A TALMUDIC PERSPECTIVE OF THE ZIMBABWEAN BANKING CRISIS OF 2004/2005

Alexander Maune*

Abstract

This article reviews the Zimbabwean banking crisis of 2004/2005 from a Talmudic perspective using seven Talmudic halachic principles: honest weights and measures, transparency and accountability, deception, fraud and theft, conflict of interest, bribery, outright and subtle, misleading others, and honesty in business. Each principle is used to review the activities and behaviours that nearly collapsed the entire Zimbabwean banking sector in 2004/2005. It was found that almost all the principles were violated prior to the banking crisis. In conclusion, had all the parties involved acted in the spirit of the Talmudic rabbis, the Zimbabwean banking crisis would not have occurred. This article has therefore business and academic value.

Keywords: Talmud, Torah, Tanach, Zimbabwe, Banking Crisis

**CEMS, Department of Business Management, UNISA*
Tel: +27 73 200 8603 or +27 81 494 5183

1 Introduction

The Talmud (Oral Torah/Law) has always been a book solely for scholars, savants, and researchers and it is considered a significant part of the Jewish daily life (Unterman, 1971). Modern commentaries of Jewish law are all based upon the principles of the Talmud. The Talmud has been the cornerstone of the Jewish culture, their creative strength as well as the backbone of their history (Unterman, 1971 and Brackman and Jaffe, 2008). The Talmud has been argued to be the Jewish wisdom for business success (Brackman and Jaffe, 2008).The Talmud literally means “study.” The Talmud is without doubt the most prominent text of rabbinic Judaism’s traditional literature (Unterman, 1971). Among Jews, of course, the Talmud has been revered, studied, and commented upon over and over again for more than a millennium (Jaffee and Fonrobert, 2007). The Talmud is also replete with legal, ethical, and moral questions. The earlier edition, most likely redacted in Tiberias in the late fourth and/or early fifth centuries in the current era, is known as the Jerusalem or Palestinian Talmud (*Talmud Yerushalmi*). The later and larger edition, redacted in Persia in as-yet poorly understood stages between the late fifth and late eighth centuries in the current era, is known as the Babylonian Talmud (*Talmud Bavli*).

According to Miller (2011) cited in Maune (2015a), the Talmud is a comprehensive term for the Mishnah and Gemara. The Mishnah is a fundamental collection of the legal pronouncements and discussions of the Tanna`im (Rabbinic sages), compiled by Rabbi Yehudah HaNasi early in the 3rd Century. The Mishnah is the basic text of the Oral Torah (Maune, 2015a). The Mishnah is a listing of the laws. The Mishnah is the framework upon which the Halachah (law) is constructed. The Gemara debates, dissects, and defines the principles upon which halachic decisions are based. The Gemara is the soul, the inner meaning of the laws. In the main, the basic law is conveyed in the Written Torah and the numerous details of that law in the Talmud. The Talmud is essentially a commentary to and elaboration of the Mishnah (The Schottenstein Edition, *Talmud Bavli,* 2014). The Talmud is principally concerned with *halachah* (Jewish law), but it also provides a detailed record of the beliefs of the Jewish people, their philosophy, traditions, culture, and folklore, that is, the *aggadah* (homiletics) (Unterman, 1971).

The Talmud is the twin of the Torah (Written Torah) itself. Both were given to Moshe (Moses) at Mount Sinai. The Torah without the Talmud is like a diamond in a dark room. It is there, but its form, its brilliance, its beauty, its very existence, is invisible. The Torah speaks of commandments, but does not define them. The answers are found only in the Talmud (Oral Law). It is the inseparable essence of the Written Torah, and the Talmud is the essence of the Oral Law (The Schottenstein Edition, *Talmud Bavli,* 2014). All the commandments that were given to Moshe at Mount Sinai were given together with their interpretation, as it is written "and I will give thee the Tables of Stone, and the Law, and the Commandment"(Exodus 24:12). "Law" is the Written Law; and "Commandment" is its interpretation: We were commanded to fulfil the Law, according to the Commandment. And this Commandment is what is called the Oral Law (Maimonides, 2011). The whole

of the Law was written down by Moshe Our Teacher before he died, in his own hand (Maimonides, 2011). He gave a scroll of the Law to each tribe; and he put another scroll by the Ark for a witness, as it is written in the Torah, "take this book of the Law, and put it by the side of the Ark of the Covenant of the Lord your God, that it may be there for a witness against thee" (Deuteronomy 31:26). But the Commandment, which is the interpretation of the Law--he did not write it down, but gave orders concerning it to the elders, to Yehoshua (Joshua), and to all the rest of Israel, as it is written in the Torah, "all this word which I command you, that shall ye observe to do . . ." (Deuteronomy 13:1). For this reason, it is called the Oral (Maimonides, 2011).

This article adopted and followed more or less the same approach by Friedman and Friedman (2009). The following Talmudic halachic principles formulated the basis of this article: honest weights and measures, transparency and accountability, deception, fraud and theft, conflict of interest, bribery, outright and subtle, misleading others, and honesty in business. The following sections provides a discussion of each principle in turn in a way that provides a review of the activities and behaviours that nearly collapsed the Zimbabwean banking sector in 2004/2005.

2 The Talmudic halachic principles

The following provides a Talmudic discussion of some of the halachic principles which the author felt important to review the activities and behaviours that took place during the Zimbabwean banking crises of 2004/2005.

