

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

COLLECTOR'S BILL Shimon worked as a cashier in Heimowitz's grocery store. He was also a coin collector and had a large collection of rare coins and bills. As an avid hobbyist, Shimon had an eye for special bills. He knew that rare bills circulated among people who had no idea that their bill was worth more than its face value as a collector's item.

One day a person came into the store. The purchase came to \$38.99. The person gave Shimon two \$20 bills, and Shimon gave him a dollar bill as change.

As Shimon put the \$20 bills in their compartment, he noticed that one had a star in the serial number. He recognized it as a series 2017 \$20 bill Federal Reserve Star Note, worth over \$30 as a collector's item! Shimon put the bill at the bottom of the pile, so that he would not give it as change to other customers.

When he had a quiet moment, Shimon exchanged the \$20 star bill in the cash register with a regular \$20 bill from his wallet.

That evening, Shimon shared with his *chavrusa* what had happened that day.

"I'm shocked!" said his *chavrusa*. "You stole from Mr. Heimowitz!"

"What do you mean?" asked Shimon. "I took \$20 and returned \$20."

"You know that it's not so," argued his *chavrusa*. "You took something worth over \$30 and paid only \$20."

"But to Mr. Heimowitz it was only worth \$20," insisted Shimon. "He would have no idea that the bill was worth more than its face value."

The two decided to turn to Rabbi Dayan.

Shimon asked:

"Was I allowed to exchange the bill?"

"Classically, the value of coins was based on the metal in them," replied Rabbi Dayan. "Over time, the world moved to coins and bills representative of value, although the metal or paper itself is worth far less. Nonetheless, *poskim* consider legal tender as money worth its official value for almost all *halachos*, including *ribbis*, *kinyan* (acquisition), *pidyon haben*, *maaser sheni*, *onaah*, etc.

"A rare bill maintains its primary value as legal tender, at face value. However, it has additional value, not as *money* but as an *object*, a collector's item. When such a bill is used as

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

CONSTRUCTION DELAYS (PART II)

Q: In the previous issue, we discussed the case of someone who hired a contractor to renovate his house, and when the contractor was done with most of the work, he stopped showing up and would not finish the job.

The conclusion in that case was that since the contractor reneged on the deal, he holds the weaker hand (*yado al hatachtonah*), and the homeowner may hire new workers to finish the job and deduct the amount he pays them from the amount he owes the first contractor.

Unfortunately, my contractor seems to have made a habit of this sort of behavior, so he made sure to get paid in full before he stopped appearing at the work site, and he now refuses to return any money so that I can pay other workers to finish the job, and he still won't show up to finish it himself.

Am I allowed to trick him into completing the project by pledging to pay him more if he finishes the job, and then refusing to pay him when he's done?

A: We're not sure how practical your *she'eilah* is, because if this contractor was wily enough to make sure he got paid in advance that you wouldn't have anything to hold over him, he'll probably demand payment up front at this point before returning to your home to finish the job.

We will nevertheless address the *she'eilah* on a theoretical level, to determine whether you are *allowed* to do it according to *Halachah*.

Although, as we explained in the previous issue, a day laborer paid by the hour is generally allowed to back out of the job, but if reneging on the agreement will cause damage to the employer (*davar haavud*), because the work he began to do cannot be interrupted without damaging the project, he is not allowed to back out.

Davar haavud includes financial damage - such as if a worker began to soak flax for his employer, and if he backs out, the flax will become rancid - as



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payment in a store, or returned by the cashier as change, we consider its face value. Its additional value as a collector's item is like a *metziah*, a found *hefker* item.

"Although a person's property can acquire *hefker* for him, even without his knowledge, many *Rishonim* curtail this to a case in which the owner will likely discover the *metziah*. The *Gemara* (B.M. 26a-b) indicates that a person who acquires a house does not acquire a lost treasure hidden in the wall, and a store owner does not acquire money dropped in the public areas of the store (C.M. 260:1,5).

