

# **The Monetary Legal Theory under the Talmud: A Jewish Historical Perspective**

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**The Second Annual Conference of Islamic Economics & Islamic Finance  
Toronto University: Chestnut Conference Center – *Armoury Suite*  
Thursday, October, 30th, 2014, 9:00 am to 5:00 pm**

Organized by: ECO-ENA: Economics & ECO-Engineering Associate, Inc., Canada [www.eco-ena.ca](http://www.eco-ena.ca)

ISSN: 2292-0560 = The Annual Conference of Islamic Economics & Islamic Finance

ISBN: 978-0-9869581-1-3 = The Second Annual Conference of Islamic Economics & Islamic Finance  
e-proceedings at Library & Archive Canada

# Based on

- *B.Geva*

## ***The Payment Order of Antiquity and the Middle Ages: A Legal History***

(Oxford and Portland Oregon, Hart Publishing, 2011)

- **Chapter 2**
- **MONEY AND MONETARY LEGAL THEORY IN ANTIQUITY AND THE MIDDLE AGES**
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- **The monetary legal theory under the Talmud**
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- §2.4 Property rules applicable to coins: facilitating circulation
- §2.5 Conclusion

# Jewish Law: Sources

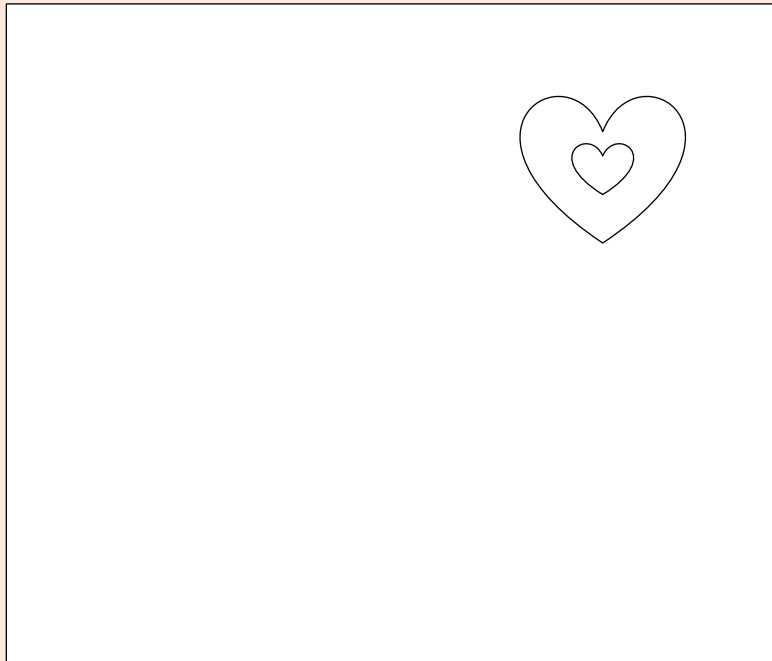
- **WRITTEN LAW**- the Torah: Sinai Revelation
- **ORAL LAW**- the Talmud: being is the summary of the oral law that evolved after centuries of post-biblical scholarly effort by the Jewish sages consisting of:
  - ==The Mishna, a book of law (compiled around 200 CE)
  - == The Gemara extensive commentary in the form of an edited record of the discussions in the academies.

Project completed during 6<sup>th</sup> century CE.

In the Talmud: each Mishnaic law is followed by the corresponding Gemara commentary, so that both form the Talmudic text on a given point.

# Transmission of the Oral Law from Sinai

- “Moses received the Torah at Sinai and handed it down to Joshua; Joshua to the elders; the elders to the prophets; and the prophets handed it down to the [sages]. They said three things: ... [3] make a fence to the Torah”



# FEATURES OF MONEY

- Unit of account;
  - Medium of exchange; and
  - ▶ Storage of value
- 

*Stable-value universal medium of exchange by reference to a standard unit of account*

*Moss v. Hancock* [1899] 2QB 111, 116

“Money” is “**that which *passes freely from hand to hand* throughout the community *in final discharge of debts* ... being accepted equally without reference to the character or credit of the person who offers it and without the intention of the person who receives it to consume it ...”**

# Coins as Monetary Objects

- During Antiquity, the coin emerged as an object used exclusively as money.
- From its inception and early development, the coin had been a piece of metal, stamped with a mark certifying its intrinsic value.
- Over the years, the shape became predominantly round and the mark predominantly came to be that of a figure, frequently the coin issuer, a state ruler.
- Under the then prevailing metallic theory, the coin circulated primarily by reference to the value of its metallic content.



