

BUSINESS WEEKLY

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



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לע"נ הרה"ח ר' נחמיה בן הרה"ח ר' שלמה אלימלך ווערדיגער ז"ל גלב"ע - י"ב כסלו, תש"ע



CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

PUBLIC AUCTION

Mordechai returned to his dorm late at night with two Slurpees, one for him and one for his roommate, Aharon.

"Thank you, but I have a stomachache," said

Aharon. "I'm sure someone will be happy to buy it."

News of the Slurpee for sale spread quickly through the dorm. Many friends expressed an interest in buying it.

Mordechai decided to run an auction and award the Slurpee to the highest bidder.

After a short, heated bidding war, Shlomie bought the Slurpee for \$10. He took the coveted Slurpee back to his room.

Fifteen minutes later, Shlomie returned and demanded his money back. "What happened?" asked Mordechai.

"I realized that Slurpees cost no more than \$6," replied Shlomie. "The price that I paid is a rip-off, almost twice its value!"

"So what?" asked Mordechai. "You agreed to pay \$10."

"Even so, when the price is significantly more than its real value, the customer has a halachic claim of *onaah* (unfair pricing)," replied Shlomie. "If the price differential reaches a sixth, he can claim a refund of the difference, and if it is more than a sixth – like our case – he can cancel the sale entirely" (C.M. 227:2-4).

"But I didn't mislead you," insisted Mordechai.

"*Onaah* applies even if the seller did not maliciously overcharge," countered Shlomie, "and even if he also was not aware of the true value" (Rama, C.M. 232:18).

"But when I auctioned the Slurpee, I didn't overcharge you at all," claimed Mordechai. "The whole idea of an auction is to see what price I can get for the item. You chose, of your own volition, to pay \$10 and outbid the previous bidder!"

The two came to Rabbi Dayan and asked

Does Shlomie have a claim of *onaah* in the auction?"

"The *Mishnah* (B.M. 56b) cites a dispute whether *onaah* applies to a *sefer Torah*, work animal or diamond," replied Rabbi Dayan. "Rabi Yehuda maintains that it does not: a *sefer Torah* is priceless, and a person is willing to pay more than the regular value of a work animal or diamond to pair it with a comparable one that he owns. However, the Sages maintain that *onaah* applies also to such items, even though a person is sometimes willing to pay extra.

DID YOU KNOW?

A non-Jew doing work for you on Shabbos, even unsolicited, can be a Shabbos violation.

Ask your Rav or email
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for guidance and solutions.



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

LOST LEDGER

Q: Before Sukkos I sold *esrogim* that I received from two vendors to sell on commission, taking a percentage of the sale price of each *esrog* as my wage. I had a notebook that served as a ledger, in which I recorded the sale price of each *esrog*, the wholesaler from whom I had taken it, and how much I owed him for it.

When the season was over, I realized that I had misplaced the notebook. Try as I might, I can't recreate the entire list from memory. After recording all the sales I do remember, I still have \$10,000 of unaccounted money that I owe to my vendors, but I have no idea how much I owe to each one. If I am required to pay each one the maximum amount I could possibly owe him, I will have earned almost nothing from this entire venture, but if *halachah* dictates that I must do so, I will.

What is the *halachah*?

A. Before we can address your *she'eilah*, we must first determine which *sugyos* apply to it.

A merchant who sells on commission is considered a *shaliach* (agent), and the profit on the products he sells belong to his vendors. The vendors allow him to sell their products – and to determine the price he considers fair for each item – and the money he is paid for those products is considered a *pikadon* that he is required to safeguard until he hands it over to the vendors. As compensation for his work, the vendors pay him a percentage of the profits.

Given this background, we find precedence for your *she'eilah* in the *poskim* (Shulchan Aruch, C.M. 300:1, 76). The case described there involves two people who deposited money with a *shomer* (guardian) – one gave 100 *zuz* (silver coins used in the Talmudic era) and the other 200 *zuz* – and he doesn't recall which one gave him which amount.

The *halachah* is that if both claim that they are certain they gave him 200, he is required to give each one 200 (after they each take an oath, which *Chazal* mandated since it is clear that one of them is lying), because



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"Shulchan Aruch (C.M. 227:15) rules according to the Sages.

"Even so, regarding auctions of specialty items like works of art, Judaica, rare *sefarim*, stamps or other collectors' items, which do not have a defined market value, there is no claim of *onaah*, since the auction itself increases the item's value" (*Hilchos Mishpat* 227:25).

