

BUSINESS WEEKLY



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

Issue #655 | Acharei-Kedoshim | April 28, 2023 | 7 Iyar 5783

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



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

ACQUIRING IN JOINT PROPERTY

Reuven and Shimon shared an apartment.

One day, while Reuven was at his parents', he called Shimon. "I have an old printer that I'm giving away," Reuven said. "Do you want it?"

"What condition is it in?" asked Shimon.

"The printer works OK," said Reuven. "My father's office upgraded their printers and let him take one of the old ones, which is much better than mine."

"I certainly am interested," said Shimon. "As you know, my printer has been making problems recently."

Reuven brought the printer to the apartment that evening. "Here is the printer!" he said to Shimon.

"Thank you," said Shimon. "Please just leave it on the floor in the living room near my computer."

That evening Reuven's father called him. "I was using the printer that I brought from the office," he said. "It had a short and stopped working. You should bring your printer back."

"Oh," said Reuven, "I gave it to Shimon."

"You handed the printer to him already?" asked Reuven's father.

"Actually, Shimon said to put the printer on the floor," said Reuven, "but I told him that I brought it for him."

"I normally would expect you to uphold your word," said Reuven's father, "but you offered the printer because you thought it was extra; now you still need it."

"But I placed the printer in the apartment with intention that it should be Shimon's," said Reuven. "He may have already acquired it! We are learning now in yeshivah about *kinyan chatzer*, acquisition through one's property."

"If it already became his, that's a different story," said Reuven's father. "But it's not just his apartment; you share it with him. I suggest that you clarify this with Rabbi Dayan."

Reuven called Rabbi Dayan and asked:

"Did Shimon acquire the printer? Can I retract from the gift?"

"Indeed, the *Gemara* (B.M. 11a) teaches that a person's property can acquire for him," replied Rabbi Dayan (C.M. 200:1; 243:20-21).

"Elsewhere, the *Gemara* (B.B. 84b) discusses the case of a seller who measures food into the buyer's basket that is sitting in joint property (C.M. 200:7).

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.



BHI HOTLINE

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

STICKY FINGERS

Q: A woman participated in a *simchah* in my hall, and when she went to wash, the ring she left on the table went missing. She told me that this ring was very valuable, and asked me to check the security cameras to try to identify the thief. When I checked the footage, I was shocked to find that one of my nonobservant waiters had pocketed the ring.

When I confronted him with the evidence and demanded that he return the ring, he said that he had already sold it, and he offered to repay \$1,000, which is what he thought it was worth.

I was hesitant to get involved, because I was scared that he might try to retaliate, although looking back, my concern was likely unfounded.

What is my responsibility to the woman whose ring was stolen?

A: A business owner is generally not liable for theft or damages caused by his employees.

The exception to this rule is if workers caused damage in the process of doing the job for which they were hired. If, for instance, someone hired workers to demolish a wall, and they were negligent and caused damage when the stones fell, the employer *is* liable in certain cases (see B.K. 98; *Shittah Mekubetzes* ibid.; *Minchas Pittim*, C.M. 306:2). In such cases, however, the reason he must pay is that he retained responsibility for potential damage caused by his wall, and he should have guarded the wall during the demolition. Since he failed to do so, he is liable due to the principle of *memono hamazik* (damages caused by one's possessions; see *Shu"t Kol Eliyahu* [Yisrael], vol. 2, C.M. 28).

Similarly, if someone hires a contractor to do renovations, even if he did not specify that the contractor would be responsible for all damages caused by his workers, we are certain that the homeowner hired the contractor on that condition. Since he dealt only with the contractor when hiring him, he has no



CASE FILE

"Ketzos (176:1; 260:1) proves from this *gemara* that only when measured into his basket does the buyer acquire in the joint property. However, were the seller to place the item on the ground of the shared property, the implication is that the buyer does not acquire it through *kinyan chatzer*. [Nonetheless, *Ketzos* suggests that if one partner were to place items there with intention that they become assets of the *partnership*, the joint property would acquire for the *partnership*.]

"Some *Acharonim* explain this *gemara* based on the idea that joint property belongs to whichever partner is using it at that moment. Thus, if the buyer places his basket there, the area underneath is currently his, so that he can acquire in his basket. However, if the seller placed his item there, that area is temporarily his, so that the buyer cannot acquire there through *kinyan chatzer*" (*Nesivos* 176:2).

