THE WERDIGER EDITION

BUSINESS WEEKLY

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

Issue #591 | Bo | Friday, January 7, 2022 | 5 Shvat 5782

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CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

GAS FEE

The Bernsteins live in Israel and recently moved into an unfurnished apartment. The apartment had a gas line for the stove, but Mrs. Bernstein preferred an induction (electric) stovetop to a conventional gas one. Their oven and dryer were also electric, as is common in Israel.

Mrs. Bernstein was very surprised to get a gas bill for 40 NIS one month after moving in. "How did we get a gas bill?" she asked her husband. "We didn't use any gas!"

Mr. Bernstein examined the bill. "There is a 40 NIS monthly fee for service," he replied. "Indeed, the bill states zero for usage."

"I'll call the gas company and cancel the service," said Mrs. Bernstein. "There's no reason we should pay 40 NIS a month for nothing!"

Mrs. Bernstein called the company the following day. "We can disconnect you," said the representative, "but there is a 150 NIS disconnection fee."

"And if we move out and the next tenant wants to use gas?" asked Mrs. Bernstein.

"There is another 150 NIS fee to reconnect," replied the representative.

"I'll discuss the issue with my husband," said Mrs. Bernstein.

That evening, over supper, Mrs. Bernstein shared the information with her husband. "It's not fair that we should have to pay for the gas service or the disconnection fee," she said. "We never asked the landlord for it. Let him pay for it!"

Mr. Bernstein spoke with the landlord the next morning.

"The gas line goes with the apartment," the landlord insisted. "You can cancel the service if you want, but at your expense — and make sure to reconnect it before you leave."

"You're exaggerating!" said Mr. Bernstein. "Why should I have to pay for the next tenant?"

Mr. Bernstein called Rabbi Dayan and asked:

"Who is liable for the gas bill and the disconnect/connect fees?"

"The financial arrangements between landlords and tenants are contractual," replied Rabbi Dayan. "Therefore, they depend mostly on the contract between the two parties. In the absence of a contract, or if there is a lacuna on a particular issue, we usually follow the *minhag hamedinah*, common practice.

"The *Mishnah* (*B.M.* 101a) addresses the division of liabilities and rights between alandlord and

BHI HOTLINE

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

AWKWARD ERROR

Q. When Reuven's son got engaged, he called a jewelry store and told the proprietor that he planned to send the *kallah* to choose a bracelet from their store, with a budget between $2,500 and $3,000. The *kallah* went to the store and chose a bracelet from among the items the proprietor showed her.

After she left, the proprietor realized that he had made a mistake – the bracelet she chose actually cost $5,000. When he called Reuven to tell him about the error, Reuven said that he would never have paid so much for a bracelet – nearly twice the figure he authorized – and the proprietor's mistake places him in an uncomfortable position. It would be extremely awkward for him to call his *mechutan* and tell him that the bracelet the *kallah* chose cost too much and she should go back and choose something cheaper. He felt that since the proprietor was responsible for this situation, he should not charge him more than the upper limit he had authorized. The proprietor answered that he is willing to drop the price a few hundred dollars because of his mistake, but there's no way he can sell that bracelet for less than $4,500.

What is the *halachah*?

A. We will discuss this case in two scenarios: one in which the *kallah* left the bracelet in the store for the *chassan*'s family to conclude the transaction, and another in which she took the bracelet and the store already charged Reuven's credit card for it.

If she did not take the bracelet, and there was no *kinyan* made on it – even a *kinyan kesef*, which would mean that the *chassan*'s family paid for it – then Reuven does not have any monetary claim against the proprietor. Although the proprietor was responsible for the discomfort Reuven will experience when he tells his *mechutan* that he cannot buy that bracelet for the *kallah*, Reuven cannot even insist that the proprietor call the *kallah*'s family and explain the situation. (Still, it would be proper for the proprietor to make the phone call, even though he is not obligated to do so.)

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tenant. As a rule of thumb, the tenant is responsible for the simple ongoing upkeep of the property. Based on this, Rambam and *Shulchan Aruch* rule that the manure that collects in the courtyard (which was used for fertilizer) belongs to the tenant — and he is also responsible for clearing it away. However, if there is a common practice otherwise, we follow that (*C.M.* 313:3).

