

BUSINESS WEEKLY



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

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CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

PURCHASE ROBBED

"I'm heading to the computer store," Chaim said to his friend Izzy. "They're having excellent sales now!"

"I've been wanting to buy a laptop for a while," replied Izzy. "Please buy one for me, up to \$1,000. You understand computers much better than I, so I trust your judgment! I'll also pay you \$100 to set it up."

"Will do," said Chaim.

At the store, Chaim compared the various laptop models offered and chose one, which he thought would suit Izzy's need at a good price. He paid for it with his credit card and headed out.

On his way out of the store, while heading to his car, Chaim was accosted at gunpoint.

"Gimme the computer!" the thug said.

Chaim realized that he had no choice! He handed the laptop to the thug, who grabbed it and ran off.

Chaim filed a report with the police and told Izzy about the incident. "Let's see if the police catch the robber," Izzy said.

A month passed, but the robber was not found.

Finally, Chaim asked Izzy to pay him for the laptop. Izzy was taken aback. "Why should I have to pay you?" he asked. "I never got the laptop from you!"

"I bought it for you, though," replied Chaim. "I acquired it on your behalf, so it was your laptop that was robbed, and your loss!"

Izzy and Chaim approached Rabbi Dayan, and asked:

"Whose loss is this? Does Izzy have to pay Chaim for the stolen laptop?"

"*Tur* and *Shulchan Aruch* rule that if Reuven asked Shimon to buy an item for him, and he did, Reuven acquires the item upon its purchase, even if Shimon paid with his own money," replied Rabbi Dayan. "It is like he lent Reuven the money" (C.M. 183:4; Sma 183:9).

"However, this is only if Reuven said, 'Buy (or acquire) for me,' in which case Shimon is like his agent in the transaction and acquired the item on Reuven's behalf. However, if Reuven merely said, 'Bring me,' or 'Get me,' the item remains Shimon's until he gives it to Reuven, because then Shimon acquires the item for himself and subsequently resells to Reuven" (*ibid.*; *Pischei Choshen*, *Pikadon* 12:23).

"In our case, Izzy asked Chaim to buy the laptop for him, so it was Izzy's from the time

DID YOU KNOW?

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

LOST LAUNDRY

Q. When my son became bar mitzvah, we bought him nine new shirts, and before he left to camp shortly thereafter, we sewed labels with his name and our phone number, into each one.

In camp, each camper would send in a bag of laundry to a company that would wash, iron and return it. When my son came home from camp, five shirts were missing. He explained that once, when he had received his bag of clean laundry, those five shirts were gone. He discussed the situation with the head counselor, who said he had no idea what to do.

Before Sukkos, I realized that since we couldn't wash his clothing for nine days, he needed more shirts. Before buying him new ones, I called the camp administration to ask whether the shirts had turned up when they cleaned the grounds after the summer. They answered that they had not, and that it was unlikely that they would turn up after this point. They added, however, that the launderer took responsibility for all lost items, and would reimburse me for new shirts. Shortly afterward, the launderer sent me a message that they would call me immediately after Yom Tov to reimburse me. I then went and bought four shirts for my son.

On *Isru Chag*, a *bachur* called to say that he had five of my son's shirts. He explained that he was learning in a yeshivah in Yerushalayim, but had flown in to spend the summer in the same camp as my son. After the summer, he returned to his Yerushalayim yeshivah, and when he unpacked his belongings, he found five shirts that didn't belong to him in the laundry bag he had received back from the launderer. He returned to the United States to spend Yom Tov with his Rebbe, and he brought the shirts back to return them to my son.

I now have four extra shirts that I would never have purchased if the company had not sent my son's shirts to this *bachur*. Am I allowed to accept the



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of purchase. Chaim was only a guardian on it. If Chaim does not receive a commission, he is an unpaid guardian and not even liable for theft; if he receives a commission, he is a paid guardian who is exempt only from *oness* (uncontrollable circumstances)" (C.M. 185:7).

"This situation of armed robbery is *oness*, so Chaim is exempt, regardless. Thus, the loss is Izzy's, since Chaim acquired it on his behalf and is not liable as a guardian" (C.M. 303:3).

"However, *Igros Moshe* questions this ruling, when Chaim paid with his own money. The *Gemara* (B.M. 102b) asks, in a similar case: 'Who informed the owner of the merchandise to sell to the sender?' Rabbeinu Yerucham derives from this that if Shimon bought an item for Reuven with his own money, Reuven does not acquire it. *Beis Yosef* and *Rama* see this as standing in opposition to the former ruling, and reject Rabbeinu Yerucham's opinion" (*Shach* 183:2).

