

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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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

WILL BENEFICIARY

Mr. Klein served as fundraiser for a prominent yeshivah, Toras Yisrael, for two decades. During this time, he developed strong connections with many significant donors; his integrity and dedication opened their

hearts.

One donor, Mr. Stein, grew extremely close to Mr. Klein and donated most generously to Toras Yisrael. "Out of respect to you, I have earmarked a very substantial sum for the yeshivah in my will," he confided one day to Mr. Klein.

After twenty years, Mr. Klein moved on to work for a different yeshivah, Ohr Chadash. Mr. Stein began contributing to Ohr Chadash also, out of his great respect for Mr. Klein. As the years went on, he shifted the bulk of his contributions from Toras Yisrael to Ohr Chadash.

Some years later, Mr. Stein approached Mr. Klein.

"If you remember, I confided to you years ago that I had earmarked a very substantial sum in my will for Toras Yisrael," he said. "Now that you are working for Ohr Chadash, I am considering changing the will and earmarking the money for Ohr Chadash. What do you think?"

"Ohr Chadash could very much use the additional funds," replied Mr. Klein. "However, despite my current position, I am not sure that it would be ethical to change the will, at the expense of Toras Yisrael."

"Why not?" asked Mr. Stein. "How is this different from the rest of the contributions that I have been shifting over mostly to Ohr Chadash?"

"A will is different from ongoing donations," replied Mr. Klein. "You already earmarked that money for Toras Yisrael in your will. I would not feel ethically proper about receiving it on behalf of Ohr Chadash without first consulting a halachic authority."

"I would appreciate if you could check the issue for me," said Mr. Stein.

Mr. Klein called Rabbi Dayan and asked:

"Can Mr. Stein change the tzedakah beneficiary in his will to Ohr Chadash?"

"*Machaneh Ephraim (Hil. Tzedakah #7)* addresses the issue of whether a person who pledged tzedakah for a certain needy person can give it, instead, to a different needy person," replied Rabbi Dayan. "He cites a dispute between Maharash Yafeh (Ashkenazi) that he can, and Radbaz (#134) that he cannot.

"*Machaneh Ephraim* rules that he cannot, based on the *Mordechai* that a poor person, who sues someone and claims that he pledged to give

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

ABSORBING THE SHOCK

Q: My car was totaled, and we needed an immediate replacement. The Jewish mechanic to whom we had the car towed offered to sell us a car on his lot for \$3,000. After a quick search for the market value for that car, we agreed.

We are now trying to sell that replacement car, and as part of that process I purchased a car history report, which revealed that the car had been rebuilt after being totaled itself. This dramatically diminishes the resale value – to the tune of approximately 75% — and it makes it impossible to resell it for anywhere near our purchase price.

Do we have any claim against the seller at this point, or does our usage of the car for these two years without bringing up this complaint – which we knew nothing about – negate any such claim?

A: There are two separate claims to consider here: *onaah* and *mekach ta'us*.

Onaah refers to instances in which either a buyer or seller mistakenly agrees to an unfair price for an item (*Shulchan Aruch, C.M. 227:1*). The *halachah* is that if the amount of the *onaah* exceeded a sixth (16.66%) of the item's true value, the victim may void the sale and demand that the money (or the item, in the case of the seller) be returned to him, but he may not demand that the difference between the fair price and the price he paid be returned (*ibid. 4*). Even if the *onaah* was not deliberate, the sale can still be nullified by the aggrieved party (*Tur 227:1*).

At first glance, then, it would seem that you have a right to void your purchase of the car, due to the *onaah*.

But *Chazal* set a deadline for *onaah* claims by a buyer, limiting the time frame for these claims to the amount of time it would take to show the item to a dealer or a relative who knows how to evaluate the price of such an item. If that deadline passed, the buyer can no longer nullify the sale due to the *onaah* (*ibid. 7*), because he is assumed to have forgone the



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him a gift, can impose an oath upon him, which implies that the person who promised has a legal obligation to give him the gift. This is due to the principle of *amiraso lagavoha kimesiraso l'hedyos* — a pledge to the Alm-ghty is tantamount to a transaction with a person, and is legally binding” (*Shach, C.M. 87:51*; see, however, *Ketzos 87:21, 212:4*).

“Nonetheless, *Tzedakah U'mishpat* (9:1[3]) suggests that it should be permissible to change to another cause with *hataras nedarim*.

“Even according to those who enable changing, *Pri Yitzchak* (1:51) writes that there is a moral responsibility to honor the verbal commitment. One who does not is considered *mechusar amana*, lacking trustworthiness” (*C.M. 204:7-8; 243:2*).