"In almost all rentals, basic utilities are taken for granted as part of the rental. This includes electricity, gas, and often a telephone line. Sometimes, the estimated average cost of utilities is included in the rental price, but most often the tenant is expected to pay for the utilities directly.

"If the tenant does not want to use a specific utility, that is his prerogative, but the monthly fee for the service during his term of occupancy remains his responsibility. If it is more cost-effective for him to cancel the service, he can, but the fee is on him and he cannot transfer it to the landlord.

"Furthermore, when the tenant leaves the apartment, the contract usually requires that he return it in similar condition, which would include the possibility of utilities. Thus, the cost of reconnecting the service is also his responsibility.

"This stands in contrast to something which in most places is not considered standard. If not stated otherwise, and the tenant has no interest in this service, he would not be liable for the monthly fee or disconnection fee.

"Internet service nowadays is questionable and depends on the community," concluded Rabbi Dayan. "Furthermore, often there are various carriers, and one may prefer one carrier over another."

Verdict: In general, the tenant is responsible for the costs and fees associated with basic utilities.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Mechilah (Forgoing) #8
Mechilah of Items or Cash

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

Q: Someone holds $1,000 cash of mine; I said that I am mochel. Is the money his?

A: This depends on the circumstances.

Mechilah cancels debt and obligations, but cannot transfer ownership of items. Thus, even if someone holds your item, saying that you are *mochel* is insufficient for the item to become his; you must state that you *give* it to him (*C.M.* 73:19; 241:2; *Pischei Choshen, Pikadon* 1:33-34).

Regarding cash that was given as a *loan*, though, *mechilah* applies even while still intact in the borrower's hands, since loan money immediately becomes his when given to him (*S'ma* 73:19).

However, in a case of money that was *entrusted*, not lent, cash in a sealed envelope is like other items (see *C.M.* 292:7). If the cash was entrusted loose, though, and in which case the guardian is allowed to use those bills and return others instead, there is a dispute whether *mechilah* applies to it like a loan, even if it is intact and was not used (*S'ma* 241:6; *Taz* 73:19; *Shach* 73:55; *Aruch Hashulchan* 73:26; 241:6).

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[Obviously, if the proprietor deliberately showed the *kallah* a bracelet that cost more than Reuven was willing to pay because he wanted to make more money on the deal, he transgressed at minimum the prohibition of *ona'as devarim*, because his words cause pain and anguish to the *mechutan* (see *Shulchan Aruch, Choshen Mishpat* 228:1-4), and he is not engaging in business honestly.]

If Reuven chooses to go ahead with the purchase rather than explain the situation to his *mechutan*, he is obligated to pay the price the proprietor charges – although it would be proper for the proprietor to compromise with Reuven on the final price to compensate for his error.

If the *kallah* took the bracelet with her, and the proprietor charged Reuven's credit card for the actual price of the bracelet, then the transaction is a *mekach ta'us*. The proprietor had no right to charge any more than the $3,000 Reuven authorized, and Reuven is entitled to cancel the transaction and return the bracelet.

Even if Reuven only realized weeks later when he received his credit card statement that he paid far more than he had authorized, the proprietor cannot claim that the bracelet devalued because the *kallah* wore it for those weeks, because both Reuven and the *kallah* followed typical business practices, under the assumption that the transaction had taken place as authorized by Reuven (ibid. 232:13). It is possible that the *kallah* will be required to pay a fee for the use and enjoyment she had from the bracelet for those weeks (ibid. 232:15 and *Nesivos* 241:9, but cf. *Ohr Samei'ach, Hilchos Mechirah* 16:8).

A similar case was brought to our *beis din* regarding a *chassan* who bought a suitcase as a gift for his *kallah*. After he gave it to her, the storeowner called to inform him that matching pieces of luggage, which were not included in the price, had mistakenly been left inside the big suitcase. He demanded that the *chassan* either return those smaller pieces of luggage or pay for them.

In this case, too, since the seller did not intend to sell these items, no *kinyan* was finalized on the smaller pieces of luggage, and the *chassan* has no right to keep the luggage without paying for them. But he is not obligated to pay for the smaller pieces of luggage; he can tell the proprietor to call the *kallah* and tell her about the error and ask her to either pay for the added pieces or return them. If he does not want the proprietor to call the *kallah*, he must pay for them – although it would be proper for the proprietor to compromise on the price.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com