

1. Pete Wells, *Restaurants Add Reservation Cancellation Fees to the Menu*, New York Times, June 2, '15

Before you can write down the time and address, you will have to dig into your wallet for a credit card number. Then you are told that if you need to cancel without adequate notice — anywhere from a few hours to a full week before — you will have to pay a cancellation fee, which may be as low as \$30 or as high as \$200 a person. Or, in a twist that several restaurants have adopted, you may have to pay for the meal in advance in exchange for a ticket. If your plans change, it's your job to find someone to take the ticket off your hands...

Before surrendering a card number over the phone, it's probably wise to ask how the restaurant plans to safeguard it. The answer may be surprising. Tse Wei Lim, an owner of Journeyman in Somerville, Mass., said that before moving to a ticket system recently, he did not ask for credit cards for reservations because he did not have a method of keeping the data that complied with the card companies' security rules. "I've spoken to fellow restaurateurs, and more than one has told me they will ask for a credit card number on the phone if it's a large party, pretend to write it down, then they throw it away," Mr. Lim said.

That's not the only white lie. The dark secret of cancellation fees is that almost no one has to pay them. "Although we take credit card numbers for parties of five or more at my restaurants, we never actually charge the customer for not showing up," the restaurateur Keith McNally wrote in an email. "Of course, we tell them in advance they'll be charged for not showing up, but it's difficult to have the heart to do it. Even, as in my case, when you don't have a heart to begin with."...

Planned cancellations

2. Leviticus 19:36

Just scales, a just stone, a just *ephah*, a just *hin* you shall have. I am HaShem your Gd, who took you out of Egypt.

3. Talmud, Bava Metzia 49a

Rabbi Yosi b'Rabbi Yehudah said: Why does the Torah say 'a just *hin*'? Isn't the *hin* included in the reference to a [just] *ephah*? Rather, this teaches that your "Yes" [*hen*] shall be just, and your "No" shall be just.

Cancelling a purchase or appointment

4. Talmud, Bava Metzia 48a

Verbal commerce does not acquire, but the sages are not pleased with one who reneges.

5. Talmud, Bava Metzia 47b-48a

A mishnah taught, "They have said, 'The One who punished the generation of the Flood will punish one who does not stand by his word.'..."

But are words sufficient to trigger this curse? Didn't we learn, "Rabbi Shimon said... Verbal commerce does not acquire, but the sages are not pleased with one who reneges." And regarding this, Rava said that [in a case of mere words] we only say that the sages are not pleased with such a person!

True, but where there are words and a transfer of money, then he is under this curse...

6. Rabbi Mordechai ben Hillel (13<sup>th</sup> century Germany), Mordechai to Bava Metzia 308

I have heard that one who accepts a *Mi shePara* is required to state it verbally, or it is declared upon him in public. This is not indicated by Tosefta Kiddushin 4... which explains, "How does one accept a *Mi shePara*? The court rises and declares, 'The One who punished the generation of the Flood, etc.'" And in Tosafot Rabbeinu Levi it is written in the name of Rabbeinu Shlomo that they tell the *shaliach tzibbur* to stand upon the platform and declare "*Mi shePara*".

7. Rabbi Yechiel Michel Epstein (19<sup>th</sup>-20<sup>th</sup> century Lithuania), Aruch haShulchan Choshen Mishpat 204:2

Some say that the *chazan* declares this publicly in the synagogue, but that is not the practice... the court curses him in the courthouse, whether there is a large group present or not.

8. Mishnah Bava Metzia 6:1 (75b)

If someone hires craftsmen and one side tricks the other [by reneging], they can only complain against each other.

9. Talmud, Bava Metzia 76b-77a

If one hires workers to dig, and rain comes and fills the land with water, then if he checked the land on the previous night then the loss is theirs. If he did not check the land on the previous night, the loss is the employer's, and he pays as one would pay an idle labourer.

So am I expected to take a loss?

10. Rabbi Moshe Isserles (16<sup>th</sup> century Poland), Code of Jewish Law Choshen Mishpat 204:11

One should keep his word even without a formal transaction, only words. The sages are not pleased with one who backs out, buyer or seller, where the price remains static. But where the price changes, not even bad faith is involved... Some say that even with a fluctuating price one may not back out; backing out would involve bad faith. So seems correct.

11. Rabbi Yechiel Michel Epstein (19<sup>th</sup>-20<sup>th</sup> century Lithuania), Aruch haShulchan Choshen Mishpat 204:7

Some say that one who retracts because he is afraid that the item will be ruined is not required to accept a *Mi shePara*, even where the item is not yet ruined and he is only concerned that it might be ruined. The *Mi shePara* was enacted only for a case where there is no loss, and one backs out only due to fluctuation in value...

12. Talmud, Bava Metzia 49b

A man gave money for wine. He then heard that a royal officer wanted to take the wine; he said, "Give me back the money; I don't want the wine." The case came to Rav Chisda, who said, "Just as they enacted the rule that delivery of the item is the last time for the seller to back out, so they enacted this for the buyer."

13. Rabbi Yechiel Michel Epstein (19<sup>th</sup>-20<sup>th</sup> century Lithuania), Aruch haShulchan Choshen Mishpat 204:7

And some say that this is only where the loss could affect the entire purchase. Where it would only destroy part of the purchase, he cannot retract due to this fear. [Although if the loss were to take place, even partially and with little value, he could retract without a *Mi shePara*, since the transaction is not yet complete.]