"*Machaneh Ephraim* (*Hil. Kinyan Chatzer* #6) suggests, though, that if the seller initially places the item there with intention to sell or give it to the buyer, the buyer would acquire it, since the seller places it there with intention that the area underneath should now serve the *buyer* to acquire the object" (*Pischei Choshen, Shutafim* 8:26[57]).

"Thus, according to the *Ketzos*, the transaction was not completed, and you can retract from the gift, whereas according to *Machaneh Ephraim*, Shimon already owns it. Due to the dispute, you can still reclaim the printer.

"Nonetheless," concluded Rabbi Dayan, "it is considered untrustworthy – *mechusar amanah* — to back off from one's word without good reason, which exists here" (*C.M.* 204:7-8,11; 241:1; *Pischei Teshuvah* 207:5).

Verdict: Partners cannot sell or give one to another in joint property through *kinyan chatzer*, but if the item was initially placed in the joint property with intent for the transaction, there is a dispute whether it is valid.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #43

Appeals

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

Q: Is there an appellate system in beis din?

A: As previously mentioned, if the *Dayanim* conclude that they erred, they can rescind the ruling in certain cases. Thus, if a litigant thinks that the *Dayanim* erred, he can alert them to the suspected error, in the hope that they themselves will rescind their ruling.

However, if the *Dayanim* uphold their ruling, classic *Halachah* does not have an appellate system whereby a higher *beis din* rehears the case. (We do find some hierarchy of *batei din*, though, when the local *beis din* is uncertain, and consults with a higher *beis din* before ruling – see *C.M.* 13:6.)

This is based primarily on the *halachic* principle: *beis din basar beis din lo daikei* – one *beis din* does not check after another *beis din*, but rather presumes that they ruled properly (*B.B.* 138b; *Sma* 19:2; *Pischei Teshuva* 19:3).

Nonetheless, a few *batei din* nowadays have a clause referenced in the arbitration agreement whereby the *Av Beis Din* can review the case and modify the ruling in limited situations (See also *Mishpetei Uziel C.M.* 4:1 and *Tzitz Eliezer* 16:67).



BHI HOTLINE

legal recourse vis-à-vis the workers who cause damage. It is obvious that no one would hire a contractor to do renovations — an effort in which the existing structure or contents are commonly damaged, as evidenced by the fact that many homeowners make sure that the contractor is insured to cover damages that might occur during renovations — so it must be that the contractor assumed liability for the home and its contents. But we assume that the contractor accepted responsibility only if this is customary in that locale (see *Ketzos* 315:2, and BHI #245).

In your case, however, where the waiter's theft was unrelated to his job, you bear no responsibility for his actions.

Even in the era when people owned slaves and should seemingly have been liable for their actions — just as a person is responsible if his animal caused damage — the owner is nevertheless exempt. Since a slave has his own mind, and the owner cannot watch him every moment, if the owner were responsible for the slave's damages, then each time the slave would get angry at his owner, he would damage somebody's possessions to force his owner to pay (*Shulchan Aruch C.M.* 349:3 with *Sma* 9, and 389:1).

Certainly, then, you bear no liability for the actions of an employee, who is not a slave and is not your property.

We must consider, however, whether you have a halachic obligation to investigate what happened and force your worker to pay.

The *halachah* is that anyone who can save another person from financial loss — e.g., if he can testify on the behalf of a litigant in a case and his testimony will influence the judgment — is required to do so, as part of the *mitzvah* of *hashavas aveidah* (see BHI #573).

Therefore, if the woman wants to sue the waiter, you would be required to testify and give her the video of him stealing the ring so she can win the court case. You are not obligated to do so, however, if you stand to suffer from it, because the *mitzvah* of *hashavas aveidah* does not obligate a person to incur a loss in order to prevent financial loss to another person. [You must be certain, however, that you will truly incur a loss, and you are not simply dispensing with the *mitzvah* for no reason (*C.M.* 264:1).]

It is clear, however, that even if you *could* fulfill the *mitzvah* of *hashavas aveidah* and you fail to do so, she has no financial claim against you in *beis din* (although it is possible that you are obligated to pay *latzeis yedei Shamayim*; see BHI #449).

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

To subscribe send an email to subscribe@businesshalacha.com or visit us on the web at www.businesshalacha.com



Sponsored by

READ
PROPERTY GROUP
REAL ESTATE & DEVELOPMENT

WOULD YOU LIKE THE ZCHUS OF SENDING
THIS NEWSLETTER TO YIDDEN WORLDWIDE?
CALL 718-233-3845 X 201. OR EMAIL :
OFFICE@BUSINESSHALACHA.COM

DISTRIBUTION IN LAKEWOOD IS
לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל