

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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Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

DELAYED BRIS

Mrs. Abrams gave birth to a boy on Tuesday morning. Her husband immediately contacted the *mohel* who had circumcised their other sons, and arranged with him to do the *bris*.

Mr. Abrams then contacted the shul's *gabbai* and reserved the function hall for the following Tuesday morning.

"There is a \$100 deposit to reserve the hall," said the *gabbai*.

"No problem," said Mr. Abrams. "I'll transfer the \$100 immediately."

The next day, another family asked the *gabbai* about using the function hall for a *bris* on Tuesday morning. "I'm sorry," said the *gabbai*, "but the Abramses already preceded you."

On Monday afternoon, the Abrams' baby developed a slight fever. Mr. Abrams called the *mohel*. "I'm sorry, but we can't do the *milah* when the baby has fever," said the *mohel*. "You'll have to wait at least until the fever subsides."

Mr. Abrams contacted the shul *gabbai*. "Unfortunately, the baby developed a slight fever," he said. "We will not need the function hall tomorrow morning. I'll let you know when we're able to have the *bris*."

"I cannot promise that the hall will be available then," said the *gabbai*. "People use it for all kinds of functions, including lectures in the morning. You'll have to pay for the hall, regardless. Furthermore, someone else had asked to use the hall tomorrow and I had to turn them away!"

"It's not my fault that I have to cancel," objected Mr. Abrams. "It was totally unexpected that the baby would develop fever, and beyond my control."

"I understand, but that is your issue," replied the *gabbai*. "The hall remains available to you tomorrow. We even lost another prospective renter!"

"I would like to consult with Rabbi Dayan on this," said Mr. Abrams.

"That's fine with me," replied the *gabbai*. "I'm happy to hear his ruling."

The two approached Rabbi Dayan, and asked: **"Is Mr. Abrams required to pay for the function hall? What about the deposit?"**

"Ideally, the hall should be rented with a contract that specifies the cancellation policy," replied Rabbi Dayan. "Whatever is stipulated is binding."

In the absence of a contract, the common practice is binding. In most places, the practice is that the deposit is nonrefundable. There does not seem to be a clear practice,



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

REIMBURSEMENT RIBBIS

Q: My friend was going shopping, and he bought something for me. Is the amount he spent for my items considered a loan, and if it is, am I allowed to repay more than he paid, or is that *ribbis* (forbidden interest)?

A: The first factor pertaining to your *she'eilah* is what happens if someone appoints a *shaliach* (agent) to buy something for him, but doesn't give him money to pay for it, so the *shaliach* buys it with his own money and does not tell the seller that he is buying it for someone else. Does the item belong to the person who sent him ("the buyer" from here on) as soon as the sale is completed, or does it only become his when he makes a *kinyan* (act to formalize the acquisition)?

Many *poskim* rule that the item belongs to the buyer only if the money used for the payment is credited to him, since the seller's intention is to be *makneh* (transfer ownership of) it to the person whose money he received as payment (*baal hama'os*).

If the buyer asked the *shaliach* to buy something for him, and the *shaliach* bought it with his own funds — using cash or a credit card — since the *shaliach* laid out the money on the buyer's directive, the buyer became obligated to compensate the *shaliach*, and it is as though he borrowed the money from the buyer, thereby becoming the *baal hama'os*, so the object became his immediately (*Shulchan Aruch, Choshen Mishpat* 183; *Shach* 2; *Ketzos Hachoshen* 4; and *Nesivos* 2). [There is a dispute among the *poskim* whether this would apply even if the *shaliach* bought it on credit on his own account; see *Mishkan Shalom* vol. 2 #41].

It would seem that if the seller has a return policy allowing for a full refund, then no loan is considered to have been extended, because the item can be returned, so the buyer is not obligated to repay the agent unless returning the item will require a heavy investment of either time or money. Furthermore, if the item he asked the *shaliach* to buy is a basic staple that everyone uses, and the *shaliach* can use

DID YOU KNOW?

Vendor agreements can have clauses that may be ribbis but can often be corrected with halachic guidance.

Ask your Rav or email
ask@businesshalacha.com
for guidance and solutions.



CASE FILE

though, about the remainder.

Regarding hiring workers, the *Gemara* (B.M. 77a) teaches that if one hires workers for a job, which becomes irrelevant because of circumstances beyond [human] control (*oness*) that neither party could foresee, or that could both foresee equally – the employer does not have to pay. Since he is in possession of the money, it was the workers' responsibility to stipulate that they should get paid even in the eventuality of cancellation due to *oness* (C.M. 334:1-2).