“Nonetheless, a will differs from a regular pledge. It is difficult to apply the concept of *amiraso lagavoa* to a will. A secular will typically assigns the assets after death, so that the pledge cannot take force now, and a halachic will (depending on its nature) often contains an explicit clause that allows retracting. For this reason, it could be permissible not only to change the *tzedakah* beneficiary, but even to retract from the gift entirely.

“Furthermore, some maintain that *mechusar amana* does not apply when there is a significant change of circumstances,” concluded Rabbi Dayan. “Since the will was drafted in consideration of Mr. Klein, one can argue that the change in circumstances justifies changing the beneficiary” (*Rama 204:11*).

Verdict: Many maintain that a person who pledges *tzedakah* for a certain person or organization should not give it to another cause, but a person can change the *tzedakah* beneficiary in his will.



MONEY MATTERS

BAR METZRA #3 Supplanting Buyer

Based on writings of Harav Chaim Kohn, shlita

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

Q: Someone sold his property to an outside party. What is the halachic right of the bar-metzra (adjacent neighbor)?

A: *Chazal* empowered the *bar-metzra* to possess the property that was sold, by reimbursing the outside party and supplanting him (*C.M. 175:6*).

We consider the buyer to be the agent of the *bar-metzra*, so that the witnesses of the transaction can write a deed of sale in the name of the *bar-metzra* and there is no need for an additional *kinyan* (act of transaction).

Even if the seller claims that he would not have sold the property rather than sell to the *bar-metzra*, the *bar-metzra* has the halachic right to supplant the buyer, provided that the seller suffers no loss and the *bar-metzra* acquires with the same terms. However, if the seller explicitly stipulated that should the *bar-metzra* possess the property the sale is void, the property returns to the seller (*Rama and Taz 175:6; Sma 175:7; Aruch Hashulchan 175:1*).

Details will be discussed in following articles, *be"H*.



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right to that claim. If he didn't show it to anyone in that time period, he has no recourse, even if he paid double the value of the item (*Sma* *ibid.* 16; we must consider, however, whether the same deadline applies if the buyer would have to pay for an appraisal [see *Kesef Hakodashim 232:3*]). It would seem that if a customer would generally pay for an appraisal before agreeing to the price and this buyer decided to forgo the appraisal, he forfeits his right to claim *onaah*.

Even without the *onaah* claim, however, in this case we must still consider whether there is a claim of *mekach ta'us*.

Onaah refers to a complaint about the price associated with the sale, but there is no problem with the actual product. A *mekach ta'us* is when the product the seller supplied is either defective or not what the buyer agreed to purchase. If there is a *mekach ta'us*, the buyer can nullify the sale even if there was no overpayment.

Unlike *onaah*, there is no time limit for a claim of *mekach ta'us* (*Shulchan Aruch 232:3*). The only caveat is that if the buyer already discovered the defect – or if it would be simple for him to find out about the problem, without having to pay for an appraisal, and he decided not to do so – and he continued to use the item, that is considered proof that he decided to forfeit any such claim (*ibid.*; *Sma 10; Kesef HaKodashim; Nesivos 1; and Mishpat Shalom*).

In your case, since the problem you identified is one that any buyer would take issue with, and you never found out about the problem, which was not easily identifiable, you still have a valid *mekach ta'us* claim.

Nevertheless, it is probably not worthwhile for you to nullify the sale, because whenever a sale is nullified retroactively, the seller deducts from the amount he returns to the buyer the value of the benefit the buyer derived from the item in the interim (*Yoreh De'ah 174:7; Choshen Mishpat 232:15*, but see *Ritva, Bava Metzria 50b*). When the sale is nullified, it turns out that item belonged to the seller all along, so the buyer must pay for the benefit he derived from it. Furthermore, since the sale was nullified, the money that the seller held all along is considered akin to a loan he was given by the buyer. If the buyer – now retroactively a lender – derived benefit from the item without paying for it, it would be considered a form of *ribbis* (see *Sma, ibid.* 33; *Pischei Choshen, Geneivah 13:2*; also see *Rashbash 476; Shiltei HaGibborim, Bava Metzria 30*, and *Nesivos 241:9* regarding this *halachah* in regard to *metaltelin*; but cf. *Ohr Same'ach, Mechirah 16:8*).

If you do decide to nullify the sale due to the *mekach ta'us*, you might actually end up owing the seller money, because the benefit derived from using the car for two years might exceed the difference between the price you paid and the amount the car was worth.

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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