"Shach distinguishes, though, that Rabbeinu Yerucham's ruling applies when Shimon acted on his own initiative, without Reuven's directive. However, *Igros Moshe* (C.M. 1:48) rejects this differentiation and further maintains that the Rosh concurs with Rabbeinu Yerucham. He considers the dispute as unresolved, so that *hamotzi meichaveiro alav hare'aya*, and perhaps Izzy does not have to pay Chaim for the item.

"Other *poskim*, though," concluded Rabbi Dayan, "follow the ruling of the *Shulchan Aruch* simply, or distinguish like the *Shach*, so that Izzy has to pay" (*Pischei Choshen*, *Pikadon* 12:21; *Hayashar V'hatov*, vol. XII (5772), pp. 52-60).

Verdict: According to the *Shulchan Aruch's* ruling, the purchased laptop belonged to Izzy, so that he suffers the loss and must pay Chaim for his expenditure on his behalf.



MONEY MATTERS

MONEY MATTERS Mechilah (Forgoing) #4

Based on writings of Harav Chaim Kohn, shlita

Not in Debtor's Presence

לע"נ ר' יחיאל מיכל ב"ר חיים דו"ג ח' בת ר' שמואל חיים ע"ה

Q: I stated that I forgo a loan to a debtor, not in his presence. Can I retract before he hears about it?

A: *Beis Meir* (E.H. 38:35) questions whether *mechilah* is valid and takes effect when not done in the presence of the debtor, before he hears about it. Some link this question to the dispute we previously mentioned whether *mechilah* is waiving of rights or granting them to the debtor. Elsewhere, *Beis Meir* concludes that *mechilah* is valid even when not done in the debtor's presence (*Pischei Teshuvah*, C.M. 241:1; *Imrei Binah*, *Dayanim* 20:4).

Others also conclude this way (see *Shach*, Y.D. 173:8; *Mishmeres Shalom* 209:21).

There is a further dispute among the *Acharonim* regarding a compromise in which the creditor was clearly *mochel* on one issue, but there remained other issues that were still unresolved – whether the creditor can retract from his *mechilah* before the compromise was settled completely, since the debtor did not yet accept the *mechilah* (*Shaar Mishpat* 22:5; *Imrei Binah*, *Dayanim* 20:3).



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money they promised to reimburse me, now that I have the shirts back, since I only bought the extra shirts due to their mistake?

A: When we examine this case from the angle of *hilchos shomrim*, it's obvious that the launderer was initially liable for the shirts they returned to the wrong boy. Every *uman* (craftsman) who is given an item to fix or work on is considered a *shomer sachar* (paid guardian), and a *shomer sachar* is liable for losing an item he was paid to safeguard (*Shulchan Aruch*, C.M. 306:1).

We must still examine, however, whether you have a right to accept reimbursement for a lost item that was found before you were reimbursed — and especially since the shirts are in the same condition as they were when they were lost. From this angle, it seems obvious that the launderer has no obligation to reimburse you, even *latzeis yedei Shamayim* (to avoid Heavenly judgment — see *Shach*, *ibid.* 363:7).

Some suggested that since both the owner of the shirts and the launderer had been *meya'eish* (despaired) of finding the lost shirts before the *bachur* returned them, when the owner receives them back he is acquiring them from *hefker*, and the launderer cannot absolve himself of payment just because the owner was able to acquire a replacement from *hefker* (see, however, *Nesivos* 362:3).

This is incorrect, however, because *yi'ush* takes effect only when an item is truly lost. If a lost object is being guarded by someone before *yi'ush*, the owner is not considered to relinquish ownership even though he is *meya'eish* (see *Ketzos* 259:1).

Nowadays, however, by law and local custom, stores generally accept responsibility for damage inflicted through *grama* (causation).

Had someone asked the launderer at the beginning of the summer what happens if someone's shirts get lost and are found a while later, but the parents had to buy replacements in the interim, he would certainly have said that he would pay for the replacements (a similar approach appears in *Dibros Moshe*, B.M. 41:12). This means that beyond what the launderer is obligated to cover due to *hilchos shomrim*, he also obligates himself to cover any damage caused through negligence on his part.

This obligation is also binding according to *Halachah*, because the concept of *situmta* confers halachic validity on typical business practice in a given locale (C.M. 201; see *Kesef HaKadoshim* 316:1 and *Shu"t Pardes Rimonim*, C.M. 33).

It is therefore probable that the launderer is responsible to reimburse you for the shirts you bought.

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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