

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 אורליא



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

WRITING VARIANT

Mordechai Benjamin wanted to buy a *Megillas Esther*. He went to the *sefarim* store near his house, which also sold *tefillin* and *mezuzos*. "Do you sell *Megillos*?" he asked.

"We do, but yesterday we sold the last one in stock," said Yair, the salesman. "There are a number of *sofrim* who write for us, though. I'll check whether any have a *Megillah* available."

Yair called one *sofer*. "Do you have any *Megillos* available?" he asked.

"Yes, I have a high-quality one almost done," replied the *sofer*. "Be"H, I expect to finish on Ta'anis Esther."

"Hold on," said Yair. "I'll ask the customer."

"There is a *sofer* who writes beautifully," said Yair. "He has a high-quality *Megillah*, which he expects to finish on Ta'anis Esther. It will cost \$2,500."

"That's OK," said Mr. Benjamin. "As long as it's ready before Purim."

"You can pay now," said Yair. "I'll tell the *sofer* to bring the *Megillah* directly to your house."

Mr. Benjamin paid. "Here is your receipt," said Yair.

When the *sofer* brought the *Megillah* to Mr. Benjamin, he saw that the writing was indeed beautiful. However it was written in *ksav AR*", which differs slightly from the more common Ashkenazic *ksav Beis Yosef* in the way certain letters are written, such as *ches* and *tzaddik*."

Mr. Benjamin called the store. "I am disappointed," he said. "I expected *ksav Beis Yosef* and would like to return the *Megillah*."

"There are many Ashkenzim who use *ksav AR*", replied Yair, "especially Chassidim, since it has a kabbalistic basis."

"I'm not Chassidic, though," said Mr. Benjamin.

"When I bought *tefillin* for my son the *sofer* asked me, and I requested and got *ksav Beis Yosef*."

Mr. Benjamin called Rabbi Dayan and asked:

"Can I return the *Megillah* as an erroneous purchase?"

"Strictly speaking, this case is an example of the principle: *ein holchin b'mamon achar harov*," replied Rabbi Dayan. "We do not follow the statistical majority in monetary issues.

"The *Gemara* (B.K. 46a; B.B. 92a) addresses the case of a person who bought an ox, which turned out to be aggressive and unusable as a domesticated animal for work. He therefore claims that this was an erroneous purchase – *mekach taus*.

"Shmuel the Amora rules that although most people buy oxen for work, not meat, we do not follow the majority likelihood in monetary issues.

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

THE MISSING LETTER

Q: A *cheder Rabbi* challenged his students to find an *ende-fei* (ה) in *Birkas Hamazon*, promising a prize to anyone who would find one.

Now, halachic authorities note that that letter does not appear at all in *Birkas Hamazon*. They explain that this alludes to the fact that a person who recites *Birkas Hamazon* with *kavanah* will not be subject to Divine anger — which is described with any of three words ending with that letter: *af*, *shetzuf* and *ketzuf* (*Roke'ach* 337; *Tashbetz Kattan* 315; *Ateres Zekeinim* and *Ba'air Heitev*, O.C. 185).

The *Rebbi* figured that when his students would despair of finding this letter, he would tell them this explanation.

To his utter surprise, a boy pointed out that there is indeed an *ende-fei* in *Birkas Hamazon*: In the *Al Hanissim* we recite on Purim, we recount that Haman wanted to exterminate every Jew, including *tof* (young children), which concludes with an *ende-fei*!

The *Rebbi* says that he didn't mean to include *Al Hanissim* in this challenge; he was referring only to the *Birkas Hamazon* we recite on ordinary days. The student insists, however, that since it appears in the *Birkas Hamazon* we recite on Purim, he deserves a prize.

Is the *Rebbi* obligated to give the child a prize? [This *she'eilah* was posed to us, and also appeared in *Piryo Masok*, p. 198.]

A: There are several aspects to consider in resolving this *she'eilah*: Is the *Rebbi* required to fulfill a verbal pledge made without a *kinyan*? Is he branded *mechusar amanah* (untrustworthy) if he does not keep his pledge? Should he keep his pledge in order to avoid teaching the child to lie?

The first question is the easiest to answer. Since the *Rebbi* did not make a *kinyan* obligating himself to give the prize, according to the letter of the law, he is not obligated to fulfill his pledge.

Regarding the second question, a person is considered *mechusar amanah* only if he failed to keep a commitment that the recipient fully expected him to fulfill. For



CASE FILE

Rather, we follow the principle: *hamotzi meichaveiro alav hare'ayah* – the burden of proof is on the plaintiff. Since some people buy oxen to slaughter for meat, if the seller was already paid and holds the money, he can claim that the ox's temperament is irrelevant. The customer has to prove that his initial intention was to buy the ox for work, or that he always buys for work" (C.M. 232:23).

