

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

TREASURY BOND

Shimon and Yosef had inherited from their father a \$20,000, 30-year Treasury bond, which would mature in another 5 years.

"What should we do about the bond?" Shimon asked Yosef.

"It matures in five years," Yosef replied. "When it matures, we'll split the money."

"I'm not interested in waiting five years," said Shimon. "First of all, who's holding the bond until then? Unfortunately, our relationship is not ideal as it should be between brothers... Second, I'd rather invest the money in other ways."

"I'm happy with the bond," said Yosef. "Its rate is higher than current interest rates."

"That's true," replied Shimon, "but over five years I still would prefer to invest in stocks."

"I'm cautious about stocks, especially now," said Yosef. "I'm not willing to redeem the bond, because I can't get that rate nowadays."

"If I had my way, I'd redeem it tomorrow!" responded Shimon. "I'm simply not interested in being a partner in the bond!"

"Well, the reality is that due to the inheritance we *are* partners," said Yosef flatly. "There's not much that can be done about it!"

"Why not?" said Shimon. "If you want the bond, give me half of what it's worth now; otherwise, I'll give you half of what's it's worth, and then do with the bond what I see fit."

"I'm not interested in buying or selling," said Yosef. "You can't make me do either!"

"But you can't make me remain a partner in something that I don't want partnership!" exclaimed Shimon.

The two approached Rabbi Dayan and asked:

"Can Shimon require Yosef to dissolve the partnership, or can Yosef insist that they jointly hold the bond till maturity?"

"In general, when two brothers inherit an item that cannot be split, each one can demand to dissolve the partnership through *gode o igode* – take or I will take," replied Rabbi Dayan. "One party offers the other the option to either buy his half or sell to him the other half" (C.M. 171:6).

"Regarding partners who own a mortgage not yet due, Rashba (Responsa 7:43) maintains that *gode o igode* does not apply, since when the mortgage loan will mature, the money that will



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

DID I DAMAGE IT?

Q. I bought an electric kettle (percolator), and although it came with a warning not to immerse it in water, I *toiveled* it, and left it out to dry for two days before attempting to use it. I had done this in the past with other kettles and it always worked, but this time, for whatever reason, it did not work after drying out.

May I return it to the seller, either because it apparently had a defect that made it incapable of withstanding exposure to water, or perhaps it had never actually worked to begin with?

A. It is obvious that you have no claim against the seller. The manufacturer clearly stated that immersing the kettle could ruin it. This would certainly be the case with a digital device (such as a Keurig machine that has a computer chip), which is almost guaranteed to get ruined when it is immersed, but even if the kettle is not digital, Jewish consumers who risk *toiveling* it lose any claim against the seller or the manufacturer by doing so.

The fact that in the past your kettles worked after you *toiveled* them does not mean that they are inherently supposed to withstand immersion. In fact, because *tevilah* commonly causes these appliances to malfunction, some companies have recently begun to manufacture them with a special *hechsher* so that they do not require *tevilah* if they are sold by Jewish retailers. (Retailers of such kettles must instruct their employees not to accept returns from non-Jews and then sell them to Jewish customers, because once they were owned by a non-Jew, they require *tevilah*, and the Jewish customer might not realize it because of the *hechsher* [see *Yoreh Deah* 120, *Shach* 25]). The *poskim* discuss solutions for using an appliance that was owned by a non-Jew and is likely to be harmed during *tevilah*; see *Shu"t Shevet Halevi* 2:57 and *Psakim Uteshuvos* 120:25.)

Your claim that perhaps the appliance never worked to begin with is also invalid, due to a principle delineated by the *Sma* to explain a seeming contradiction between two *halachos* (as discussed in BHI # 634, which we cite here to remind readers of this principle).

On one hand, we find that if someone bought an animal

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be received can be split.

“However, Rosh (98:7) maintains that each partner can demand to dissolve the partnership also in loan documents; since a loan document cannot be split now, *gode o igode* applies. Thus, each partner can demand that the other either buy his half in the bond, or sell the other half to him. *Beis Din* (or a qualified professional) would evaluate the worth of the bond, depending on the various factors – the time frame, credit rating of the investment, etc.

“Tur and Shulchan Aruch (C.M. 66:41), in the laws of loan documents, cite the opinion of the Rosh, that *gode o igode* applies also to loan documents.

“Rema does not comment there. However, in the laws of *gode o igode*, Rema (C.M. 171:14) mentions the opinion of the Rashba that *gode o igode* does not apply to a mortgage and the like, whereas in the laws of partners, Rema (176:20) rules like the Rosh that *gode o igode* applies to loan documents.

“Sma (66:91; 171:39; 176:53) is inconclusive about the Rema’s opinion; alternatively, he suggests a possible distinction between a mortgage and loan documents” (see also *Taz* 171:14).

“Shach (66:131), however, rejects the distinction of the Sma and rules like the opinion of the Rosh and Shulchan Aruch. He suggests that the Rema merely mentioned the opposing opinion of the Rashba, but does not rule so. This appears to be the consensus of later *Acharonim*, that *gode o igode* applies to loan documents” (*Pischei Choshen* 3:23; see, however, *Nesivos* 176:40).

“Thus,” concluded Rabbi Dayan, “Shimon can demand that Yosef either buy his half of the bond or sell him the other half.”

Verdict: There is a dispute between the *Rishonim* whether *gode o igod* applies to debt destined for collection. The consensus of *poskim* seems like the Rosh, that it applies.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Dayanim (Judges) #45

Fees

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

Q: Can a Dayan or beis din charge money for adjudicating the din Torah?

A: In principle, a *dayan* may not charge salary for adjudicating, since judging is a form of teaching Torah, which is a *mitzvah* incumbent upon those worthy of ruling. Moreover, if he did charge, *Chazal* declared the ruling null and void (C.M. 9:5).

Nonetheless, the *Dayan* may charge compensation if he loses earnings from regular work during that time – *s'char batela*. As most *Dayanim* have other work, or give lectures or private lessons, the prevalent practice is to allow charging *s'char batela*. The fee must be collected equally from both parties.

Moreover, if *Dayanim* are appointed as a regular position, so that they do not take alternate jobs, this is also considered *s'char batela* (*Pischei Teshuvah* 9:12).

Alternatively, if the *Dayan* has no source of income he is allowed to charge for teaching or adjudicating (see *Y.D.* 246:5).

Beis din may also charge a fee to cover administrative costs.

It is also permissible to charge for mediation or compromise, or for overseeing a *get*, which is not a halachic ruling (*Shach* 9:7; *E.H.*, *Seder Haget* 154:4).



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that was found to be a *treifah* when it was *shechted*, we rely on a *chazakah* that the animal was healthy before it was sold, and since the blemish was first discovered after the buyer took possession of it, he must prove that the blemish predated the sale. If he can't prove it, the sale is final. Even if the buyer hasn't paid for the animal yet — which makes him the *muchzak* (holder) of the money, so we might think that the seller has the burden of proof, under the rule of *hamotzi meichaveiro alav haraayah* — he is still obligated to pay (*Shulchan Aruch* 332:11).

On the other hand, we find that if someone bought cheese, and when he opened the package he discovered that it is moldy, but it is impossible to tell whether it spoiled before or after it was sold, the *halachah* does follow the principle that *hamotzi meichaveiro alav haraayah*. If the buyer hasn't paid for the cheese yet, he is not obligated to pay (ibid. 332:16), and we do not say that since the uncertainty arose when it was in his possession, he is required to pay.

The *Sma* (ibid. 35) explains that an animal that appears to be healthy has a *chazakah* that it is not a *treifah*, and this *chazakah* is valid until proven otherwise. Cheese, however, will inevitably spoil, so it does not have such a *chazakah*, and the *halachah* therefore follows the rule of *hamotzi meichaveiro alav haraayah*.

Applying this reasoning to your case, a new device has a *chazakah* that it left the factory in working condition. If the item didn't work immediately upon arrival, in which case it is impossible that it was damaged by the buyer, the transaction is null and void (*Pischei Choshen, Geneivah* ch. 12, fn. 83; see BHI issue #501). But if it worked when unboxed, and then stopped working, we assume that it became defective in the buyer's possession. In such a case, unless the buyer can prove that it was delivered defective, he cannot demand a refund, and if he hasn't paid yet, he must pay (*Shu"t Netzach Yisrael* 51).

In your case, since it is likely that you damaged the kettle by *toiveling* it, the *chazakah* that it left the factory in working condition remains intact, and not only can't you return it, but even if you haven't paid yet, you are required to pay for it.

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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