2.1 Honest weights and measures

The Torah is very much concerned with honest weights and measures. The Torah states (Leviticus 19: 35-36): “You shall not commit a perversion in justice,[1] in measures of length, weight, or volume. You shall have correct scales, correct weights, correct dry measures, and correct liquid measures – I am Hashem, your God, Who brought you forth from the land of Egypt.” One is not permitted to own an inaccurate weight or measure (Deuteronomy 25: 13-16): “You shall not have in your pouch a weight and a weight – a large one and a small one. You shall not have in your house a measure and a measure – a large one and a small one. A perfect and honest weight shall you have, a perfect and honest measure shall you have, so that your days shall be lengthened on the Land that Hashem, your God, gives you. For an abomination of Hashem, your God, are all who do this, all who act corruptly” (Bava Metzia, 61b). This is why shopkeepers were instructed to wipe their weights once a week and clean their scales after every weighing (Bava Basra, 88a).

The Talmud further states that, “The punishment for measurements is [even] more severe than the punishment for promiscuity….” The Talmud is so concerned with honest measures that the sages even prohibit vendors of liquids from pouring a liquid rapidly from a great height. Since foam is generated, the consumer ends up with less liquid. In addition, market commissioners were appointed to oversee businesses using weights and measures (Bava Basra, 89a). For example, the strict Talmudic attitude towards maintaining accurate weights and measures counters society’s lenient view with respect to “short-changing” clients and “cutting corners.” One major form of theft or monetary exploitation regarded by Talmudic law is “overcharging.”

There are three degrees of overcharging. If the discrepancy between the sale price and the market value is less than one sixth of the market value, no legal action is possible. It is assumed that the buyer and seller waive their legal rights as the social costs of cancelled sales would outweigh any benefits (Tamari, 1991). If the discrepancy between the sale price and the market value is exactly one sixth, the buyer may make a claim for the price differential. If the sales price differs from the market value by more than one sixth, the sale may be invalidated. If the seller makes it clear that there is an overcharge, and no form of oppression exists, then no claim for “overcharging” can be made. This form of legal protection is designed to prevent the exploitation of a party who may be weaker, ignorant, misled, or otherwise disadvantaged (Tamari, 1991). The issue still arises whether one is entitled to charge more than the market value up to the one-sixth level. The Talmud suggests that the moral activity would be charging no more than the market price, despite being technically allowed by the law.

In the current period as well as in the financial services sector, rating agencies act as providers of honest weights and measures. However, it is without doubt that these rating agencies have been the law unto themselves and were accorded absolute power to shape the perception of investors about corporate and their products. These rating agencies have remained unregulated during the period under consideration. Credit rating agencies have lost their credibility, particularly for the role they have played in the Zimbabwean banking crises of 2004/2005. The biggest problem about these rating agencies is the possible negative influence of competition among themselves on the ratings they provide. The ratings quality is likely to be impacted by the need to generate revenue. Like all other businesses, these rating agencies are driven by the need to generate exorbitant profits for their shareholders instead of the quality of service they provide to their clients. Logic suggests that with high quality service, comes growth of market share and associated reward for superior

[1] Scherman (2013). Leviticus 19:35-36. A businessman who falsifies weights and measures is likened to a judge who perverts judgment.

performance. Despite their questionable quality of service that this cartel has subjected their clients to, their revenue has been growing.

Regulators, credit agencies and external auditors have been criticized for doing little to prevent the banking crisis. Banks escaped closer scrutiny of regulators who allowed risk management practices to slip. Credit rating institutions have not been regulated and there was no working relationship between them and the Central Bank. As expected the issue of independence is cited by agencies as they deem regulations to be interference in the ratings process.

After the banking crisis the Central Bank instituted a number of guidelines to regulate the banking sector environment. These guidelines included the accreditation guidelines for Credit rating agencies. The guideline provides that no person, other than an accredited credit rating agency, is permitted to conduct or assign a credit rating to a banking institution conducting banking business in Zimbabwe. Each banking institution operating in Zimbabwe is required to be rated by an accredited credit rating agency at least once a year. These Credit Rating Agencies must be accredited by the Central Bank. Credit Rating Agencies assess the credit risk of corporate or government borrowers and issuers of fixed income securities. Credit Rating Agencies may provide credit ratings for different types of debts and financial obligations including, for instance, private loans and debt securities that are not publicly traded, zero coupon bonds, preference shares and other securities that offer a fixed rate of return. The work of rating agencies must be complementary to regulatory efforts of promoting financial stability and protecting the interests of investors and creditors. Credit ratings must instil market discipline which in turn enhances corporate governance and risk management systems for the financial institutions. Credit Rating Agencies facilitate the realization of regulatory objectives of protecting investors, maintaining fair, efficient and transparent markets, and reducing systemic risk (Gono, Dhliwayo and Mataruka, 2004). Had this been prevailing during this period most financial institutions would not have collapsed or placed under curatorship. Had the regulator and the credit rating agencies worked in the spirit of providing honest weights and measures as expounded by the Talmudic rabbis, the banking crisis would have been avoided. However, failure to provide honest weights and measures has been cited as the major contributor towards the near collapse of the Zimbabwean banking sector. Providing dishonest measures is an abomination of God (Deuteronomy 25:13-15).

In Friedman and Friedman (2009), credit ratings were considered to be the modern equivalent of the stone-weight, and auditors are the market commissioners. To Friedman and Friedman (2009), credit rating agencies that provided deceptive ratings are also guilty of *geneivat da'at* (literally, theft of thought) as well as *lifnei iver* (literally, "before the blind"). Needless to say, the undeserved high ratings [and audit reports] given to extremely risky firms and securities have caused the entire financial system to "stumble" (Friedman and Friedman, 2009).

