷

A had movable property and books in the home of B. One of the king's men came to B's home and stole all his property, not leaving him anything. The king then took all the stolen property and sold it, and both Jews and non-Jews purchased it with the king's permission, and with it was sold everything that A had in B's house.

R. Yosef ibn Migash answered:

...since we do not presume that A despaired of recovering his property, he is entitled to recover it from those who purchased it from the king, and if anyone who purchased the property from the king sold it or gave it to someone else, the original owner can recover it from him as well. And A is not obliged to compensate any purchaser, since the purchasers all knew that the king stole these goods and sold them. And it has already been stated that the enactment does not apply to a known thief, even though any particular item might actually be his and not stolen. And this applies with even greater force to these books, since the purchaser already knew that they did not belong to the king, but rather that he stole them and sold them. The law is that A is not obliged to compensate purchasers for what they paid.⁷⁸

⁷⁶ R. Yosef ibn Migash (1077-1141) was one of the leading Jewish legal authorities in Spain.

⁷⁷ *Resp. Ri ibn Migash* 125, quoted in *Shitah Mekubetzet, Baba Metzia* 24b.

⁷⁸ R. Yosef ibn Migash is apparently referring to a first purchaser, or to a second purchaser who also realized that the books he purchased were those originally sold by the king. Cf. *Resp. Rambam* (ed. Blau) 209; and the sources listed in a comment by S. Abramson, *ibid*, vol. 3, p. 165.

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The above principle notwithstanding, if a person purchases a stolen item for the purpose of restoring it to its original owner, he will be entitled to compensation for his expenses.⁷⁹

Another circumstance that creates suspicion concerning the purchaser's good faith is an item purchased for considerably less than the going price. To the regulation that the purchaser is entitled to compensation for what he paid even if he paid significantly more or significantly less than the object's value,⁸⁰ the author of *Arukh haShulhan* adds:⁸¹

It seems to me that if it is something readily available in the marketplace to be purchased at a standard price [and he purchases it for significantly less], the enactment does not apply, since it is apparent that there is some sort of wrongdoing here. All such matters are decided by the appraisal of the judges in accordance with the time, the place, and the character of the purchaser.⁸²

⁷⁹ See above, Chapter 1, Section 2, C.

⁸⁰ See *Sh. Ar.*, *Hoshen Mishpat* 356:8 (above, note 54). See *Shakh*, ad loc., 21: "If one bought something worth two hundred for one hundred, we do not say that since the price was so low, he must have realized it was stolen. Rather it is the way of the world that sometimes a person needs money and, therefore, reduces the price.... For this reason they promulgated the Market Enactment."

⁸¹ *Arukh haShulhan*, loc. cit., 11.

⁸² See Warhaftig, op. cit. (above, note 2), 147. According to some opinions, the Market Enactment applies only to purchases of property stolen by stealth (*genevah*), but not to purchases of property taken by robbery (*gezelah*). Warhaftig, p. 146, cites, among other sources, *Resp. Maharam ben Barukh* (ed. Prague) 461, and asserts that "Maharam ben Barukh holds that the reason protection was not enacted for purchases from a robber is not that one who purchases property taken in a robbery does not do so in good faith, but rather because the Market Enactment, like all other rabbinic enactments, was

Chapter Two

7. APPENDIX: PROTECTION OF SALE IN MARKET OVERT BY ARTISANS AND LEGAL GUARDIANS, AND FOR SALE IN ERROR

A general principle of Jewish law is that enactments do not cover unusual circumstances (*mitla dela shakhi'ah la gazru beih rabbanan*). In his *HaHazakah baMishpat halvri*, Zerah Warhaftig shows how this principle applies to the protection of sales in market overt. On page 149, he asserts that protection

was enacted only for one who purchases from a thief, since this is not unusual, but not for one who purchases from an artisan or from a person who sells an item by mistake thinking that it is his to sell.

Warhaftig bases himself on a responsum of Rif (ed. Warsaw, 1884), no. 126. However, the text in that edition is incomplete, and a better reading is available in the Biednowitz edition (Bilgoray, 1935), no. 51. The latter reads as follows (in the bracketed text, we emphasize the differences between the two readings):

If someone purchases an item from another, and he knows that the item does not belong to the seller, he has placed his money in jeopardy, for if the original owner

instituted to cover only routine situations, and the Sages did not pass their legislation for unusual circumstances.”

