

BUSINESS WEEKLY



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

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



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

CREDIT-CARD LOANS

One day Mr. Oshri was approached by his neighbor Mr. Leibowitz, who ran a small business from his house. "Is there any way that you can lend me \$5,000 for a month or two?" Mr. Leibowitz asked.

"I don't have \$5,000 now," replied Mr. Oshri, "but I expect to have in two weeks. Can you wait?"

"I need the money now," said the neighbor. "If you're willing, though, I can swipe your credit card through my business for \$5,000. I'll get the money in a day or two, and in two weeks you can make your monthly payment to cover it meanwhile."

"I'm OK with that," agreed Mr. Oshri. Mr. Leibowitz swiped the card for \$5,000.

Another neighbor, Mr. Fuchs, similarly approached Mr. Oshri for a \$1,000 loan.

"I don't have available cash," said Mr. Oshri.

"I'm desperate for the money," said Mr. Fuchs. "Can you take a cash advance from your credit card?"

"I can, but it's very expensive," said Mr. Oshri. "There's a 4% fee for the advance, and then a 2% monthly interest payment until the advance is repaid."

"I have no choice," said the neighbor. "I'll cover whatever it costs you!"

Mr. Oshri took the \$1,000 cash advance.

A month later, Mr. Leibowitz came to return the loan. "I actually only got \$4,900," he said to Mr. Oshri. "I have a 2% processing fee whenever I swipe a credit card. I'm happy to pay you \$5,000, though, if there's no *ribbis* prohibition."

"They billed me \$5,000!" replied Mr. Oshri. "I don't see why there should be a problem!"

At the same time, Mr. Fuchs came to return the \$1,000. He wanted to pay Mr. Oshri also the \$40 cash advance fee and \$20 of interest that accrued during the month.

Mr. Oshri suddenly wondered whether that entailed *ribbis*, since Mr. Fuchs was returning more than he borrowed. He approached Rabbi Dayan and asked:

"Is there an issue of *ribbis* in either case? How much must the borrowers return?"

"There is a fundamental difference between the two cases," replied Rabbi Dayan.

"There is no violation of *ribbis* for expenses associated directly with procuring or granting the loan. For example, the *Mishnah* (B.B. 167b) teaches that the borrower is responsible for the cost of writing the loan document" (C.M. 39:17).

DID YOU KNOW?

Earning interest on a loan for the days of Shabbos and Yom Tov can be considered schar Shabbos

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

ROGUE REALTOR

Q: Reuven bought a property, and after the purchase was finalized, he realized that the property had a fatal flaw. Reuven realized that he would not succeed if he tried to sell the property himself. He hired an experienced real estate agent to try to delude someone into buying it, promising him that he would pay him a large bonus, beyond his typical realtor's commission, if he succeeded.

When the real estate agent managed to unload the property for a respectable sum, he approached Reuven to collect the bonus. Reuven responded that since what the agent did was halachically wrong, he is not obligated to pay. Furthermore, he said, the agent should return the entire commission he was paid at closing, because he hadn't earned it properly.

Who is correct?

A: If someone promises to pay a bribe to a dayan, he is not required to pay him. Even if he already paid it, the dayan must return it to him (Shulchan Aruch, C.M. 9:1).

This halachah seems to imply that money earned in violation of halachah must be returned, in which case the realtor would be required to return the commission to Reuven.

The poskim differentiate between these cases, however.

When a person pays a bribe to a judge - or pays interest on a loan - the transfer of the money is in direct violation of a Torah prohibition. In principle, transactions that the Torah prohibits, are null and void, and the money belongs to the person who owned it initially (*Temurah* 4b).

If someone hires witnesses to bear false testimony, on the other hand, the prohibition those witnesses committed is unrelated to the monetary transaction.

In such a case, the witnesses are not obligated to return the money they were paid, because the person who hired them promised them money for fulfilling a specific task, which they did (*Nesivos* 9:1 and



CASE FILE

"Thus, an actual cost or expense, such as the legal fee to draft a loan document or a wire transfer fee, can be charged to the borrower. The *mitzvah* of providing a loan does not require you to expend money to grant it" (*Bris Yehudah* 9:1-5; *The Laws of Ribbis* 4:1-4).

"You were billed \$5,000 for the swipe, which is the amount you made available and lent Mr. Leibowitz. The 2% fee that the credit card company charged him and deducted from the \$5,000 is considered a cost in procuring the loan.

"Similarly, in the second case, the initial 4% fee for withdrawing the cash advance can be forwarded to the borrower, whether it's a flat fee or percentage of the cash advance. However, the subsequent interest payment to the credit-card company is not a cost in procuring the loan, but rather interest that you, the card holder, owe the credit-card bank for the money that you borrowed from them.