2.2 Transparency and accountability

The Torah (Numbers 32:22) says, "And you shall be innocent before God and Israel." This verse is used by the Talmud (Yoma, 38a) to derive the principle that it is not enough for one to know that one`s actions are proper in God`s eyes. One must also act in such a way as not to engender suspicion on the part of human beings. Conflicts of interest, of course, cause people to be suspicious of one's actions and this is not permitted. Demonstrating the importance of keeping honest records, the Torah (Exodus 38:21-31) enumerates the amount of gold, silver, and copper used in the construction of the Tabernacle. Moreover, the Torah (Exodus 38:21) informs us who was ultimately responsible for guaranteeing that accurate records were kept: "These are the accounts of the Tabernacle, the Tabernacle of the Testimony, as they were calculated according to the commandment of Moses…" Moses wanted to show everyone that he was acting in such a way so that no one would be suspicious of him and to make evident to the Israelites that no precious metals were diverted for anyone's personal use. Thus, he commanded others to audit the books.

The Sidrah begins with a detailed listing of the amounts of gold, silver and copper that was contributed for the construction of the Tabernacle. Despite the fact that metals were deposited with Moses and were under the supervision of Bezalel – people whose greatness and integrity were indisputable, known to the people, and attested to by God – Moses would not rely on assumptions. Leaders must be beyond reproach and must keep accounts of the funds that pass through their hands. Today we would refer to this as transparent accounting records. The Talmud (Pesachim, 13a) states that the overseers in charge of the soup in the kitchen were not allowed to purchase surplus food when there were no poor people for whom to distribute it. Surpluses were only allowed to be sold to others so as not to arouse suspicion that the charity overseers were profiting from public funds. The Talmud (Yoma, 38) relates how the family of Garmu, that made the showbread for the Temple, was especially careful to be above suspicion. Their children were never seen with fine bread. Brides from the family of Abtimas never wore perfume since this family made the incense for the Temple.

Moses gave a complete reckoning to the Jewish people of what their donations had been used for. Financial transparency is essential for all organizations and especially those that are supported by the community (Exodus 38:21). From the on-site examinations and investigations by the Central Bank,

it was found that Some banking institutions unethically maintained two sets of financial records; one set for regulatory convenience at licensing, and on an on-going basis another set reflecting the correct profile of the institution. Some financial institutions were misrepresenting their financial condition, while some were tampering with the information systems to conceal losses by creating fictitious assets and understating expenses and liabilities. Poor corporate governance practices were at the centre of the challenges that faced other banks, for example, Barbican Bank. There were no separate and independent boards for each subsidiary and the holding company. In addition, there was over domineering by the Chief Executive Officer (CEO) who happened to be one of the major shareholders.

Cosmetic management was evident as reflected by CFX bank management who were manipulating computer generated financial statements in order to conceal accumulated and monthly losses. Management also resorted to the creation of fictitious assets in order to conceal the losses and funding gaps on illegal foreign exchange deals. The utilization of depositors' funds to acquire fixed assets further exacerbated the liquidity problems. The huge non-performing insider loans also compounded the problem. A targeted on-site examination conducted on 15 December 2004 determined that CFX bank was insolvent and had a huge accumulated loss. The bank's internal auditors and independent external auditors also confirmed the accumulated losses and manipulation of management accounts. As a result of these losses, the bank was found to be insolvent. These findings were subsequently corroborated by the curator's reports. In addition, the curator determined illegal dealings by counterparties on the bank's assets, inadequate capitalization, imprudent insider dealings, illegal foreign currency dealings and ineffective risk management.

The Central Bank also discovered that the Executive Chairman of Intermarket banking corporation had loaned himself ZW$90 billion of depositors' money and the insider loans were not being serviced. The Executive Chairman was said to have been so dominant that he had the veto power on everything that took place in the corporation. Investigations by the appointed curator discovered insider loans to the tune of ZW$174 billion. It was, however, argued that fraud by some employees taking advantage of weak management systems exacerbated the financial distress in Intermarket.

The Central Bank, however, instituted a framework of the relationship between bank supervisors and Banks' external auditors in 2004. This Framework sets out the rationale for formal co-operation between bank supervisors and external auditors in that it contributes to enhancing the risk-focused approach to bank supervision. The guideline facilitates mutually beneficial synergies between external auditors and bank supervisors. It covers *inter alia,* the role of external auditors, their independence, their reporting responsibilities in relation to the Central Bank, and the framework for on-going dialogue between external auditors and the Central Bank. Mataruka (2004) states that, external auditors should express an objective opinion on whether the bank's financial statements give a true and fair view of the bank's financial position and make recommendations to the board of directors. The external auditors` role became very questionable after the banking crisis and they faced criticism from the public. External auditors are expected to perform their duties with due care and skill commensurate with the complexity of the engagement and are not be exonerated by disclaimer clauses in the statements they endorse if they contain material errors and gross misrepresentation.

The Central Bank Chief expressed his concern on their objectivity and independence and stated that they should avoid providing non-audit / consulting services to, or borrowing from, banking institutions and bank holding companies that they audit. Furthermore, an audit firm should diversify its clientele base in order to avoid over-reliance on fees from one banking institution or group of connected institutions. Annual audit fees derived from an audit performed on a banking institution or group of connected institutions are also limited to not more than 10 percent of the total gross fees of the firm as a whole, or as shall be determined from time to time by the Reserve Bank in consultation with relevant stakeholders. External auditors are required to report promptly to the Reserve Bank, in terms of section 43 of the Banking Act, irregularities or illegal acts that may have been committed by any director of the financial institution or any person whose activities may significantly damage the financial institution's financial stability (Gono et al., 2004). This framework of relationship seeks to improve transparency and accountability in the banking sector. This must be done in the spirit of Torah as was done by Moses (Exodus 38:21-31).

2.3 Deception, fraud and theft

The Talmud's views towards deception, fraud and theft go beyond those of contemporary business ethics thought. Besides acknowledging the rational and logical requirement of honest dealings within the marketplace, the Talmud looks at monetary dishonesty as a transgression against God's will. Regarding stealing, many prohibitions have been stated in reference to it in the Torah: "You shall not steal" (Exodus 20:13), "Nor may you rob" (Leviticus 19:13), "You shall not oppress" (ibid.), "Nor may any man [among you] make a false denial" (Leviticus 19:11), "Or lie against his fellowman" (ibid), "You must not cheat one another" (Leviticus 25:14), "You must not move back the border of your fellowman [`s

field]" (Deuteronomy 19:14). Such activities lead to Divine retribution (Tamari, 1991).