"Based on this, *Mordechai* (B.M. #258) rules that if someone bought seemingly plain metal and sold it to another, but it turned out to contain valuable metal inside, the first person has no claim to the valuable metal, since he never intended to acquire it" (*Rama*, C.M. 232:18; *Pischei Teshuvah* 232:8).

"Here, the store owner will not likely find out about the valuable bill. It will likely be given as change to another customer or deposited in the bank. Although Shimon acquired the bill on behalf of Mr. Heimowitz and was responsible for it as a guardian, he accepted it only as \$20" (see C.M. 291:4).

"Therefore," concluded Rabbi Dayan, "Shimon, who recognized the bill as rare, was allowed to exchange it for a regular bill of the same face value, and to possess its additional value as a collector's item."

Verdict: Regarding the cash register, the rare \$20 bill is worth its face value, and the additional value as a collector's item is comparable to a *metziah* unlikely to be found by the store owner, so that the cashier can replace it with a regular bill and acquire it.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #5 (Bordering Property)

Partner

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

Q: What is the status of a partner regarding the rights of *bar metzra*?

A: A partner in the property has the status of a *bar metzra*. Thus, he has first rights to buy out his partner's share, even if he is only one of multiple partners. The same is true for one of multiple inheritors, who are partners in the properties of the estate (C.M. 175:5).

Moreover, a partner has priority over the adjacent neighbors, since he has rights in the property itself. Thus, even if an adjacent neighbor already bought the share offered for sale, the partner has the right to take it from him, as the first-priority *bar metzra* (*Sma* 175:6; *Shach* 175:5).

However, if the partners already split, the former partner does not have priority over the adjacent neighbors. Nonetheless, some suggest that an inheritor continues to have priority over the neighbors, or, at least over outsiders, even after the brothers already divided the estate (*Taz* 175:5; *Mishpat Shalom* 175:5; *Avnei Ephod*, *Mishbetzei Ephod* 175:2).



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well as personal damage, such as if a musician hired to play at a wedding backs out at a point when a new band cannot be hired. The *halachah* is that if the worker backs out and the employer cannot find a different worker to replace him, the employer is allowed to trick him into finishing the job by offering more money to finish it. Once the work is finished, he is required to pay only the originally agreed-upon amount, and even if he already paid the worker more, he is entitled to demand back that additional amount. Since the worker was halachically obligated to fulfill his original commitment, the employer is allowed to trick him into doing so (*Shulchan Aruch*, C.M. 333:5).

Some *poskim* rule that the same *halachah* applies to a contractor, who, as we explained in the previous issue, is not allowed to back out of his agreement even if it's not a case of *davar haavud*. Therefore, if he does renege, the person who hired him is allowed to trick him into finishing the work (*Shach*, *ibid.* 29). [Some explain that since the contractor is obligated to refund the amount it will cost to complete the job with another worker, the homeowner may offer to pay him up to that amount, and when the job is complete, he can tell him that he should pay himself from the payment he already received, because he would have been obligated to refund this amount anyway. Therefore, he may only trick him by offering up to the amount a different contractor would charge to complete this job (*Shu"t Dvar Avraham* 3:21; also see *Chazon Ish*, B. K. 23:32).]

Others argue that this *halachah* applies only to a case of *davar haavud* (*Nesivos* 10).

A third opinion maintains that whether this *halachah* can be applied to a contractor is dependent on a dispute among *Rishonim* regarding whether a contractor is allowed to renege or whether the homeowner can force him to finish his job (*Machaneh Ephraim*, *Sechirus Poalim* 5).

Either way, if the contractor's recalcitrance will cause the homeowner a financial loss, because he will not be able to live in the house and will have to rent another dwelling until the work is done, then it is definitely a *davar haavud* and he is allowed to trick the contractor into finishing the work (*Mishpetei HaChoshen* p. 141).

[If a *kinyan* – such as the drafting of a contract – was made, thereby obligating the contractor to do the work, it would seem that all *poskim* would agree that the homeowner may trick the contractor into completing the job. But the money he paid for the previously completed work does not, in and of itself, serve as a *kinyan* since it was given as payment, not with the intention of making a *kinyan* (*Chochmas Shlomo* 333:3).]

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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