

# 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

## SHEMITTAH BIKKURIM

It was 2 a.m. on Shavuot morning. Mr. Furst had just finished learning *Mishnayos Bikkurim* with his son. He closed his eyes and tried to imagine what it was like to bring *bikkurim*, as described vividly in the *Mishnayos* (ch. 3). He drifted off into a dream and envisioned himself in an orchard in Eretz Yisrael, with the Beis HaMikdash rebuilt.

Mr. Furst walked around his orchard and looked excitedly for the first fruits to appear on the trees. He had prepared red strings, which he would tie around the first fruits, in anticipation of bringing them to the Temple as *bikkurim*.

It was the *Shemittah* year, so that Mr. Furst left the gate to his orchard open. His neighbor, Mr. Deutsch walked into the field, also with red strings.

"What are you doing here?" Mr. Furst asked him.

"Well, what are you doing here?" Mr. Deutsch replied.

"I'm looking for the first fruits to bring as *bikkurim*," Mr. Furst replied.

"Well, so am I," replied Mr. Deutsch. "Since it's *Shemittah* year, and produce of *Shemittah* is *hefker* (ownerless), you have no more rights to the fruit than I. If you can bring *bikkurim*, then so can I!"

Mr. Furst was stunned for a moment. "It's not quite the same," he replied. "You have no connection to the land. Even though the fruit is *hefker*, the land is still mine!"

Meanwhile, Mr. Schlissel, who wandered by, overheard the conversation. "I think that you're both doing something unnecessary," he said. "Since the fruit is *hefker*, neither of you should be bringing *bikkurim*! It's like you just picked up fruit from the street. Would you bring *bikkurim* from that?"

Mr. Furst awoke, with the question etched in his mind.

At 3 a.m. Rabbi Dayan came to give a *shiur*. After the *shiur*, Mr. Furst approached him and asked:

**"Are *bikkurim* brought during *Shemittah*? Who can bring them?"**

"Produce of *Shemittah* is considered *hefker*," replied Rabbi Dayan. "Nonetheless, the land and the trees themselves remain the owner's, but he is not allowed to lock his field or orchard and deny others access to the *Shemittah* produce." Chazon Ish (*Orlah* 11:18) writes that there is no obligation of *bikkurim* during *Shemittah*, since the fruit is *hefker*. Even if the owner subsequently possesses them, they are not considered fruit that comes from his land. "Ohr Hachaim (*Devarim* 26:2) also writes

## DID YOU KNOW?

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## BHI HOTLINE

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

## CEASE OR SEIZE?

**Q:** I recently opened a *simchah* hall, and I bought a huge supply of dishes, paying the seller in full upon delivery.

One week later, I walked into the kitchen and was shocked to find someone wrapping up the dishes and preparing it to be hauled off.

"Why are you stealing my dishes?" I asked.

"I'm not stealing it," he answered. "I am the supplier of these dishes, and your seller keeps delaying payment, so I'm canceling the sale and taking back the dishes."

I told him that he had no right to seize the dishes, because even if his story is true, his claim is against my seller, not against me, since I did pay for the dishes.

He insisted that since he wasn't paid, the sale is void, and he's seizing his own property.

Who is correct?

**A:** If someone sells real estate or objects and comes to demand payment multiple times, that shows that he made the sale because he is desperate for the money. It is therefore considered as though he sold the item on condition that he would be paid on time, and if the buyer delays payment, the seller is permitted to cancel the sale (*Shulchan Aruch, C.M.* 190:10-17).

It is questionable, however, whether this *halachah* would enable the supplier of your dishes to nullify his customer's subsequent sale and seize the merchandise you bought.

First of all, this *halachah* applies only if the seller requested payment on the exact date it was due. If he requested the payment even one day later, he cannot nullify the sale, because his lack of urgency proves that he made the sale unconditionally (*ibid.* 16 with *Sma* 25).

But even if the supplier *did* demand payment from his buyer (i.e., your seller), he still wouldn't be able to nullify the subsequent sale to you.



## CASE FILE

that *bikkurim* does not apply during *Shemittah*. He explains that during the *Shemittah* year Hashem 'reserved' the Land for Himself, so that the phrase 'that Hashem gives you,' is not applicable then.

"Rashi (*Shemos* 23:19), however, cited by Tashbetz (2:247), writes that *bikkurim* does apply on *Shemittah*. Gur Aryeh and some other Mefarshai Rashi, though, note that this does not appear in all versions and may be a mistaken version" (see, however, *Minchas Chinuch* 91:2).