The Talmud (Bava Basra, 88b) says, "Stealing from a human being is worse than stealing something that is consecrated [for use in the Beis HaMikdash[2]], for when referring to the former, [the Torah] speaks first of 'sinning' and only afterwards does it mention 'misappropriation' [while when referring to the latter it speaks first of 'misappropriation' and only then does it mention 'sinning']." Theft requires not only restitution, but repentance before God (*teshuvah*), and may result in an individual becoming ineligible as a witness (Tamari, 1991).

The Talmud (Bava Kamma, 119a) says: "Whoever steals from another, even [something] worth only a prutah, it is as if he has taken his life." [From here] one sees the severity of this sin even with regard to small amounts. The Talmud further states (Taanit, 7b) that, "The rains are withheld only because of the sin of stealing." The Torah (Leviticus Rabbah[3] 33:3): "[In] a basket full of transgressions, which sin is the most incriminating? The sin of stealing!" And it was the sin of stealing that finally condemned the generation of the Flood to such harsh punishment (Sanhedrin, 108a).

The Torah (Exodus 23:7) states that: "Distance yourself from a false matter," which includes all kinds of falsehoods such as press releases with misleading information, deceptive advertisements, deceptive labels, deceptive packaging, and so forth. Isaiah's criticisms of Israel dealt with unethical business practices. The Tanach (Isaiah 1:22) complains that: "Your silver has become dross, your wine diluted with water." According to the Talmudic commentators (Rashi and Radak), this is not a metaphor but refers to actual deceptive practices in ancient Judah and Jerusalem that angered the Lord. Apparently, even in ancient times, some retailers would adulterate their products to deceive their customers. The Tanach (Amos 8:5) remonstrates the Jews for unethical business practices, including "making the *ephah* (a dry measure) smaller and the *shekel* larger and falsifying the scales of deceit."

Onsite examinations by the Central Bank and curators have uncovered rampant activities of deception, fraud and theft in many financial institutions. Management and directors went on to violate their fiduciary duties. Some banking institutions were overstating their capital positions by under-providing for non-performing loans, while others falsified transactions to conceal undercapitalization. In some instances, banks were involved in illicit and unethical practices involving the use of depositors' and borrowed funds to create an illusion of adequate capitalization thereby violating the Banking Act and the Companies Act. Poor corporate governance practices, weak underwriting and monitoring standards, as well as ill-planned growth contributed to excessive levels of non-performing insider loans. Some banking institutions disregarded set prudential lending limits notably to insiders and related parties. In some cases, interest was not charged on insider loans and the loans were eventually written off without board approval. As a result of illicit dealings with insiders and related parties and/or due to operational losses, a number of banking institutions failed to meet the prescribed prudential capital adequacy ratios. The Central Bank was forced to place a number of banking institutions under curatorship following a determination that they were insolvent and were not operating in accordance with sound administrative and accounting practices and procedures.

Furthermore, a number of institutions had departed from their core business and were issuing loans to companies connected to the directors and shareholders. Others were engaged in fraudulent foreign exchange activities to fund operations of their subsidiaries using local depositors' funds. Some challenges were a reflection of technical mismanagement which eventually unleashed cosmetic and desperate management practices, for example, Trust Banking Corporation. Some directors recapitalized their banks using depositors' funds in violation of both the Banking Act and the Companies Act, for example, Royal Bank. In an act of deception, it was determined that although Time Bank Limited's records indicated a capital base of ZW$14.76 billion as at 31 December 2003, the actual capital position, after reversing interest income of ZW$184.58 billion that had been accrued on fictitious assets, was a negative ZW$174.6 billion.

Following another determination by the Central Bank that CFX Bank was facing serious liquidity, profitability and solvency challenges, the Bank was placed under curatorship on 17 December 2004. Gono et al., (2004) state the following as some of the reasons for the decision; bank management was manipulating computer generated financial statements in order to conceal accumulated and monthly losses. Management also resorted to creation of fictitious assets in order to conceal the losses and funding gaps on illegal foreign exchange deals. The utilization of depositors' funds to acquire fixed assets further exacerbated funding gaps. The institution was adversely affected by poor corporate governance as evidenced by numerous unauthorized excesses and imprudent write-offs of interest on insider loans.

The findings above reflect the excessive deceptive and fraudulent activities that were associated with the Zimbabwean banking crisis in 2004/2005. According to Tamari (1991), theft requires not only restitution, but repentance before God (*teshuvah*), and may result in an individual

[2] Temple

[3] Vayikra/ (Leviticus) Rabbah – is an ancient volume of aggadot which was created in Eretz Israel and was edited in the 5th or the beginning of the 6th century C.E. It was clearly influenced by the ancient Tannaic Midrashim (Hananel Mack, 1989, MOD Books, Tel-Aviv).

becoming ineligible as a witness. Had the directors and management heed the Talmudic rabbis` advise, the Zimbabwean banking crisis would have been prevented. The Talmud discourages any form of deception, fraud and theft. These are considered the most incriminating sins on earth.

2.4 Conflict of interest

The Talmud (Bava Metzia, 38a) discusses a disagreement regarding the law in the case of a bailee who is watching someone's fruit, wine, oil, or honey and notices that it is starting to spoil. Should he sell it or is he not permitted to do anything? The Talmud maintains that he should sell it to others under the supervision of the court, but he is not permitted to buy it for himself. The reason being to avoid people to suspect that the bailee purchased it for an unfairly low price. Klainman (2000) uses this law to prove that the Jewish laws dealing with conflict of interest are not only for judges, witnesses, or public officials. These laws are also for trustees or "anyone having a fiduciary relationship with another." Also, they cause others to be suspicious of one's motives, implying a lack of transparency or oversight. One is obligated to act in a way that does not cause others to be suspicious of one's actions.

There is no question that Jewish law does not allow people or organizations to place themselves in a situation where a conflict of interest is present. The Talmud (Sanhedrin, 18b) states that neither the king nor the High Priest may be members of the court that is involved in the intercalation of the year. The Talmud felt that the conflict of interest was too great and therefore did not allow the king to participate as a member of the panel. The High Priest also had a conflict of interest. If he agreed to add another month, the following Yom Kippur would be later in the year when it is colder in Israel. This would result in a great deal of discomfort for him, either because of the five ritual baths he took on Yom Kippur and/or because the floor would be very cold and he performed the service barefoot. When it comes to conflicts of interest, no one is to be trusted (Friedman and Friedman, 2009).

In all the cases, there was a common feature of expropriation of minority shareholders and depositors through insider loans. This was attributed mainly to power imbalances wielded by major shareholders who normally controlled the board and management. In this instance executives gave themselves loans from the depositors and investors funds. In all cases the loans were not repaid or they were repaid on the directive of the Central Bank during routine supervision or as part of Corrective Orders. Insider loans disproportionate to the resources of the company reflect corporate governance failure not only from the perspective of poor board monitoring but also from an ethical and moral perspective. They depict a human factor failure in management. Insider loans have a poor rate of servicing and have potential to bring down the company unless very closely monitored and the board enforces repayment (Muranda, 2006).

For example, Intermarket Banking Corporation was engaging in non-banking activities, and insider loans and advances. This constituted 64% of total loans and advances thereby exposing the bank to high concentration risk. The crisis was attributable to a non-performing book of ZW$185 billion, made up mostly of insider loans, and involvement in speculative activities on the stock exchange. The lack of separation of ownership from management compromised board independence and oversight. This, however, resulted in an imprudent directive by the majority shareholder to invest 60% of Intermaket Building society's investments within the group thereby resulting in the siphoning of depositors' funds for the benefit of insiders (Gono, 2004).

Royal bank had a capital deficit of ZW$27.6 billion. The capital deficit was mainly attributed to non-performing loans amounting to ZW$28.3 billion, of which insider loans amounted to ZW$23.1 billion (Gono et al., 2004).

Gono et al., (2004) argue that excessive management control was manifested by the emergence of owner-run institutions, and through the domination of CEOs in decision making, cronyism and nepotism on boards of directors. Undue influence by CEOs led some banking institutions to catastrophe as such CEOs bypassed their boards or were merely waved-on by rubber-stamping "yes men" boards to engage in extensive risky and speculative transactions, with disastrous consequences for the institutions concerned.

The central Bank instituted some regulations to control the situation and restoring order. It stipulates that once their appointment takes effect, directors assume a fiduciary role and must display the utmost good faith towards the banking institution in their dealings with it or on its behalf. Furthermore, the Companies Act [Chapter 24:03] subjects directors to disclosure requirements for outside business interests. Directors shall observe restrictions on insider lending as provided in the Banking Act and Regulations. More so, directors are required to observe the Zimbabwe Stock Exchange rules and/or other applicable laws in dealing in shares. In addition, they must avoid making any personal profit, acquiring personal benefit or retaining any commission, bonus or gifts for performing their official function of granting approval to financing arrangements or the use of particular services. The Central Bank further provides that, every banking institution shall have a policy on insider loans, which complies with the provisions of the Banking Act and Regulations as amended from time to time. The stipulations also provide for disclosures on any lending in connection with any related interest (Dhliwayo, 2004).

The directors must act in the spirit of the Talmudic rabbis who prohibited any dealings that resulted in conflict of interest as they argued that one is obligated to act in a way that does not cause others to be suspicious of one's actions.

2.5 Bribery, outright and subtle

The Torah is very strict about taking bribes: It states (Exodus 23: 8; Deuteronomy 16:19): "Do not accept a bribe" and (Deuteronomy 16:19): "Do not pervert judgment." The Talmud (Kethuboth, 105a) adds that the Torah prohibits a judge from taking money even in order to acquit the innocent or to declare the guilty liable. To further elaborate on this point, the Talmud (Kethuboth, 105b) expounds the story of Rabbi Yishmael son of Rabbi Yosi whose sharecropper brought him a basket of a fruit (from Rabbi Yishmael's own orchard) every Friday afternoon. One day he brought the basket on Thursday. When Rabbi Yishmael asked him why he brought the fruit early, he was informed that the sharecropper wanted to use him as a judge on a case. Rabbi Yishmael recused himself and found others to try the case. Later, when Rabbi Yishmael overheard the proceedings, he kept thinking to himself of arguments the sharecropper might use to win the case. When he realized what he was doing, he cursed those who take bribes. He said that in this situation, where he did not take the gift and even if he had, it was fruit from his own orchard, yet, he was still biased and could not think clearly. All the more so, one who takes a bribe (or who even has a conflict of interest) can never be impartial.

For the first time in Zimbabwean history, indigenous banks were allowed and subsequently encouraged. In fact, all new licenses were issued to such banks in the 1990s, with the first indigenous commercial bank established in 1997. The number of banking institutions increased rapidly and by 2002 they had more than doubled. The emergence and expansion of indigenous banks was in line with the political zeal to break up the dominance of foreign banks which used to serve the white population. Issuing of licenses to those with political connections was, however, lax, enabling the elite group to use newly-licensed banks as an avenue to accumulate wealth. There was ownership concentration in newly-licensed indigenous banks, with the founders and their families as controlling shareholders and represented in top management and the board of directors (Mumvuma, Mujajati, and Mufute, 2003).

