

# 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

### RING ON CREDIT

Yehuda and Shira stood happily under the *chuppah*, ready to do *kiddushin*. Yehuda held the ring and was about to give it to his *kallah*.

The *mesader kiddushin* Rabbi Reiss asked Yehuda: "Is the ring yours?" "Yes," answered Yehuda.

"Did you buy it with your own money?" Rabbi Reiss asked.

"Yes, I used my own credit card," Yehuda replied.

Rabbi Reiss paused for a moment, contemplating. "OK...," he said.

He then asked the witnesses: "Is the ring worth a *perutah*?"

"Yes," they answered.

Having completed his verification, Rabbi Reiss instructed Yehuda to say: "*Harei at mekudeshes li*," and place the ring on his *kallah's* finger. Yehuda did so, and Rabbi Reiss declared: "*Mekudeshes, mekudeshes!*"

After the *chuppah* was over, people headed to the *se'udah*. Rabbi Dayan met the *kallah's* father, Rabbi Etan, and wished him a hearty "*Mazel tov!*"

"Thank you," replied Rabbi Etan. "May we be *zocheh* to continue sharing *simchos*!"

"Amen," replied Rabbi Dayan. "I give my heartfelt *brachah* to the new couple, Yehuda and Shira, that they merit building a *bayis ne'eman b'Yisrael!*"

"Amen!!" replied Rabbi Etan. "I'd like to ask you something, though."

"Certainly," said Rabbi Dayan.

"Rabbi Reiss is a highly knowledgeable Torah scholar," said Rabbi Etan. "I noticed that he paused when Yehuda said that he bought the ring with his credit card, and then carried on. Why did Rabbi Reiss pause?"

**"Is there some issue with buying the wedding ring with a credit card?"**

"The *chassan* must give the *kallah* monetary value, customarily a ring, for the *kiddushin*," replied Rabbi Dayan. "We generally require that the ring be his, and aspire that the *kiddushin* be valid both *mid'Oraysa* and *mid'Rabbanan*."

"Shulchan Aruch rules like Rebi Yochanan (*Kiddushin* 26a; *B.M.* 47b) that by Torah law payment of money consummates the transaction, but the Sages required that the buyer make another *kinyan*, such as taking the item – *meshichah*. There is a dispute over what consummates the transaction when buying movable items from a non-Jew" (*C.M.* 198:1; *Rama* 194:3; *Shach* 194:1).

"It is questionable whether using a credit card constitutes payment of money, especially if the payment was not yet transferred by the credit company to the vendor" (see *Mishpatecha L'Yaakov* 2:13).



## BHI HOTLINE

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

### DOUBLE TROUBLE

**Q1.** I was looking for an apartment to rent, and I found one that was becoming vacant in a month. The landlord and I came to an agreement on the rent, and even discussed details such as who would pay for a paint job and minor renovations that had to be made. I told him that I was traveling to Eretz Yisrael for a couple of weeks, and he said that I should be in touch with him when I return.

When I called him upon my return, he said that in the interim, another person had contacted him and he had agreed to rent it to him, and had even received a payment from him. I told him that he had already committed to rent it to me, and he replied that he didn't think our conversation was binding. He agreed to accept the ruling of a *dayan*. Who has the rights to the apartment?

**Q2.** At BHI, we received another *she'eilah* that involves similar principles: Someone hired a *badchan* for a wedding, and a week before the wedding the *badchan* called and, apologizing profusely, explained that he had mistakenly double-booked that night. He suggested that we draw lots to determine who should have the rights to his services, and who will have to hire a different — perhaps less-talented — *badchan*. Is that the correct way to deal with this situation?

**A.** These *she'eilos* are similar in that both deal with someone who made commitments to two people and cannot keep both. The difference between them is that in the first case, there was a *kinyan* (act to formalize the agreement) with the second person, and in the second there wasn't.

In any monetary transaction — between seller and buyer, landlord and tenant, employer and employee, giver and receiver of a gift — once the two parties come to an agreement, they are prohibited from renegeing on the commitment, even if they did not make a *kinyan*. Although a person can technically back out of such a commitment, it would brand him *mechusar amanah* (lacking integrity), and the *chachamim* are displeased with him (*Shulchan Aruch*,

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## CASE FILE

"Therefore, the *chassan* should preferably pay for the wedding ring with cash (or, possibly, a personal check), to clearly establish his full ownership of it, through both paying money and taking it from the store" (*Hanisuin K'hilchasam* 7:16; *Pischei Choshen, Kinyanim* 3:[21]).

"Machaneh Ephraim (*Kinyan Meshichah* #2) addresses the question: If the *chassan* did not pay yet for the ring, but took it through *kinyan meshichah* or *hagbaha*, which are binding only *mid'Rabbanan*, are the *kiddushin* nonetheless valid also *mid'Oraysa*?

"He cites from Beis Yosef (*E.H.* 28), who discusses whether transactions that the Sages authorized can subsequently be used to effect a Torah *kinyan* (e.g., *kiddushin, mechiras chometz* or *bechor*). Perhaps, once the Sages awarded the purchased item to the buyer – it becomes his *mid'Oraysa*, since the Sages have authority to revoke the vendor's ownership – *hefker beis din hefker*.

