

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

TRYING ON

Chana Green was shopping with her mother in a department store for camp supplies.

"I need a couple of dresses," Chana said to her mother. They went to the clothing section and chose six dresses to try on.

Mrs. Green took the dresses to the dressing room. "Be careful as you try them on," she told Chana.

As Chana took one of the dresses off its hanger, it got caught and made a tiny tear on the seam.

Chana tried on the dress, but it did not fit her at all. "There's no point in buying this dress," she said to mother. "But what do we do about the tear?"

Mrs. Green showed the tear to the manager.

"If you damaged the dress," the manager said, "you'll have to buy it."

"The tear can be easily fixed," said Mrs. Green. "The dress does not fit my daughter at all, and we have nothing to do with it. I'm willing to pay to have the dress repaired professionally and it will be good as new."

"We don't deal with fixing dresses," said the manager. "You took the dress so it's yours. You can't return it once you damaged it."

"We didn't exactly take the dress," argued Mrs. Green. "My daughter just tried it on. We had no intention to buy it."

"And what about the items in your shopping cart?" asked the manager. "Would you say that they're also not yours?"

"That's an interesting question," said Mrs. Green. "Maybe not."

The manager looked at the dress again. "I suppose it could be repaired for a cost," he said. He called Rabbi Dayan and asked:

"What is the status of someone who takes an item to try on or puts in their shopping cart and it gets damaged?"

"The *Gemara* (B.B. 88a) teaches that once a person picks up an item that is for sale at a set price with intention to acquire it, the item is his, even before paying," replied Rabbi Dayan. "He already made an act of acquisition, *kinyan hagbaha*. Thus, he is completely liable for the item, even if subsequently lost or robbed under uncontrollable circumstances, since the transaction was completed" (C.M. 200:7).

"Furthermore, the *Gemara* (*ibid.*) teaches that someone who took an item from a seller, on

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

NOT MY MEZUZOS!

Q: I recently completed renovations on my home. When I was ready to move back in, I couldn't recall what I did with my *mezuzos*, which were removed for the construction. My contractor had eight *mezuzos* in his car, and he said that he had taken them off the door of my house. I didn't recognize the *mezuzah* cases, but since I couldn't find my *mezuzos* and he insisted these were mine, I had them checked by a *sofer* and I put them up.

A short time later, I found several of my *mezuzos*, which proves that some – if not all – of the *mezuzos* he gave me were not mine. When I told the contractor, he said they must have been from another house he renovated, but he has no idea which house it was.

What should I do?

A: Since it is obvious, as you wrote, that at least some of the *mezuzos* are not yours, you are going to have to do a bit of investigating before we can determine what to do with them (see *Beitzah* 10b).

If the contractor has some projects that are still under construction, then the *mezuzos* in his car are likely from one of those houses, and the mitzvah of *hashavas aveidah* obligates you to return them.

Even if they have been on your doorposts for a long time and no one has spoken up about missing *mezuzos*, which would seem to connote that the owner was *meya'eish* (despaired) of finding them, you might still have an obligation of *hashavas aveidah*. Although *yi'ush* usually does allow the finder to be *koneh* (acquire) a lost object, the *halachah* (*Shulchan Aruch*, C.M. 356:3) is that if an object was moved from one person's property to another's (*shinui reshus* – in this case, from the contractor's car to your house) and the *yi'ush* only occurred afterward, the *yi'ush* does not allow the finder to acquire it, because it came into the finder's possession illicitly (*Ketzos* 136:2).

If you find out, however, that the *mezuzos* were sitting in the contractor's car for a long time, and it is probable that the *yi'ush* occurred before he gave



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condition to check whether it is suitable, is fully liable until he decides not to keep it. Some explain that he is considered a buyer meanwhile, while others consider him a borrower, since he has the option of keeping the item and buying it" (C.M. 186:1; 200:11; Sma 200:31).

"Nonetheless, nowadays, seemingly there is no intent to acquire ownership when picking up an item in a store, until it is brought to the checkout counter. People commonly put items in their shopping cart, yet return them to the shelf while shopping because they found a preferable or cheaper item, decide that the item is unnecessary, or don't have enough money to buy it.

"Even so, the customer would seemingly be considered a borrower on the items in his shopping cart, since he has the option of buying them and assumes responsibility while he holds them in his cart.

"Similarly, some suggest that a person who takes several items from a seller with intention to buy one, such as a person who takes several *esrogim* to ask his Rav, would be considered a customer for one, but could be considered a borrower on the rest" (Pischei Choshen, Pikadon 1:[73]).