Onsite examinations established that some banking institutions were overstating their capital positions by under-providing for nonperforming loans which were in most instances linked to insiders and associate companies. Cases were also noted of banking institutions which were capitalized using depositors' funds in contravention of the Banking Act. One institution went to the extent of crafting an intricate web of transactions designed to create an impression of adequate capitalization. Some institutions were also found to have misrepresented the minimum paid up capital during the licensing stage, a development which prompted the Central Bank to require promoters to deposit start-up capital with the central bank (Gono et al., 2004). The Central Bank further instituted that supervision and regulation of financial institutions must commence at the licensing of the institution. In this regard the Central Bank has put in place a comprehensive licensing framework aimed at ensuring that only potentially strong institutions are allowed to enter the financial system. This ensures financial stability and minimizes the cost of problem bank resolution. The licensing function entails evaluation of proposals to set up operations by new institutions, mergers and acquisitions as well as the evaluation and approval of cross border investments (Gono et al., 2004).

The banking crisis could not have occurred if the regulators such as the Central Bank were doing their job from the initial stages of license issuance. What happened? Bribery, whether outright or subtle (that is, *shochad devarim*) was definitely one of the problems here. The Talmud (Kethuboth 105b) discusses a category of bribe known as *shochad devarim* (literally, "bribe of words" or "bribe of acts"). Several examples of *shochad devarim*, including the above-mentioned story of Rabbi Yishmael son of Rabbi Yosi, are provided. The sage Shmuel was crossing a bridge and a person gave him a helping hand. It turned out that this person needed a judge and Shmuel disqualified himself. Ameimar disqualified himself from serving as a judge because an individual who needed his services had removed a feather that had fallen on his head. Mar Ukva disqualified himself because someone covered up some spit that he was about to come across. It is obvious that Jewish law insists that justice must be completely unprejudiced and objective. Thus, a bias that arises from a past favor would very likely be *shochad devarim* (Friedman and Friedman, 2009).

2.6 Misleading others

The principle of *lifnei iver* (literally, "before the blind") prohibits one from giving bad advice to another person. It is based on the verse in the Torah (Leviticus 19:14): "You shall not curse the deaf, and you shall not place a stumbling block before the blind[4]; you shall fear your God - I am Hashem." The original Hebrew reads, *lifnei iver lo sitten michshol* ("before the blind do not place a stumbling block") and is often referred to, succinctly, as *lifnei iver*. The term "blind" is interpreted metaphorically as meaning someone who is unsuspecting, naïve, ignorant, or

[4] Scherman (2013). "Before the blind." [In addition to the lateral meaning,] one may not give bad advice to an unsuspecting person (Rashi; Sifra), or cause someone to sin (Rambam).

even morally blind[5]. Thus, one who purposely gives bad advice to another has violated this law. In fact, one who conceals his true motives for giving the advice (for example, there is a conflict of interest and the advisor stands to make a hidden profit or get a kickback from his advice) has violated the principle of *lifnei iver* (Leviticus 19:14). As the Midrash[6] explains, the reason the verse ends with the warning about fearing God is that human beings do not know whether advice proffered to them by friends is good or bad; after all, advice is often given with an ulterior motive. Only God knows the true motive of the advice giver.

In addition, *lifnei iver* is considered to be a prohibition against helping or causing another to sin[7]. Thus, placing any kind of prohibited temptation in front of someone would not be allowed. For example, providing an individual with a prohibited food would be a violation of *lifnei iver,* thus according to the Talmud (Pesachim, 22b). How many times do people fail in these transgressions daily as their lust for profit lures them onward? In the Torah the severity of their punishment has already been spelled out (Deuteronomy 27:18): "Cursed is he who misleads an undiscerning person."

The responsibility of an honest person is such that when someone comes to him for advice he must give him the same advice that he would himself follow, having no other end in mind, immediate or distant, than the benefit of the one who has come for the advice. And if it should happen that he sees himself as standing to lose by such advice, he should reveal this to the other party if he is able to, and if he cannot, he should excuse himself and not give any advice (Luzzatto, 2009).

Muranda (2006) states that, two directors of ENG Capital Investment virtually operated as the full board. They became quite reputable as deal brokers. Even as the company was starting to show signs of oncoming problems the directors managed to convince highly reputable companies to part with their money in violation of the Talmudic principle of *lifnei iver lo sitten michshol*. The young directors were also well known for loving flashy and expensive vehicles. Problems set in early 2004 when the company started failing to repay investors funds on maturity. They failed to account for ZW$61 billion of investor money. They also gave themselves loans that were never repaid.

Time bank inflated its capital base using interest income of ZW$184.58 billion that had been accrued on fictitious assets. The fictitious assets were loan facilities purportedly availed to various companies to fund peri-urban agricultural and property development projects, which were designed to disguise the abuse of depositors' funds by the bank (Gono, 2004).

Apart from concealing accumulated losses through the manipulation of management accounts, CFX management also manipulated the system-generated balance sheet by creating fictitious assets in order to mask losses created by illegal foreign exchange deals (Gono, 2004). The Central Bank examination unearthed massive misrepresentation of the financial conditions in some banking institutions. It was noted that some banking institutions unethically maintained two sets of records; one fabricated set for regulatory convenience, and another set reflecting the correct profile of the institution. In addition to misrepresentation of financial conditions, some banking institutions went as far as tampering with the information systems to conceal losses by creating fictitious assets and understating expenses and liabilities. Management of some banking institutions crafted irregular capitalization schemes involving the use of borrowed funds to fund the purchase of the company's own shares, in violation of the Companies Act (Gono et al., 2004).