Mordechai (B.M. #345) extrapolates to rental, that if a tenant dies during the rental period, his inheritors are exempt for the remaining period, since the rental is canceled due to unexpected *oness*. However, Rashba (*Responsum* 1:1028) differentiates between rental and hiring; rental is like purchasing for the day, so that *oness* of the renter does not exempt him from payment.

Rama (C.M. 334:1) cites both opinions, and concludes that, on account of the dispute, the inheritors are exempt, but if the renter prepaid – the inheritors cannot demand a refund. Although some *Acharonim* rule like the Rashba, the Shach (334:2) sides with the Mordechai, so that the decision of the Rama holds (see *Machaneh Ephraim*, *Sechirus* #5; *Minchas Pittim* 334:1; *Pischei Choshen*, *Sechirus* 6:8[24]).

From the Mordechai's analogy to hiring workers, this seemingly applies to any *oness* that renders the rental impossible or useless. Furthermore, when canceling because of *oness*, the loss of alternate potential clients does not make a difference (see C.M. 333:2; *Nesivos* 333:5).

"Thus, Mr. Abrams does not have to pay the remainder," concluded Rabbi Dayan, "but is not entitled to a refund of the deposit."

Verdict: There is a dispute whether a renter who canceled due to uncontrollable circumstances (*oness*) is liable, so that each party remains with the money in his possession.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #19

Factors of Compromise

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

Q: What factors should *beis din* consider when making a compromise?

A: Like a ruling, a compromise advocated by *beis din* must be just and fair. A compromise that is clearly tilted unjustly or rooted in error can be undone, like an erroneous ruling (C.M. and *Rabi Akiva Eiger* 12:2).

Furthermore, when the parties agree that *beis din* can compromise between them, *beis din* should aim for a compromise that approaches the law – *pshara krova l'din*. Otherwise, there was no need for litigation; the parties could have reached an agreement themselves with a mediator (*Pischei Teshuvah* 12:3).

The simplest, common, compromise is to divide the disputed amount in half. However, when the law leans toward one side, the compromise should be no more than a third from that amount. When someone is obligated to swear, *beis din* should compromise to relieve him of the oath and evaluate the oath's monetary "worth" based on the severity of the oath and the likelihood of his ability to swear (C.M. 12:2; *Shevus Yaakov* 2:144; *Divrei Malkiel* 2:133).



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it for himself and not incur any financial loss from laying out the money, then the buyer is not required to repay him, and no loan is considered to have been made (see *Shu"t Igros Moshe*, *Choshen Mishpat* 1:48; *Kesef Hakodashim* 182).

All of the above applies to cases in which the buyer specifically asked the *shaliach* to buy the item for him. But if the shopper happened to know that his friend needed something, and he bought it for him without asking, it does not belong to the friend – even if the shopper intended to buy it specifically for him. In such a case, no loan has been extended, because if the friend decides that he doesn't want the item, he is not obligated to pay the shopper for it.

Now, there are *poskim* who maintain that the concept of *zachin l'adam shelo befanav* (one can do something beneficial for another person even if that person is unaware of it) applies to cases that involve a sale (i.e., not only in cases in which someone took hold of a free item for someone else), so if someone bought something for someone else and notified the seller, the seller may not void the sale if the person it was bought for wants to keep it (*Shulchan Aruch* 235:23, see *Ketzos Hachoshen* 4). Nevertheless, if the friend never told the shopper to buy that item for him, and is entitled to choose not to keep it, he did not become obligated upon the conclusion of the transaction. Therefore, he is not considered to have taken a loan from the shopper, and there is no issue of *ribbis* if he wants to overpay for the item.

Clearly, then, if your friend was certain that you wanted the item he bought for you, but you never told him to buy it, you are not considered the *baal hama'os*, and no loan was extended, so you may overpay.

But if you asked him to buy the item, and the return policy does not allow for a full refund, and the item is not a basic staple, then the money your friend paid on your behalf is a loan, and you may not overpay when you compensate him.

Even in cases where there was a loan, overpaying would not be *ribbis d'Oraisa* (Torah-level interest), because you did not express at the time of the loan that you would pay your friend more than he paid, but it is still prohibited to pay him more than he loaned you (*Yoreh De'ah* 160:4). Some *poskim* write that even if you are not trying to pay him more than he loaned you, but you frequently give him gifts, you may still not add any money at the time that you are repaying him for the item, because it looks like *ribbis* (*Shulchan Aruch Harav*, *Hilchos Ribbis* 7).

But if you have no intention to overpay for the loan itself; you merely want to add on some money to cover the effort he invested on your behalf, you may do so, as long as you express clearly that it is to compensate him for his effort (*Mishnas Ribbis* 3:13).

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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