However, as Warhaftig himself explains further on, the enactment does not apply to purchases from a robber, because “in most cases robbery becomes public knowledge” – thus rendering the enactment irrelevant. For those unusual cases where robbery does not become public knowledge, the legislation was not passed. See *Resp. Maharam ben Barukh*, *ibid.*, where Maharam explains that the enactment was not legislated to cover stolen real estate, “because in most cases, theft of real estate becomes known to the public.” See Warhaftig 151.

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can bring proof that the item is his, he may take it [and the sale is not protected under the Market Enactment]. The same applies to one who purchases an item from an artisan [and it is known that it is not his].

Rif is actually discussing a case where the buyer already knows at the time of purchase that the item does not belong to the seller. Rif's exclusion of purchase from an artisan, then, is not because purchase from an artisan is unusual and, therefore, not covered by the enactment. The specific circumstances described by Rif are purchase from a merchant or purchase from an artisan where the purchaser knows that the item does not belong to the seller. Warhaftig's inferences from this responsum are, therefore, not supported.

On the applicability of the enactment to purchase from artisans, see also Rema's comment on *Shulhan Arukh Hoshen Mishpat* 356:7: "Similarly, an artisan to whom vessels are given for repair, and he mortgaged them, the original owner must compensate him." Warhaftig (p. 128) apparently understands this to mean that the artisan seized the vessels in payment for his services. But see also *Arukh haShulhan, Hoshen Mishpat* 356:16, whose rendering of this regulation does not suggest that the artisan seized the vessels in payment: "An artisan to whom vessels are given for repair, and he sold or mortgaged them...."

On page 150, Warhaftig continues:

For the same reason, that the Sages' enactments do not cover unusual circumstances, Maharam of Rothenburg rules that [the purchaser is not protected] where a guardian sold his wards' property for his own profit..., for it is unusual for a guardian to misappropriate the property of his wards.

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Purchases from a guardian are not protected under the Market Enactment, the original owners being minor orphans. In the responsum, we find:

The enactment is for the benefit of the purchaser. Would the Sages have applied the Market Enactment to [minor] orphans, legally incapable of waiving their rights? Certainly not!

But the responsum continues:

If you will argue that no one will ever [wish to] purchase a book from a guardian of orphans, and you leave [guardians] no breathing space, this is different. If a guardian sells a book for the orphans' benefit, there is no question [that the sale is valid].... Rather it is where a guardian sells not for their benefit..., this is what I consider an unusual circumstance not covered by the enactment. Guardians, after all, are appointed by the court..., and not even one in a thousand defrauds his wards.

In other words, it is not the rarity of the situation that excludes purchases from guardians from the enactment. Rather, purchases from guardians are excluded because the items sold are the property of minors, and the extreme rarity of misappropriation justifies the exclusion.

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Bibliography

- Allon, G. *Mehkarim beToledot Yisrael*, vol. 2, p. 289, n. 7
- . *The Jews in Their Land in the Talmudic Age*, Jerusalem, 1980
- Bar-Sha'ul, R. E. "Mis'har beEretz Yisrael biDevarim sheYesh Bahem Hayyei Nefesh," *Mitzpeh*, 166-171
- Beer, M. *Rashut haGolah beBavel biYmei haMishnah vahaTalmud* (1970), 129ff
- Bloch, M.A. *Sha'arei Torat haTakkanot*, Part II 2:107, p. 312 and 3:143, p. 219
- Cohen, S. "Judaism and the World of Business and Labor," *Proceedings of the Rabbinical Assembly of America* 25 (1961) 17-44
- Dickstein, P. "Mehir Tzedek veOna'ah," *haMishpat haIvri* 1 (1926), 15-55
- Dimitrovsky, H.Z. "He'arot Al LeGilgulo Shel Heshbon," *Tarbiz* 39 (1970), 317
- Dorion, I. "Herut Sotzialit beYisrael," *Yavneh* 2 (1949), 152
- Elon, M. "HaMa'asar baMishpat haIvri," *Sefer Yovel lePinhas Rosen*, Jerusalem, 1962, p. 176, nt. 5
- . "LeMahutan shel Takkanot haKahal baMishpat haIvri," *Mehkerei Mishpat leZekher Avraham Rosenthal*, Jerusalem, 1964, 38, n. 110; 39, n. 111
- Falk, Z. "Ke'en Dinei Mis'har baHalakhah," *Dinei Yisrael* 1 (1970), 53
- Finkelstein, L. *Jewish Self-Government in the Middle Ages* (1924), 31, 181