These activities misled both the public and the regulator. The Talmud provides that all these transgressions are committed on a daily as lust for profit lures people onward. The Torah (Deuteronomy 27:18) states that, "Cursed is he who misleads an undiscerning person." Management and directors of banks should act in the spirit of the Talmudic rabbis in conducting their fiduciary duties. As a result of these misleading activities, a lot people lost their funds and investments. The impact had a chain reaction.

2.7 Honesty in business

The Talmud (Shabbos, 31a) states that: "The first question an individual is asked in the afterlife at the final judgment is: 'Were you honest in your business dealings?'" This statement on its own demonstrates the importance of honesty in business dealings. In fact, all that the Holy One blessed be He desires, is honesty, as it states (Psalms 31:24): "The Eternal safeguards the honest." And it says (Isaiah 26:2): "Open the gates and let the righteous nation enter – they have waited trustingly" and (Psalms 101:6): "My eyes are upon the faithful of the land, that they may dwell with me; he who walks the way of perfect innocence, he shall serve me," and (Jeremiah 5:3): "Surely your eyes are toward those who are faithful." "Whoever conducts his business dealings honestly is

---

[5] ibid

[6] Midrash – Is the specific name for the activity of biblical interpretation as practiced by the Rabbis of the Land of Israel in the first five centuries of the Common Era. The Hebrew word derives from the root, d-r-sh, which literally means "to inquire" or "to search after." In the earlier books of the Bible, the root is used to refer to the act of seeking out God`s will (for example, Genesis 25:22; Exodus 18:15), particularly through consulting a figure like Moses or a prophet or another type of oracular authority. Midrash itself is part of the Oral Torah. The Hebrew word for "study" used in the verse (Ezra 7:10), *lidrosh,* has the same root as midrash. By late antiquity midrash had come to designate Bible study in general. The Rabbis called their academy a *bet midrash,* literally "a home of study," and from such usage, midrash came to be the term the Rabbis themselves employed to designate the way they studied Scripture and interpreted its meaning.

[7] Ibid. Scherman (2013).

liked by humankind and it is considered as though he observed the entire Torah" (Mechilta, Exodus 15:26). Rabbi Shimon Ben Gamliel, in Avos (1:18) states that: "The world endures on three principles: truth, justice, and peace." "One who wishes to become pious must be scrupulous in observing the laws dealing with damages and torts" (Bava Kamma, 30a).

The Talmud states that rather eat vegetables and fear no creditors than eat duck and hide (Pesachim, 114a). The rabbis made this statement several times in different ways. It calls on companies and individuals not to spend beyond their means. Once in debt, you are always fearful of creditors and the humiliation that being in debt can bring (Kahaner, 2003). Obeying the strict letter of the law is not enough. The Talmud says that Jerusalem was destroyed, for not doing more than the law required (Bava Metzia, 30b). This idea is brought out in the story of Kamtza and Bar Kamtza, which is told in the Talmud (Gittin, 55b). The Talmud uses the term “the way of the pious” to describe the highest form of ethical behavior. A businessperson who leads his or her life according to this standard would rather sacrifice time and money before exploiting another’s misfortune (Friedman, 1985).

A financial institution should hold itself to high standards when carrying on business and at all times strives to observe the spirit and the letter of the law. Compliance goes beyond what is legally binding and embraces broader standards of integrity and ethical conduct. Failure to do the right (ethical) thing may give rise to compliance risk and hence attract regulatory sanctions, material financial loss and loss to reputation. Failures in compliance can be a real threat to the future of any corporate. The adoption of compliance mechanisms contribute to stability and growth and thus help to build corporate image and reputation; gaining loyalty and trust from stakeholders including consumers and employees, hence creating competitive advantage. Commitment to quality objectives such as compliance with the law and high ethical standards results in organizational achievement (Gono et al., 2004).

However, Barbican bank was placed under curatorship on 15 March 2004 after an investigation conducted by the Central Bank determined that the institution was insolvent with a capital deficit of ZW$46.6 billion, as at 31 January 2004. The problems that faced the bank were all linked to poor corporate governance practices. There was no separate and independent board for the subsidiaries and the holding company. The institution mixed non-banking activities and banking business. The bank abused the Reserve Bank liquidity support by funding non-banking activities such as the purchase of shares in various counters on the stock exchange (Gono et al., 2004).

In some instances, holding companies were used to evade regulation as depositors funds were channelled to associate companies and/or related parties such as asset management or investment companies, which were not regulated. In addition, some banks abused liquidity support from the Central Bank to fund non-banking subsidiaries and associates’ requirements. This stifled economic activity in the real sector. Some among the licensed bankers surreptitiously took depositors’ funds, with a full, predetermined and calculated intention never to give back those funds to their rightful owners, but to enrich themselves, their family businesses or other insider parties (Gono, 2004). In some cases, funds were blatantly diverted to the personal use of the CEO or top management in the form of personal loans, or investments falsely accounted for in the company’s name. Other less patent abuses of depositor funds exposed through Central Bank investigations involved management designing elaborate structures of capitalizing the banks using depositor funds. The structures involved advancing funds to a “friendly institution” which in turn would on-lend the funds back to the bank’s holding company. The holding company would inject the funds back into the bank which would be accounted for as capital. In other instances, depositor funds had been recklessly invested by management in speculative and risky transactions, such as short-term stock market trades, resulting in huge losses for the institutions concerned (Gono et al., 2004).

All these activities were totally in contrast with the spirit of the Talmudic rabbis who instituted the virtue of honesty in business dealings. The directors and management of these banking institutions would fail the first question that an individual is asked in the afterlife at the final judgment that, “Were you honest in your business dealings?"(Shabbos, 31a). The Tanach (Jeremiah 22:13) excoriates those who did not care about honesty and justice; in his words: “Woe to him who builds his house with unrighteousness and his upper stories with injustice.” The cause for this is (Jeremiah 22:17): “But your eyes and your heart are only on your dishonest gain.” The Zimbabwean banking crisis was due to greed, to borrow the expression by Friedman and Friedman (2009).