"Regarding public auctions of standard items, *Teshuras Shai* (1:456) rules that *onaah* applies, like any other sale. Even if according to *dina d'malchusa* there is no claim of *onaah* in auctions, he follows the *poskim* that this does not apply between individual Jews. Moreover, even an explicit condition is not always valid regarding *onaah*" (C.M. 227:22).

"However, several *Acharonim* rule that *onaah* does not apply to auctions for several reasons. If the auction is open to non-Jews, regarding whom *onaah* clearly does not apply, it similarly does not apply to Jews, since they entered the auction with this understanding and acceptance, especially if the auction is conducted according to the law of the land" (*Sho'el U'ma'ishiv*, vol. IV, 3:137; *Mishpat Shalom* 227:15).

"Others explain that the common commercial practice not to apply *onaah* to auctions overrules the default *halachah*, especially when dealing with something whose value is not known; or that a purchase through auction is not meant to be according to the item's value" (*Pischei Choshen*, *Onaah* 10:15).

"Thus, Mordechai does not have to accept the Slurpee back.

"Nonetheless," concluded Rabbi Dayan, "*Nesivos* (109:5) writes that if the bidder mistakenly added beyond the item's value based on an erroneous evaluation by the appraiser, he can claim *onaah*."

Verdict: Several *Acharonim* rule that *onaah* does not apply to a public auction, certainly of specialty items, and even of standard items.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

BAR METZRA #42 (Bordering Property) Concluding Summary

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

During the past ten months we've learned many details of the law of *bar-metzra*. In consonance with the Torah's directive to do what is "fair and good," *Chazal* granted priority to the *bar-metzra* (adjacent neighbor) to buy a property that is for sale, since typically he can use it most effectively.

Moreover, in certain cases *Chazal* even granted the *bar-metzra* rights to take the property from an outside buyer and reimburse him what he paid, viewing the outside buyer as the "agent" of the *bar-metzra* in acquiring the property.

In today's setting, where the real estate sale process is financially and legally complex, it will be difficult for the *bar-metzra* to take the property from the buyer after the sale has been finalized, due to various restrictions of this *halachah*.

Nonetheless, a person who is selling his property should offer it to the adjacent neighbor, and – if he is willing to match the bid of other potential customers – give him priority, in accordance with this *halachah*.



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he is considered negligent for not paying closer attention and/or recording which one gave him which amount.

If those who deposited the money with him are not certain about their claim that they are the one who deposited 200, *beis din* does not require the *shomer* to give each one 200, since he is uncertain and so are they (*shema v'shema*), and we do not obligate a person to pay based on a claim of *shema* (*Nesivos* 76:9). If, however, he wants to be *yotzei yedei Shamayim* (i.e., not owe money according to the judgment of Heaven), he should pay both.

In certain variations of this case, the *shomer* would not be considered negligent – for instance, if both people deposited their funds with him at the same time, in each other's presence (see *Sma* ibid. 5 and *Shach* 6). He is not considered negligent in such a case because it was a fair assumption on his part that they trusted one another and would not make any false claims when they came to retrieve their money. Therefore, even if they both claim that they are certain they deposited 200, he is not required to pay both 200, even *latzeis yedei Shamayim*. Rather, he pays 100 to each one, and the third hundred is set aside until Eliyahu HaNavi arrives and tells us whom it belonged to, or until one of them admits that it belongs to his friend, or until they agree to split it.

Applying these principles to your *she'eilah*, you were certainly obligated to keep careful records how much you owe to each vendor, and they bear no responsibility for the uncertainty that arose. Therefore, *latzeis yedei Shamayim* you should pay each one the maximum you can possibly owe him, even if *beis din* cannot obligate you to pay because neither of your vendors can claim with certainty how much he is owed.

If you decide to pay only what *beis din* requires you to pay, then the two vendors should split the \$10,000. Since neither of the two is lying, they split the money evenly, as they would in any case of uncertainty (*safeik*) in which neither party is making a false claim (*Shach* 300:8 and 365:7; see *Divrei Mishpat*). (It is questionable whether you are entitled to any commission, since you never paid the vendors the money due to them; see *Nachlas Tzvi* 305.)

If the reason you cannot find the notebook with the amounts you owed is due to an *oness* (circumstances beyond your control), you are not required to pay both the maximum amount, even *latzeis yedei Shamayim*.

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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