

# BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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## CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה



## BHI HOTLINE

לע"נ ר' שלמה ב"ר ברוך וזוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

## SPARE CHANGE

**Q:** I was about to buy something in a vending machine, when I noticed that there was some change left in the coin return tray, apparently belonging to a previous customer.

Am I allowed to take it? If not, to whom does it belong?

**A:** *Sh'ailos* regarding vending machines come up frequently, with several variables, and we will try to address a number of questions that have been raised.

Your assumption that the coins in the return tray were left behind by a previous customer, who either didn't notice all the coins there, or simply forgot to take his change, is probably correct. So to whom does that money belong?

We must first establish that it's unlikely that those actual coins ever belonged to the customer who left them there. If they would have, even if they happened to pass through the machine, they would still belong to him. In all likelihood, however, he placed money into the vending machine, and after delivering his purchase, the machine discharged change that was already inside before his purchase — and therefore belonged to the owner of the vending machine — to the return slot.

When the customer left behind his change, he had not made a *kinyan* on it to acquire it. Although it was returned to the customer, it did not become his just by the virtue of it being the change for the money he inserted into the machine, because one cannot make a *kinyan* on money using other money (*Shulchan Aruch, C.M. 203:4*; see *Shu"t Maharsham 5:18*).

There is a dispute among the *Acharonim* regarding the following case. A borrower came to repay a loan, and the lender said, "Throw the money to me, and you will be absolved." The borrower threw the money, but the lender did not make a *kinyan* on it. Rabbi Akiva Eiger (*C.M. 120:1*) rules that by throwing the money, the borrower relinquished his ownership of it, and since it was not acquired by the lender, if someone else comes and takes it, it belongs to him.

The *Nesivos Hamishpat* (123:1; see *Imrei Binah, Geviyas Chov 27*) maintains that as long as the money hasn't been acquired by the lender, it still belongs to the borrower, and no one else is allowed to take possession of it.

**PARTIALLY TRUE** There was great excitement in the community! Two outstanding young men, Avi and Boruch, were getting married during the week. Despite coronavirus, their uncle Meir Zev was flying in to celebrate with them.

A cousin, Yosef, who had grown up with both Avi and Boruch, was not able to come. "Could you take two envelopes for me?" he asked.

"With pleasure," answered Uncle Meir Zev.

Yosef brought over two envelopes with money in them. "They're marked," he said. "Avi's is already sealed, since I initially thought I would mail it."

"I also want you to take money for *tzedakah*," Yosef said. He counted out and gave an additional sum to Uncle Meir Zev, who put it in a third envelope.

Uncle Meir Zev put the envelopes in his jacket pocket. When he arrived, he realized that they fallen out along the way.

"I lost the envelopes carelessly, and obviously am liable for them," he informed Yosef, "However, I don't know how much was in each envelope. I never checked them; one was even sealed."

"Each gift envelope had \$250," replied Yosef. "The *tzedakah* envelope had \$300. I counted out the *tzedakah* money when I gave it to you!"

"That's true, but I don't remember how much it was," said Uncle Meir Zev, "My mind was on other things while you counted the money. I'll cover the \$800 that you gave me."

"It's good you trust me," said Yosef. "Otherwise you could claim that the envelopes might have had less and refuse to pay the full amount."

"What makes you think that I wouldn't have to pay what you claim?" asked Uncle Meir Zev.

"I have no proof," said Yosef. "It's only my word that I gave that amount. I can't make you pay more than I prove!"

He decided to ask Rabbi Dayan:

**"How much would Uncle Meir Zev have to pay if he didn't trust me?"**

"A person who admits partially to a claim – e.g., the plaintiff claims that he lent \$100, and the defendant admits that he borrowed \$50 – is known as *modeh b'miktzas*," replied Rabbi Dayan. "The Torah requires that he swear on the part that he denies in order to be exempt. This is one of the three Torah mandated oaths" (*C.M. 75:2*).

"The *Gemara* (*B.M. 98a, 116b*) teaches that if the defendant is unsure about the additional amount – e.g., is unsure about the remaining \$50 – and

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Many businesses can restructure their employee contracts to avoid Shabbos concerns without the need for a Heter Mechira.

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for guidance and solutions.



## CASE FILE

therefore is unable to swear, he is liable for the full amount. This principle is known as: *mitoch she'eino yachol l'shava - meshalem* (since he is unable to swear - he pays)" (C.M. 75:13).

"Some *Rishonim* exempt the defendant whenever he is not expected to know about the remainder. The requirement to pay is only when the partial admission is suspect, as in the case of a borrower who claims that he does not know about the remaining \$50" (see *Sma* 298:1).