3 Conclusion

The Talmud has always been a book solely for scholars, savants, and researchers and it is considered a significant part of the Jewish daily life (Unterman, 1971). This article reviewed the Zimbabwean banking crisis of 2004/2005 from a Talmudic perspective using seven Talmudic halachic principles: honest weights and measures, transparency and accountability, deception, fraud and theft, conflict of interest, bribery, outright and subtle, misleading others, and honesty in business.

The review showed that the seven halachic principles are not absolutely discrete but rather, they overlap as was expressed in Friedman and Friedman (2009). Furthermore, it was found that many of the activities and behaviours by both the directors and

management as well as by the regulators as discussed in this article violated multiple if not all the Talmudic halachic principles. Had various parties, ranging from directors, management, and regulators acted in the spirit of the Talmudic rabbis, the Zimbabwean banking crisis would not have occurred. This spirit is inculcated in the business ethics principles discussed in the Talmud and the Torah. The Talmudic law is tied to ethics and insists that individuals go beyond the mere letter of the law. The Talmud does not hesitate to find faults and sins even in Moses, David, and in many of the sages. The Talmud embodies everything that concerns mankind and the far-reaching human problems are treated in it.

The Talmud in the broader sense means culture, moral and ethical precepts and restraints; a social outlook, human and universal ideals, which are contained in practically every word of the Talmud. The Talmud states that progress and civilization without moral, ethical, and spiritual development, are valueless and even harmful.

In conclusion, the immortal Mashgiach (Spiritual guide) of the pre-War Mirrer Yeshivah, Harav Yerucham Levovitz, once exclaimed as he clutched a Gemara, “Where is there another book in which every single word is truth!” Indeed, the truth is contained in this and every volume of the Talmud; the task of the student is to labour to find it, and in so doing, to make his mind a tool and his heart a repository of the truth.

References

1. Brackman, L. and Jaffe, S. (2008). *Jewish wisdom for business success: Lessons from the Torah and other ancient texts,* AMACOM, Broadway, N.Y.
2. Dhliwayo, C.L. (2004). “Corporate governance,” Bank licensing, supervision and surveillance, *Reserve Bank of Zimbabwe,* Guideline No. 01-2004/BSD, Harare, Zimbabwe.
3. Friedman, H. H. (1985). “Ethical behaviour in business: A hierarchical approach from the Talmud,” *Journal of Business Ethics,* 4, pp. 117-129.
4. Friedman, H. H. and Friedman, L. W. (2009). The financial meltdown of 2008: The perspective of Jewish Law, Jewish Law, Retrieved from http://jlaw.com/Commentary/FinancialMeltdownTORAHVIEW_Jun17.pdf.
5. Gono, G. (2004). Monetary Policy Statement, *Reserve Bank of Zimbabwe Act, Chapter 22:15, Section 46,* Harare, Zimbabwe.
6. Gono, G., Dhliwayo, C.L. and Mataruka, N. (2004). “Bank licensing, supervision and surveillance annual report 2004,” *Reserve Bank of Zimbabwe*, Harare, Zimbabwe.
7. Harvey, C.R. (2005). “The Risk Exposure of Emerging Equity Markets,” *World Bank Economic Review*, Vol. 9, No.1, pp.19-50.
8. Jaffee, M.S. and Fonrobert, C.E. (2007). *The Cambridge Companion to the Talmud and Rabbinic Literature,* Cambridge University Press, N.Y., USA.
9. Kahaner, L. (2003). *Values, Prosperity, and the Talmud: Business Lessons from Ancient Rabbis,* John Wiley and Sons, Inc., Hoboken, New Jersey.
10. Klainman, R. (2000). “Conflicts of interest of public officials in Jewish law – Prohibitions, scope, and limitations.” In H.G. Sprecher, ed., *Jewish Law Association Studies X: The Jerusalem 1998 Conference Volume*, pp. 93 – 116, Binghamton NY: Global Publications of SUNY at Binghamton.
11. Maimonides, M. (2011). *The complete restatement of the Oral Law (Mishneh Torah)*, Mechon Mamre, Jerusalem, Israel.
12. Mataruka, N. (2004). “Minimum internal audit standards in banking institutions,” Bank licensing, supervision and surveillance, *Reserve Bank of Zimbabwe,* Guideline No. 02-2004/BSD, Harare, Zimbabwe.
13. Maune, A. (2015a). “Hillel the elder: A Talmudic perspective of his leadership intelligence,” *Risk governance & control: financial markets & institutions,* Vol. 5, No. 2, pp. 7-14.
14. Miller, C. (2011). *Torah – The five books of Moses with complete haftarah cycle,* Lifestyle Books, Brooklyn, N.Y.
15. Mumvuma, T., Mujajati, C. and Mufute, B. (2003). ‘Understanding Reform: the Case of Zimbabwe,’ First Draft URP.
16. Muranda, Z. (2006). "Financial distress and corporate governance in Zimbabwean banks," *Corporate Governance*, Vol. 6**, No.** 5, pp.643 – 654.
17. Scherman, N. (2013). *The Stone Edition Tanach*, 3rd Ed., Mesorah Publications, Brooklyn, NY.
18. Tamari, M. (1991). *In the Marketplace: Jewish Business Ethics*, Southfield: Targum.
19. The Schottenstein Edition (2014). *Talmud Bavli, the Gemara: the classic Vilna edition, with an annotated, interpretive elucidation, as an aid to Talmud study*, Mesorah Publications, Ltd., Brooklyn, N. Y.
20. Unterman, I. (1971). *The Talmud: An analytical guide to its history and teachings,* Bloch Publishing Company, N.Y.