# Money in the Talmud

- [Certain religious obligations]
- Payment for (and price of) goods (lands, or services);
- Subject matter of a loan;
- Repayment of a loan;
- Subject of money change transactions;
- Value of a coin
- Free circulation from hand to hand

# Is loan of money is different from a loan of other fungible chattels?

- Prices of commodities are set in money.
- Accordingly, one consequence of the biblical prohibition against charging and paying interest is that in principle, only the lending of money, rather than other fungible chattels, is permissible.
- That is, due to possible fluctuation in price of commodities, the loan of a fixed quantity of a commodity, in return for a promise to return the same amount of that commodity in the future, known as a loan of a bushel for a bushel or *se'ah* for a *se'ah*, is usually prohibited.
- Conversely, since money is in what the price is set, fluctuation in the value of money does not lead to the violation of interest prohibition. Hence, a loan of money against a promise to return the same amount in money is permissible.

## 6. COINAGE

MANEH	SELA'*	DINAR (ZUZ)	MA'AH	PUNDION	ISSAR	PERUTAH	
מָנֶה	סֶלַע	דִּינָר (זוז) (זוז)	מָעָה	פּוּנְדִיּוֹן	אִיסָר	פְּרוּטָה	
S I L V E R				C O P P E R			
1	25	100	600	1200	2400	19,200	MANEH
	1	4	24	48	96	768	SELA'
		1	6	12	24	192	DINAR
			1	2	4	32	MA'AH
				1	2	16	PUNDION
					1	8	ISSAR
1 GOLDEN DINAR זָהָב דִּינָר = 25 SILVER DINARIM כֶּסֶף דִּינָרִים							

\*Talmudical term for the Biblical *shekel*; but the term "shekel" is sometimes colloquially used to denote a half-*sela'*.

Source: A. Carmell, AIDING TALMUD STUDY 5<sup>th</sup> ed,  
(Jerusalem/New York: Feldheim, 1986) at 82

# Sale of Goods under the Talmud

- Ownership of a chattel passes by means of a formalized procedure, in the form of a proprietary act, called a *kinyan*, carried out in the object to be transferred.
- Typical proprietary acts involve the change of possession; depending on the type of the object, such acts are *hagbaha* (lifting) and *meshicha* (drawing near or pulling) by the transferee, as well as *mesira* (delivery or handing over) by the transferor.
- **Until proprietary act – even after payment of money: transaction is revocable.**

# Barter under the Talmud

- The Talmud also facilitates the acquisition of a chattel by means of *chalifin* or barter, namely, the exchange of two chattels, a procedure that involves a proprietary act in relation to only one of the chattels to be transferred.
- One type of *chalifin* is that of *kinyan sudar*, or the transfer of ownership in a chattel by means of giving or drawing a kerchief.
- Under this procedure, the transferor of an object receives or takes from the transferee a kerchief, in return for which ownership passes to the transferee in the chattel to be transferred, while it is still in the possession of the transferor, and without any reference to a proprietary act in it.

# Coins as Chattels

- As tangible objects coins can be owned and physically transferred, as well as be valued on the basis of their metallic content.
- But unlike ordinary chattels, coins derive further value from their designated use as currency, by virtue of the image or figure imprinted on them, guaranteeing their weight and fineness, and hence their monetary value as media for exchange.
- Being thus distinguishable from other chattels, coins may neither be transferred by means of *Chalifin*, nor serve as an instrument for acquiring other chattels by means of *Chalifin*, rather than given in payment of chattels.
- This is so in part due to the requirement that for *Chalifin* a utensil of use-value is required. Furthermore, since coins may be withdrawn from circulation, their monetary character, and hence value as money, is not stable: “the figure [thereon] tends to become obsolete.”