"However Rambam and *Shulchan Aruch* rule that even in such a case the defendant is liable. His partial admission of the claim strengthens it and requires an oath to contradict it; otherwise, the claim is accepted" (C.M. 90:10; 298:1).

"*Shach* rules accordingly. However he writes that if the defendant clearly has no way of knowing about the remainder, such as if he received a sealed envelope to watch with an unspecified amount of money, since the plaintiff cannot expect him to swear, this rule does not apply" (*Shach* 72:51).

"Thus, regarding the *tzedakah* and unsealed envelope, Uncle Meir Zev could know about the remaining amount, and is liable, since he cannot swear," concluded Rabbi Dayan. "However regarding the sealed envelope, he is exempt beyond what he acknowledges" (*Pischei Choshen, Pikadon* 8:19).

**Verdict: A person who cannot swear about the remainder of a partial admission is liable, unless he clearly could not know. If he is not expected to know, but could, there is a dispute among the *Rishonim*. *Shulchan Aruch* and *Shach* rule that he is liable.**



## MONEY MATTERS

### BAR METZRA #2 Responsibility of Seller

Based on writings of Harav Chaim Kohn, shlita

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'י בת ר' שמואל חיים ע"ה

### Q: I plan to sell my apartment. Must I notify the adjacent apartment owner?

A: The primary responsibility to give priority to the *bar metzra* is on the buyer, not on the seller. This is because the owner can choose not to sell the property entirely. Therefore, if a Jew sold his property to a gentile, who is not bound by *v'asisa hayashar v'hatov*, the rights of *bar metzra* do not apply. (C.M. 175:39; *Sma* 175:7, 38, 67).

Nonetheless, ideally the owner should notify the adjacent owner of his intention to sell; or *beis din* if the *bar metzra* is not present, so that they can notify his friends or relatives. Some explain this as good advice, so that people should not be hesitant to buy lest the *bar metzra* come and undo the sale. Others explain that the seller also has some degree of responsibility to do *hayashar v'hatov* (*Rama* 175:34; *Sma* 175:63; *Divrei Malkiel* 3:156; *Aruch Hashulchan* 175:7).



## BHI HOTLINE

This scenario is similar to the case of a vending machine, whose owner is required to return change to the customers, a transaction that is performed - by common agreement - by having the machine spit the change into the return slot. This is akin to the customer saying, "Throw me my money and you will be absolved." According to Rabbi Akiva Eiger, that money no longer belongs to the vending machine owner, but has not yet become the property of the customer, either, so the finder is allowed to take it. According to the *Nesivos*, however, it still belongs to the vending machine owner, since it never reached the customer.

It is possible, however, that even according to the *Nesivos*, since the vending machine owner knows that the machine is returning the money in a public place, where it is accessible to everyone, he relinquishes his rights to that money even if the customer does not take it, since he knows that someone else is likely to take it.

This is especially true because it is quite common for customers to forget their change, which makes it comparable to the case of figs that are blown off a tree. The *halachah* is that anyone can take those figs, because the tree owner realizes that animals will be drawn to the sweet smell and eat them, so he allows anyone to take them (ibid. 260:6). This is not considered *yi'ush shelo midaas* (despairing even without knowledge of what is transpiring) because the owner actually knows that they will fall and is willfully forgoing the rights to them even before they fall (*Sma* 23). Similarly, since the vending machine owner knows that many customers forget their change in the machine, and the next customer will likely claim it for himself - reasoning that since it belongs to the previous customer, he is not required to return it to the owner of the machine - the owner forgoes his rights to the change, in advance, and the finder may therefore take it. (There is another approach to this issue based on *Nesivos* 344:1, but see *Shu"t Rabbi Akiva Eiger* 203.)

Nevertheless, if the machine is in a place where most customers or passersby know the owner or the person responsible for the machine, such as in a private office or a yeshivah, and when money is found in the return slot, people generally return it, then this additional logic does not apply and the *halachah* depends on the above dispute between Rabbi Akiva Eiger and the *Nesivos*.

This discussion applies only to instances in which the machine is not mistakenly shooting out extra change because it is broken. If the machine has a bug and is returning extra change, if it belongs to a Jew, there is an obligation of *hashavas aveidah* to return it, because the owner probably does not know that the machine is broken, so even if he is considered to have despaired (*yi'ush*) of getting back his money, this is *yi'ush shelo midaas*, which does not entitle the finder to keep it.

We will address additional *sh'ailos* related to vending machines in the next issue.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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