Bibliography

- Goldman, S. "Jewish Ethics and Their Application to Modern Commerce and Industry." Thirteenth Conference of Anglo-Jewish Preachers, London, 1960, 17-23
- Grossman, A. "Dinei Ona'ah beSifrut haTana'im vahaAmora'im" (unpublished doctoral dissertation for the Hebrew University, Jerusalem, 1966)
- Gulak, A. "Sikarikon," *Tarbiz* 5 (1934), 23-27
- HaLevanon*, 11 (1875), nos. 7. 35, 36; no. 39, (19 May 1875) 72
- Halpern, ed., *Pinkas Va'ad Arba haAratzot*, 258, n. 1
- . *Takkanot Medinat Mehrin*, 87, n. 5
- International Encyclopedia of the Social Sciences, s.v. "Antitrust legislation"; and s.v. "Consumer sovereignty"
- Jung, L. *Business Ethics in Jewish Law*. New York, 1987
- Jung, M. "The Ordinance of Market Overt," in *The Jewish Law of Theft*, Philadelphia, 1929, 90-99
- Levine, A. *Free Enterprise and Jewish Law*. New York, 1980 and: *Economics and Jewish Law*, New York, 1987
- Lieberman, S. "Roman Legal Institutions in Early Rabbinics and in the Acta Martyrum," *JQR* 35 (1944-45) 37, 52
- Melamed, E. Z., "Hitpat'hut Dinei haOna'ah biMekorot haMishnah vahaTalmud," *Yavneh* 3 (1942) 35-54
- Molkho, M. "Takkanat Hezkat Batim Hatzerot veHanuyot beSaloniki," *Sinai* 38 (1951). 296-314
- Murray, D. E. "Sale in Market Overt," *International and Comparative Law Quarterly* 9 (1960), 24-52
- Rabbinowitz, L. *The Herem Hayyishub* (1945)
- Rakover, N. *The Multi-Language Bibliography of Jewish Law*, Jerusalem, 1990, 704-707
- . *Otzar haMishpat*, Part 1, Jerusalem, 1975, 433-434; Part 2, Jerusalem, 1990, 449-451
- Shiloh, S. "Al Shetei Takkanot biSefarad," *Sinai* 61 (1967), 291-297
- Silverstein, A. J. "Consumer Protection in Talmudic Law," *Commercial Law Journal*, July 1964. 279-282
- Simiatitsky, M. "Hezkat haKehillah bePolin," *haMishpat haIvri*, 5 (1937), 199-253
- Sperber, D. "LeGilgulo Shel 'Heshbon." *Tarbiz* 39 (1970) 96
- Struzman, U. "Takkanat haShuk baMishpat haIvri: Mashma'utah veHiyyuniyyutah." *Dinei Yisrael*, 9 (1978-1980), 7-50

Bibliography

- Tamari, M. "Jewish Law and Economic Laws," *Niv Hamidrashia*, Spring 1969, 127-132
- Warhaftig, I. "Haganat haTzarkhan leOr haHalakhah," *Tehumin* 1 (1980), 444-488; *Tehumin* 2 (1981), 470-492; *Tehumin* 3 (1982), 334-370; and *Tehumin* 4 (1983), 382-403
- Warhaftig, S. *Dinei Avodah baMishpat haIvri*. Tel Aviv, 1969, 129-130
- Warhaftig, Z. *HaHazakah baMishpat haIvri*, Jerusalem, 1964, 110-116, 135-163, 269
- Wygoda, M. *Hire and Loan*. Hok leYisrael, ed. Nahum Rakover, Jerusalem, 1999, pp. 7, 94-95
- Zipperstein, E. *Business Ethics in Jewish Law*, New York, 1983