"Similarly, if someone sold edible seeds but they did not grow, the customer cannot demand a refund for them as defective merchandise; perhaps the seeds were bought for eating, unless the customer clearly indicated that they were bought for planting" (C.M. 232:21).

"However, if the customer hasn't paid yet, so that he holds the money, he can refuse to pay for the unusable ox or defective seeds" (see *Nesivos* 232:12; *Aruch Hashulchan* 232:36; *Pischei Choshen, Ona'ah* 12:15-18).

"Here, too, although most Ashkenazim use *ksav Beis Yosef*, since the store owner holds the money, he can claim – if he wants to – that perhaps you are among those who use *ksav AR*¹, unless you can prove that you use only *ksav Beis Yosef*. It would have been proper, though, to clarify the *ksav* before selling you the *Megillah*.

"Regardless, both forms of writing are acceptable," concluded Rabbi Dayan. "A person should try to be consistent regarding *tefillin* and *mezuzos*, but can use a *megillah* written differently, which has more lenient rules" (see O.C. 690:3; 691:2).

Verdict: Unless it was clear that the customer wanted a specific kind of writing, he cannot demand a refund as an erroneous purchase if the writing differs from what he expected, since *ein holchin b'mamon achar harov*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #36

Returning Bribery

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

Q: When is a Dayan who received bribery required to return it?

A: Since it is prohibited to accept bribery, the *Dayan* is required to return it when the litigant demands it back, similar to *ribbis* (C.M. 9:1; *Gra* 9:2).

If the litigant does not demand the money back, *beis din* does not force the *Dayan* to return it, since it was given willingly and there is no claim. Nonetheless, if he wants to do *teshuvah* some say he should return it, regardless. Others say that he is not required to, since seemingly the litigant is *mochel* (*Sma* 9:3; *Aruch Hashulchan* 9:1; *Pischei Teshuvah* 9:2).

If the litigant owes others and is unable to pay, he is required to demand the bribe back to repay his debt. Even if he did not demand it for a long time, we do not definitively conclude *mechilah*. However if the litigant was explicitly *mochel* the money, he can no longer demand it back, even if he will remain unable to repay his debt (*Pischei Teshuvah* 9:2; *Ketzos* 9:1).



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instance, if someone pledged to give someone an expensive gift, since the recipient is unlikely to fully believe that he will receive such a large gift until he actually receives it (*lo samcha daatei*), the would-be giver is allowed to renege on his pledge (C.M. 204).

The question is how we apply that *halachah* to a prize promised to a child.

There are three possibilities:

1. Since the determining factor as to whether the giver is *mechusar amanah* depends on the *semichas daas* of the recipient, and a child does not have *daas*, it is impossible for him to be *someich daas*. The *Rebbi* is therefore not considered *mechusar amanah* if he doesn't give him the prize. (This *psak* was first suggested by *Kehillas Yaakov* [Algazi — *Tosafos D'Rabbanan* 119, entry for *Zechiyah L'Kattan*], but it was refuted. It is also the opinion of *Shu"t Salmas Chaim, Mahadura Chadashah* 35).
2. We can also make the opposite case: A child's lack of *daas* means that he can't differentiate between a small gift and a large one, so not delivering a promised gift of any value would render the giver *mechusar amanah*.
3. Some *poskim* say that age is of no consequence in this regard, and someone who fails to give a promised gift of minimal value is considered *mechusar amanah* even if the recipient is a minor (*Kehillas Yaakov* *ibid.*; *Dvar Mishpat* 105:2; see *Minchas Pittim* 204).

Although the latter approach is the primary approach of the *poskim*, it does not actually apply to your case, as we will see.

The *Gemara* (*Sukkah* 46b, cited in *Taz*, C.M. 249) states that a person should not tell a child that he will give him something and then fail to keep his word, because that teaches the child to lie. Therefore, even if withholding the prize might not involve a *Choshen Mishpat* issue, it does involve a *chinuch* issue.

Nevertheless, in the case of this *Rebbi*, who was referring only to the main part of *Birkas Hamazon* and quoting an early *Rishon*, the *Rokei'ach*, there certainly is no issue of *mechusar amanah*, and — depending on the maturity of the children and the value of the prize promised — he may not be teaching them to lie, because he has a clear and valid explanation as to why that *ende-fei* in *Al Hanissim* does not count.

In fact, the reason is so clear that even if there had been a *kinyan* to formalize the promise of a prize, the *Rebbi* would not be required to give it (see C.M. 207:4; see *Shu"t Nodah b'Yehudah, Yoreh De'ah* 69).

Nevertheless, it would be wise for the *Rebbi* not to endanger his relationship with the student, and it would therefore be beneficial for the *Rebbi* to praise the boy for putting in extra effort and to give him a small gift.

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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