

BUSINESS WEEKLY



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

Issue #598 | Vayakhel | Friday, Feb 25, 2022 | 24 Adar I 5782

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



CASE FILE

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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

SHABBOS SALE

Mr. Appel ran a computer store. One of his clients, a nonobservant Jew named Mr. Moskowicz, had ordered a computer. Mr. Appel notified him on Thursday afternoon that it was ready.

"I can't come today," said Mr. Moskowicz. "I can come tomorrow afternoon."

"I leave early on Friday," replied Mr. Appel. "I close at 3:00 p.m."

"That's a problem," said Mr. Moskowicz. "I can't get there before 4."

"I open again on Monday," said Mr. Appel. "You can come get the computer on Monday."

"I need it by Sunday," said Mr. Moskowicz. "I arranged with my son to come help me set it up, transfer my files, etc. If I don't get the computer till Monday, it will delay everything a week."

"If you want, I can leave the computer with Mr. Thomas in the neighboring store," said Mr. Appel. "You can pick it up from him, but it has to be before 5:30 p.m."

"Why, does he close then?" asked Mr. Moskowicz.

"No, he's open till 7, but it's important for me that you get the computer by 5:30," Mr. Appel replied. "I prefer not to explain why." He didn't want to get into a discussion about Shabbos with Mr. Moskowicz.

"OK, I'll be there between 4 and 5:30 PM," Mr. Moskowicz said.

Mr. Appel brought the computer to Mr. Thomas on Friday. "This is for a client, Mr. Moskowicz," he said. "He's supposed to stop by later this afternoon."

"OK, I'll give it to him," said Mr. Thomas.

On Monday, Mr. Appel asked about the computer. "Mr. Moskowicz came just before I closed," said Mr. Thomas, "at 6:45 in the evening."

"Oh, really?" asked Mr. Appel. "He told me he would be here by 5:30."

"Well, he wasn't," said the neighbor. "He said something about getting delayed."

Mr. Appel was concerned. "That means that Mr. Moskowicz took the computer on Shabbos!" he said to himself. "I never sell things on Shabbos! What about the money?"

Mr. Appel turned to Rabbi Dayan, and explained what happened. He asked:

"Was the sale that occurred on Shabbos valid? Can I use the money?"

"The *Gemara* (*Beitzah* 37a) teaches that transactions of many forms are not allowed on Shabbos," replied Rabbi Dayan. "Many

DID YOU KNOW?

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

Ask your Rav or email
ask@businesshalacha.com
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

LONG DISTANCE ARBITRATION

Q: I live in the United States, and I am party to a financial dispute with someone in Europe. We agreed to appoint a certain businessman as an arbitrator to determine who is correct or recommend a *psharah* (compromise). We received a *shtar beirurin* (arbitration agreement) to sign. One of the lines states: "This Agreement was effected and finalized concurrently herewith according to Jewish Law by formal *Kinyan Agav Sudar* with use of an object valid to effect a *kinyan sudar*."

Is this *kinyan* absolutely necessary for the arbitration agreement to be binding?

And if it is, given that we are in distant countries and the hearing will be held on Zoom, how can we effect this *kinyan*?

A: There are two factors to consider in this case.

The first factor is whether signing an agreement can take the place of a *kinyan*, or an actual *kinyan* is necessary.

Generally, when a financial dispute is adjudicated by someone who is not qualified to issue halachic rulings on such matters – especially if his decision won't necessarily reflect *Halachah*, and the two parties are giving him the right to impose a *psharah* – a *kinyan* is necessary in order for his decision to be binding. If there is no *kinyan*, either party may renege on his agreement to accept the arbitrator's decision.

Some *poskim* rule, however, that just as a person can obligate himself by signing a contract to do something that he has no inherent obligation to do (*Shulchan Aruch*, C.M. 40:1), he can also obligate himself, via a contract, to accept the ruling of an arbitrator (*Sma* 12:18 and *Yeshuos Yisrael* 12:2).

[Some *poskim* limit this to cases in which the document containing the giver's commitment was handed over to the recipient, but not to cases in which the document will be given to a third party or even to the arbitrator, unless the arbitrator is a Jew and was appointed as an agent to acquire the document on the recipient's behalf (*Erech Shai* 12:7, s.v. *Nassan*).]

Some *poskim* disagree with this entire premise, maintaining that a person can only obligate himself



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explain that this is a Rabbinic injunction lest one write" (*Sma* 195:22).

"Nonetheless, the *Tosefta* (*Beitzah* 4:3) teaches that if a transaction was made on Shabbos, even with willful intent, it is valid. The sale document should be dated after Shabbos, though, presumably so that the violation will not be apparent" (*C.M.* 195:11; 235:28; *Aruch Hashulchan* 235:26).

"The language of the *Shulchan Aruch* seemingly indicates that both parties, the buyer and the seller, violate the Rabbinic injunction, when doing so willfully" (*Pischei Choshen, Kinyanim* 7:12).

"The injunction against transactions also includes giving gifts that are not for the purpose of Shabbos or for a *mitzvah*, as an extension of the prohibition of commerce" (*Mishnah Berurah* 306:33).