# Money 'over-the-counter' change transaction

- Two type of coins: which currency is the 'goods' and which is the 'money'?
- Gold 'acquires' silver: it is the drawing of the gold coins that binds their acquirer to pay with silver coins [**Silver is 'money': more in circulation**]
- Copper coins (goods) acquire the silver coins (money). [**Silver is 'money': higher value to metallic content**]
- 'Bad coins' (either disqualified or withdrawn) buy good one.
- No consensus as to what constitutes money in a transaction in which copper coins are exchanged for gold coins.
- In an exchange of coins of different denominations of the same metal, both sets are money so that the transaction is not finalized until each party draws what is tendered to him

# Repayment of a gold dinar loan

- While money may consist of coins of different metals, a debt is to be paid only at its value in the metal which, compared to all other metals, constitutes money.
- This is true even if the loan itself was incurred in coins of another metal.
- Otherwise, namely where silver coins are money compared to gold coins, repayment of a gold dinar for a loan made in a gold dinar, thus effectively linking the value of the debt to the value of gold in silver, would constitute a loan of a *se'ah* for a *se'ah* (of gold) and thus violate the interest prohibitions



# Exchange not OTC:

BM 46a

- “If one’s donkey-drivers and workers were asking him for their wages in the market-place whereupon he said to the moneychanger in the market place: give me a dinar’s worth of copper coins so that I can provide them with their needs, and I will bring you in return a good dinar and [***one-eighth of dinar***]– if he presently has the promised coins at home – [but not otherwise] – it is permitted”

# The one-eighth of dinar:

Cannot be:

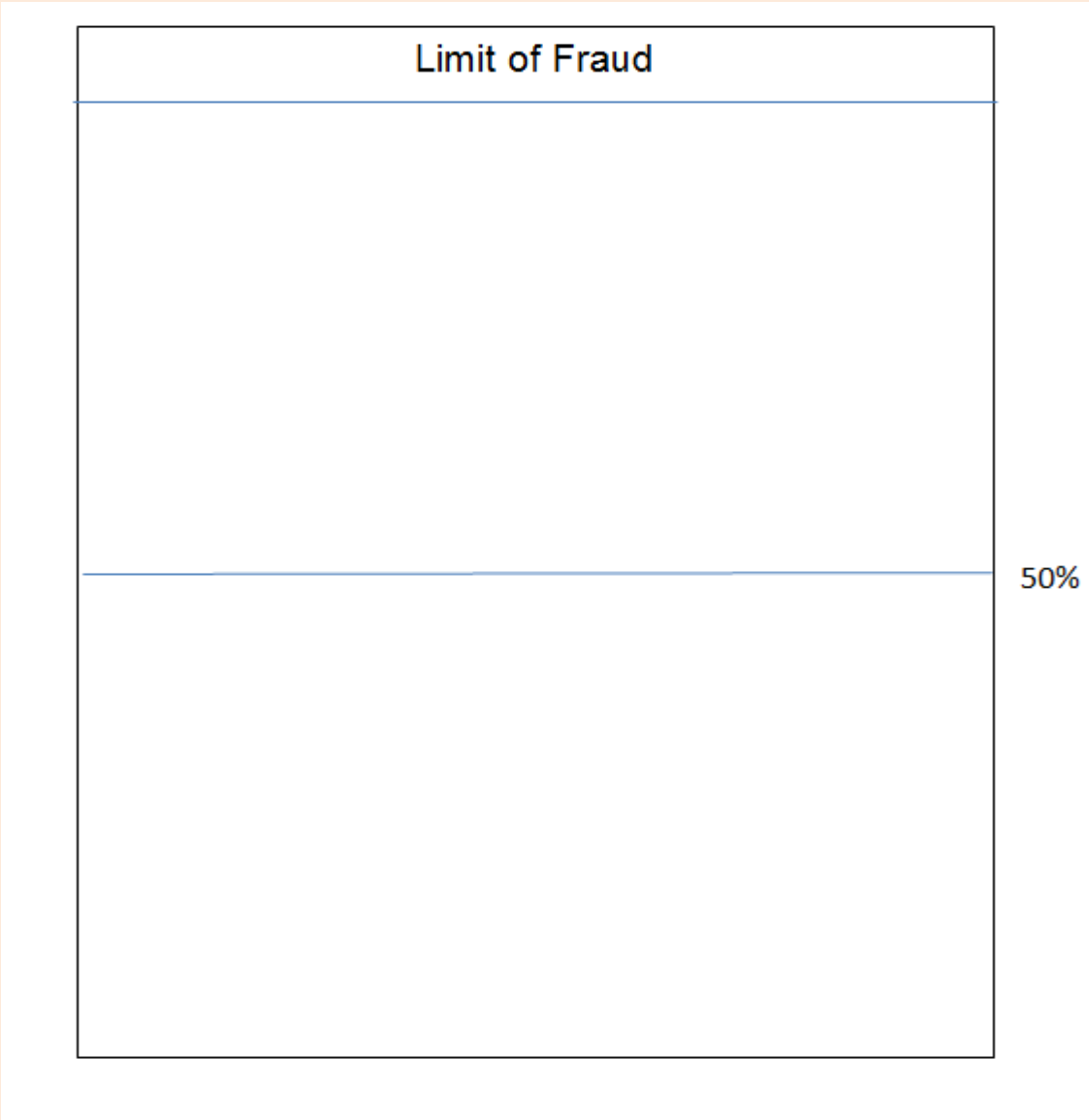
- Interest on a loan;
- Sale by means of *Chalifin*;