"Some explain Rashi's rationale that it suffices that the owner of the land acquires the fruit from *hefker*, since he still owns the land. This is similar to the opinion of the Rambam (*Bikkurim* 2:14) that if someone acquired both the land and the fruits after they were already detached, he is obligated in *bikkurim*, since he is now the owner of both the land and the fruit" (*Toras HaAretz* 1:21; see however, *Avnei Nezer, Y.D.* #445).

"Others explain that the obligation of *bikkurim* begins at an early stage of the fruit, even before they become sanctified with *kedushas sheviis*. Therefore, when the fruit were declared *bikkurim*, they were not yet *hefker* and still belonged to the owner, even though they later became *sheviis*" (*Har Zvi, Zeraim* 2:45; *Mishnas Yaavetz, Hil. Bikkurim* 2:1).

"Another person cannot bring *bikkurim* from these fruits, though" concluded Rabbi Dayan. "Even if he picks the *hefker* fruit – the land is certainly not his!"

**Verdict: There is a dispute whether *bikkurim* are brought during the *Shemittah* year, since the produce is *hefker*. When the Beis HaMikdash will be rebuilt, *b'e"H*, Sanhedrin will have to decide.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

### MONEY MATTERS Mechilah (Forgoing) #27 Honor

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

### Q: Can a person of authority – parent, teacher or king – forgo his honor? Is it appropriate to do so?

A: Honoring one's parents is a great *mitzvah*, included in *Aseres Hadibros*, but they can forgo their honor. Nonetheless, a child should be sensitive and not request them to do things that they will do grudgingly (*Y.D.* 240:19, 25).

Similarly, a teacher or Torah scholar can forgo his honor. Although his honor is rooted in *kvod haTorah*, the Torah that a scholar learns is considered his own. Nonetheless, he should refrain from doing actions that might degrade the honor of Torah. Thus, there is a dispute whether it is appropriate for him to return a filthy, lost object that he would not take had it been his own, and is exempt from returning it (*C.M.* 263:1-3; *Y.D.* 240:7).

However, a king cannot forgo his honor, since the honor due him is not his own, but on account of his royal position and the nation that he represents (*Rambam, Hil. Melachim* 2:3).



## BHI HOTLINE

The *halachah* that a seller is allowed to nullify a sale if the buyer fails to pay on the exact date is limited to instances in which the seller does not generally sell such items, and the only reason he did was because he desperately needed money. Since his urgent need for money was the entire reason for the sale, he is entitled to cancel it if he doesn't get his money, because he would never have made the sale had he known that he wouldn't receive payment on time (see Rashi, *BM*. 87b, s.v. *Ha*).

A merchant whose entire business is to sell such items is usually willing to accept a delay in payment in order to make a sale. Therefore, even if he did request payment multiple times, we assume he did so only to ensure that the buyer wouldn't forget about it or endlessly postpone paying. Since there is no proof that he made the sale on condition that payment is rendered on time, he may not nullify it (see *Maharam Lublin, B.M.* 77b, and see *Shu"t Malbushei Yom Tov, C.M.* 4, and *Shu"t L'horos Nassan v.11, C.M.* 121).

There is one possibility that the supplier might have a valid reason to nullify the sale.

Some *poskim* write that the condition that a seller may cancel a transaction only if he demands payment on the due date, applies to cases in which the buyer is currently ready to pay, but the seller wants to nullify the transaction because of a previous delay in payment. But when someone sells goods without setting any conditions, there is a tacit agreement that the buyer will pay immediately. Therefore, if the seller requests payment and the buyer says he is short on funds and he will pay when he has money, the seller is entitled to nullify the sale, because he only sold the merchandise on condition that he would be paid (*Shu"t HaRif*, cited in *Nesivos* 190:7, cf. *Meshovev Nesivos* 91:9).

Even those *poskim* would agree, however, that the supplier has no right to seize the goods from you unless he is willing to reimburse you. At most, he may nullify his sale to your seller, which will retroactively render the goods stolen. But *Chazal* established a rule that if someone bought stolen goods from a thief, and the rightful owner wants to reclaim them, he must reimburse the buyer for whatever he paid for the goods. *Chazal* established this rule for *takanas hashuk* (effective operations of the market), because without this rule, people would be afraid to buy merchandise out of fear that if it turns out to have been stolen, they will lose their money (*C.M.* 356:2).

In your case, it is unlikely that it is worthwhile for the supplier to reimburse you the retail price for the merchandise; his only recourse is to sue your seller in *beis din*.

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

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