"Even gifts or food sales for the purpose of Shabbos or Yom Tov, which are allowed with certain restrictions (see *O.C.* 323; 517:1,3), should be done through taking the items, not through *kinyan sudar* (*Mishnah Berurah* 527:60). Perhaps this is because *kinyan sudar* is usually intended to be documented, or because the transaction is more evident in this manner" (*Pischei Choshen, Kinyanim* 7:[32]).

"In some cases, *Chazal* comment that 'there will not be blessing' in earnings not in the spirit of *Halachah*, but this would not seem to apply here, since you intended to sell on Friday (*O.C.* 251:1; 696:1).

"Thus, while Mr. Moskowicz was not allowed to take the computer on Shabbos," concluded Rabbi Dayan, "the transaction is valid, and you are allowed to use the money. Here, you can date the receipt as Friday, since the violation is not thereby apparent."

Verdict: Transactions are not allowed on Shabbos, other than for the purpose of Shabbos with certain restrictions. If a transaction was done in violation, it remains valid and the money is permitted.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Mechilah (Forgoing) #14 Promise to Pay

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

Q: I promised to pay my creditor by a certain date. He is willing to extend the time. Does this release me from my promise?

A: When the debtor promises, takes an oath, or makes a handshake (which is like an oath) to pay by a certain date, *Shulchan Aruch* writes that the agreement of the creditor to extend the time does not relieve the debtor of his Heavenly obligation to pay in accordance with his promise or oath (*Y.D.* 228:39; *Taz, Y.D.* 228:48; but see *Sma* 73:19 and *Taz, C.M.* 73:6)

Instead, the creditor should declare that it is as if he received payment, and the debtor recommit to pay by the new date.

There is a dispute whether it suffices that the creditor explicitly be *mochel* the promise or oath when extending the time (*Pischei Teshuvah, Y.D.* 228:35).

However, if the creditor forgoes the debt entirely, this implicitly relieves the debtor also of his Heavenly obligation, since with the complete cancellation of the monetary debt, the promise or oath is also canceled (*ibid.*).



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through a contract to definite clauses, but not to terms that are uncertain. The commitment to follow an arbitrator's decision is an example of something that is not definitive, since he hasn't issued his decision yet (*Tumim* *ibid.* 7, and *Nesivos, Chiddushim* 12). There is no definitive ruling on the debate whether a signature on an arbitration contract is binding (*Divrei Geonim* 81:10 and *Shu"t Maharsham* 5:45), and consequently a *kinyan* should be made.

This brings us to the second factor we need to discuss: whether a contract in which both parties sign that they made a *kinyan* – which is often written into contracts used by *frum* Jews – has the same effect as a *kinyan* even if it is obvious that no *kinyan* was made.

Some say that when someone signs that he made a *kinyan*, it is *hodaas baal din* (an admission by a party in a dispute), which is considered as valid as the testimony of a hundred witnesses (see *Rema* 79:1). Even if one of the parties knows that the other party could not have made a *kinyan*, the statement that there was one is considered a *kinyan odisa* (a *kinyan* made by admission), even when it is obvious that it is untrue, and it has the same validity as a *kinyan meshichah* (*Shu"t Noda b'Yehudah, Mahadurah Kamma, C.M.* 30, cited in *Pischei Teshuvah* 40:3, *Ketzos* *ibid.* 1 and 194:3, and *Nesivos* 60:17).

Many *poskim* argue that *odisa* is not considered a *kinyan*, and an admission is considered valid only as a matter of *ne'emanus* (trustworthiness), meaning that we accept each signee's admission that the matter is true (*Shu"t HaRashba* 3:67, cited in *Beis Yosef, C.M.* 252; *Taz Yoreh De'ah* 168:14; *Shu"t Divrei Chaim, C.M.* 1; *Imrei Binah, Halvaah* 16).

According to this approach, when it is obvious that no *kinyan* was made, an admission by signature is not binding (see *Shu"t Avnei Nezer, Orach Chaim* 542:26; *Hagahas Baal Yeshuos Yisrael to Shu"t HaRashba* 4:50).

Some say this is also a *sfeika d'dina* (*Shu"t Maharsham* 7:212).

In reality, however, there is a way for you and your adversary to make a proper *kinyan* even if you are in different countries. Each side can appoint a *shaliach* to facilitate the *kinyan* in the other country. The *shaliach* gives the party in his country an item (a handkerchief, a *gartel*, pen, or any other item of value) to lift as he obligates himself to the other party that he will accept the ruling of the arbitrator.

Since this option exists, if either party denies that he made a *kinyan*, we would not trust him against his own signature acknowledging that a *kinyan* was made.

It appears, however, that even without a *kinyan*, the signature on the arbitration contract alone is binding. There are other issues that could theoretically invalidate a contract like the one you describe, such as if it is emailed by the parties, as this medium is not recognized in *Halachah* (see *Ketzos* 191:1 and *Pischei Teshuvah* 238:2). Yet in practice, we do recognize an emailed contract, because of the *halachah* of *situmta* (*C.M.* 201), which lends halachic validity to standard business practices.

Situmta also renders the signature on the arbitration contract halachically valid even without a *kinyan*.

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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