"*Avnei Miluim* (*E.H.* 28:33) maintains that if the *chassan* did not purchase the ring with money, the *kallah* would be considered *mekudeshes* only *mid'Rabbanan*. However, others maintain that she is *mekudeshes* also *mid'Oraysa*, because of *hefker beis din hefker* or for other reasons" (see *Meshovev Nesivos* 72:30; *Noda B'Yehuda, E.H.* 2:54; *Otzar Haposkim* 28:1:1:13 citing *Binyan Olam, Y.D.* 59).

"Additionally, a credit card, even if not actual payment, could be tantamount to paying money since it transfers responsibility of payment (*himcheihu etzel chenvani* or *zakaf alav b'milvah*). It is also likely considered *situmta* – commercial practice, which, according to some authorities, acquires *mid'Oraysa*" (*Pischei Teshuvah* 201:1; *Pischei Choshen, Kinyanim* 2:[25]).

"That is why Rabbi Reiss paused," explained Rabbi Dayan. "There is an issue, but he concluded that the ring is acceptable for *kiddushin*."

**Verdict: Preferably, the *chassan* should buy the wedding ring with cash. However, if he used a credit card the *kiddushin* are valid, certainly *mid'Rabbanan*, and, according to many authorities, also *mid'Oraysa*.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

*Dayanim* (Judges) #9

**Evaluating What to Grab**

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

**Q: In cases that *beis din* is not halachically authorized to adjudicate nowadays, but the plaintiff can grab – *tefisa* – should *beis din* evaluate how much he can grab?**

A: Some authorities rule that the plaintiff can ask *beis din* to evaluate the amount he deserves, at least in cases of monetary damage that are not common, such as personal injury (*Rif, B.K.* 30a; *Shach* 1:17).

However, *Rema* (*C.M.* 1:5) rules that *beis din* should not do so, since this is tantamount to judging. Only post-facto, after the plaintiff grabbed, should *beis din* evaluate how much he can keep.

The plaintiff must be able to verify his claim to keep what he grabbed. However, if he grabbed without being seen, he is believed on his claim based on *migo* – since he could have denied that he grabbed (*Sma* 1:19).

Even so, the plaintiff may not grab through secular courts. If he did, some authorities allow him to keep what he took (*Shach* 1:15; *Pischei Teshuvah* 1:5).



## BHI HOTLINE

*C.M.* 204:7, *Sma* 333:1). Some *poskim* write that it is even permissible to call someone who does so a *rasha* (*Maharam MiRottenberg*, cited in *Beis Yosef, Yoreh De'ah* 264, and *Taz* *ibid.* 5).

But a person who committed to a deal is considered *mechusar amanah* for renegeing only if the other party truly relied on that commitment. If, for example, someone told another person that he would give him a large gift, the recipient doesn't fully rely on acquiring that gift until he actually receives it, so if the giver reneges, he is not considered *mechusar amanah* (*C.M.* 204:8 and 241:1).

In the case of a sale, the seller would be considered *mechusar amanah* for backing out only if the two parties already came to terms on a price and similar details, because until then, neither party relies on the deal going through (*Beis Yosef* 189).

In both of our scenarios, it would seem that the landlord or service provider already became *mechusar amanah* for backing out on the first person when he committed to the second person. If he now reneges again to go back to the first person, he is going to be *mechusar amanah* a second time, so he should stick with the second person.

Nevertheless, *Rishonim* write that since he was not permitted to renege on the first deal, his second commitment was not valid, and does not invalidate his prior commitment (*Beis Yosef, Yoreh De'ah* 264, citing *Shu"t Maharam, Minchas Pittim* 204:11, and *Shu"t Chasam Sofer, Yoreh De'ah* 246, cited in *Pischei Teshuvah, Yoreh De'ah* 264:11). [Some *poskim* write that he should try to fulfill both commitments by offering the person who does not get the deal some sort of monetary compensation (*Kesef Hakodashim* 204:7).]

Certainly, then, in regard to the *badchan*, where there was no *kinyan*, he should fulfill the first commitment.

But if the second person made a *kinyan*, then the landlord or service provider is fully committed to that obligation and was already *mechusar amanah* for not keeping his word to the first person.

In your case, the second person giving the landlord money is generally considered a *kinyan*. But if the local custom is to write a rental contract, it is possible that if no contract was written yet, the monetary exchange does not finalize the lease and the landlord may still renege on the second commitment (*C.M.* 190:7, 195:9, *Pischei Choshen, Kinyanim* ch. 2, fn 22).

According to many *poskim*, however, someone who reneges after money has changed hands is cursed with a *mi shepara* (see *Issue* #588; *Pischei Teshuvah* 204:2). In such a case, it is unclear what *halachah* would dictate. On one hand, we might say that the second commitment cannot nullify the first, and that *Chazal* only imposed a *mi shepara* to shame him into keeping his word, and you should, therefore, receive the apartment.

Ultimately, however, since not fulfilling the second commitment incurs a *mi shepara*, it is worse to renege on that commitment than to renege on the first one, so the apartment should go to the second person, because he already gave the landlord money (*Kesef Hakodashim* 204:7).

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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