Accordingly (among other possibilities):

- ‘Since he has [it]’ –

===like exchange OTC; or

===like ‘bushel for bushel’ which is allowed where  
‘he has [it]’ [an exception to the prohibition]



Monetary Value of an Eroded Coin – I

# Monetary Value of an Eroded Coin –II

- Full-weighted coins or those that have eroded up to (and including) the fraud limit (or even down to another Isar), may be used at their face value.
- Coins eroded beyond that point, that is, beyond the fraud limit (or plus another Isar), reduced to up to (and including) 50% of their original weight, may be used at their actual weighted metallic value – at least at the 50% point.
- Coins reduced below 50% of their original weight are to be demonetized, and may not be used as money.

# Three positions as to the limit of fraud for coins

*A s for goods -- other than for a sale of a commodity by measure, weight, or number (where 'perfect tender' is required') -- an acceptable deviation is:*

- $1/24$  (4 Isars to the Sela);
- $1/12$  (4 Pundyons to the Sela); or
- $1/6$  (8 Pundyons to the Sela).

# The fate of a demonetized coin: conflicting views

- The holder of a coin that cannot be retained due to its excessive erosion beyond 50% “should pierce it and hang it as a pendant on the neck of his son or on the neck of his daughter.” Stated otherwise, he is under a specific obligation to demonetize the deficient coin and destroy its appearance as a coin, upon which he is at liberty to use it as an ordinary chattel.
- the holder of a coin that eroded beyond the retention limit may neither make it a weight among his weights nor throw it among his piles of fragments of his silver utensils. He is not allowed to pierce it and hang it as a pendant on the neck of his son or the neck of his daughter. Rather, “he should either grind it up, or melt it down, or cut it up, or bring it to the Dead Sea and throw it in.”

# Facilitating circulation

- Owner's despair upon losing a chattel – a finder or bona fide purchaser of a stolen object with respect to which the owner despaired gets title and is not liable to pay compensation;
- Owner who lost a chattel with no earmark – such as a coin – is presumed to despair;
- 'Marked' coin – is an inadequate identifying sign– since coin is designed to be spent – and may have circulated.

# Exceptions to metallism throughout the Talmudic discussions.

- The disqualification of the coin as both an instrument and an object of *Chalifin* has been based on a view that the value of the coin is unstable due to the reliance on the figure in the assessment of its value.
- That same figure is however recognized as a source of the monetary character of the coin, as well as, often, of its value.
- Furthermore, the relative added value of the figure stamped on the coin is taken as a factor in the determination of the value of the coin which constitutes money in relation to another item of property.

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All such considerations and discussions point to cracks in an orthodox metallic theory looking at the value of the metallic content as the exclusive source for determining the value of the coin.



The background of the slide is a dense, overlapping pattern of gold coins, likely Roman aurei, which are slightly out of focus and have a warm, golden-yellow hue. The coins are arranged in a way that creates a textured, shimmering effect.

# The Payment Order of Antiquity and the Middle Ages

A Legal History

BENJAMIN GEVA

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HART MONOGRAPHS IN  
TRANSNATIONAL & INTERNATIONAL LAW