"A person who took several suits or dresses to a dressing room to try on might not even be considered a borrower, but a lesser guardian, since he has no clear intention of buying the item.

"A borrower or guardian is halachically liable only for the loss of value of an entrusted item," concluded Rabbi Dayan, "although sometimes people choose to return a new, intact item of their own volition" (C.M. 344:2).

Verdict: A person who took items to try on or put in his shopping cart assumes responsibility for them as a guardian or borrower until he reaches the checkout counter and is halachically liable for their loss in value.



MONEY MATTERS

BAR METZRA #24
(Bordering Property)
Gifts

Based on writings of Harav Chaim Kohn, shlita

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

Q: My neighbor has a very large lot and gave the part adjacent to me as a gift to someone. Do I have a bar-metzra claim to that piece of property?

A: A person is entitled to give a gift to whomever he wants. The adjacent neighbor cannot claim that it would be "fair and good" to give him the gift, instead. Thus *bar-metzra* rights do not apply to property given as a gift, even if you want to compensate the recipient its fair value (C.M. 175:55; Aruch Hashulchan 175:48).

Nonetheless, where the gift seems to be a ruse to circumvent the law of *bar-metzra*, Chazal granted the *bar-metzra* his rights. For example, if someone sold a property but wrote in the contract that it is a "gift", or if the seller gave the buyer an insignificant, thin strip of land along the neighbor's border as a gift and then sold him the remainder of the property for its full value, the *bar-metzra* does not lose his rights through this ruse (Rama 175:28; Pischei Choshen 11:[68]).



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them to you, then you may keep them, because *shinui reshus* after *yi'ush* enables you to acquire them (Nesivos 136:2).

Nevertheless, even in such a case, if someone claims the *mezuzos* are his and is able to provide *simanim* (identifying characteristics) to prove it, it would be best to go *lifnim mishuras hadin* (beyond the letter of the law) and return them to him. [If the finder is a poor person and the loser is rich, the finder is not required to go *lifnim mishuras hadin*; see C.M. 259:5.] The *poskim* debate whether the finder should go *lifnim mishuras hadin* to the extent that he publicizes that he has found *mezuzos* that aren't his (Kitzur Piskei HaRosh, B.M. 2:6, Korban Ha'eidah, Shekalim 7:2), or whether he should return it only if the loser comes to claim that they belong to him and provides *simanim* (Shulchan Aruch HaRav, Hilchos Metziah 18; Maharam Shif, B.M. 24a; see *Shu"t Imrei Yosher* 2:59 and *Shut Tzur Yaakov* 66).

If you received the *mezuzos* at a point when *yi'ush* may not yet have occurred, you do have an obligation of *hashavas aveidah*. You should therefore ask the contractor for the contact information of all his clients, and you should contact each one to ask if they are missing *mezuzos*.

If you find the owner, you should come to some sort of agreement as to which *mezuzos* to return to him. If you don't find the owner, or the contractor refuses to give you the contact information of his clients, the *halachah* is that the *mezuzos* should sit until Eliyahu HaNavi arrives and informs us who owns lost items that were found before *yi'ush*.

In this specific case, it would seem that you are allowed to use the *mezuzos*. Although a *shomer* of a lost object - just like any other *shomer* - is generally not allowed to use the object he is guarding, and someone who "borrows" something without permission is considered a thief (this might also be considered *shelichus yad* - misappropriation; see *Shulchan Aruch*, C.M. 292:1; *Shulchan Aruch HaRav*, Hilchos Metziah 2; but cf. *Shach* 260:26), securing a *mezuzah* in a proper case and placing it on a doorpost inside your house is no different from placing it in a closet for safekeeping. [You should have a record somewhere, however, that the *mezuzah* does not belong to you but is an *aveidah* that you are safeguarding.] This is permitted, because there is no *halachah* requiring that a person use *mezuzos* that belong to him (*Shu"t Har Tzvi*, Y.D. 238; *Minchas Chinuch* 423; but cf. *Daas Kedoshim* 289:5 deliberates about this), and since the *mezuzah* is unlikely to get ruined if you are using it this way, the owner would generally be happy for his possessions to be used for a *mitzvah* (*Shulchan Aruch*, O.C. 14:4).

You should not place this *mezuzah* on a doorway in which it could get ruined, however, such as on your front door, where moisture from rain or humidity could seep into the parchment.

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