"Interest payments to a non-Jew for which the Jewish lender is liable may not be 'passed on' to the borrower. This is not a cost in granting the loan; it results from the delay in repaying the issuing bank. You are not allowed to take the \$20 even if Mr. Fuchs agrees to pay it" (*Y.D.* 168:17; *The Laws of Ribbis* 4:5; 17:15-19).

"Had you drafted a valid *heter iska*," concluded Rabbi Dayan, "you could collect also against the interest amount to the credit-card company, especially if the cash advance was granted for business purposes."

Verdict: One-time fees charged for use of a credit card can be passed on to the borrower, but not subsequent interest payments, without a valid *heter iska*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Mechilah (Forgoing) #18 Mechilah of a Minor

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

Q: An 11-year-old girl babysat for a few hours. I was short \$2 cash for her payment and she said that she forgoes it. Is the *mechilah* of a minor valid?

A: *Chazal* validated the transactions of minors once they reach the age of *pe'utos* (at least six or seven) and also have an understanding of buying and selling (*C.M.* 235:1).

Sma (61:55) cites that a minor who forgoes a debt owed to his deceased father is considered *mechilah b'taus*, and the *mechilah* is void.

Shach (66:80) explains, though, that this applies when the minor was presumably unaware of his father's business affairs and didn't know of the debt. However, if the minor knowingly chooses to be *mochel*, his *mechilah* is valid, like other gifts that he gives, since he presumably benefited somehow from the recipient. Thus, the babysitter's *mechilah* is valid (*Sma* 235:5; *Gra* 235:9). Conversely, we cannot presume *yei'ush* of a minor, even in certain situations of *aveidah* that we would presume *yei'ush* of an adult, since the minor has no benefit there (*C.M.* 260:6; *Pischei Choshen, Halvaah* 13:9).



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Imrei Yosher 2:170). Other *poskim* rule that even if they weren't paid yet, the person who hired them must pay (*Shu"t Mahari Bassan* 84, *Imrei Binah, Dayanim* 17, *Shu"t Tshurat Shai* 1:7. Cf. *Chasam Sofer, C.M.* 27).

One of the proofs of this principle is from a *Gemara* (*Rosh Hashanah* 22b) that relates that the *Baisusim* (a sect of Jews in the era of the Second *Beis HaMikdash* who denied the validity of *Torah Sheb'al Peh* and Rabbinic law) sought ways to trick *beis din* into designating the wrong day as *Rosh Chodesh Nissan*. They once hired two witnesses to falsely testify that they had seen the moon on a specific night. One of the witnesses was a faithful Jew, and in his testimony he described a series of implausible events, to hint to the *beis din* that the testimony was false. He concluded his statement by saying, "If you don't believe me, here is the money I was paid to tell you this."

The *beis din* told him that he could keep the two hundred *zuz*. *Rashi* explains that although he hadn't delivered the testimony he was paid to deliver, *beis din* had the power to appropriate the money because of the principle of *hefker beis din hefker* – *beis din* can declare someone's property ownerless (thereby enabling this witness to take it).

We can infer from *Rashi* that had he testified as they had paid him to testify, he would have been entitled to keep the money despite having transgressed the prohibition of bearing false testimony to earn it.

Some *poskim* write that according to this principle, if someone hired an agent to ensnare someone into entering a business deal on false premises (*Tshuras Shai*, loc. cit.), or he hired a thief to steal something (*Imrei Binah*, loc. cit.), he is required to pay the agent or thief. Similarly, if someone hires an attorney to represent him in civil court against a Jewish defendant, he is required to pay the attorney's fee.

Two novel concepts arise from this *halachah*:

1. Although there is a rule that a person cannot appoint an agent to do an *aveirah* on his behalf (*ein shaliach l'dvar aveirah*) — which means that the act of theft is attributed to the thief, not the person who sent him — if the thief was promised payment for stealing, he is entitled to payment.
2. Although someone who tricks someone into paying more than the going price for an object (*onaah*) must return the difference between the true price and the amount he was paid, the agent who arranged the transaction is entitled to payment. Similarly, in our case, even if the buyer voids the sale due to the defect, the agent nevertheless deserves compensation for his services. [Some *poskim* disagree, however, and write that when the sender needs to rectify his transgression, thereby not benefiting from the service, he is exempt (*Shu"t Beis Yitzchok, Even Ha'ezzer* 2:91 [15] and *Panim Masbiros* 23)].

Returning to your question: According to many *poskim*, the agent is entitled to collect the bonus he was promised even if the sale is nullified by the buyer, but we must stress that the agent was prohibited from deluding him and must do *teshuvah* for this sin.

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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