

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

MISQUOTED PRICE

Yehuda ran a small *sefarim* store in his yeshivah; he sold *sefarim* during the lunch break.

One Thursday afternoon, Shlomo came by. "My cousin is becoming bar mitzvah this Shabbos," he said. "Any *sefarim* you can recommend?"

Yehuda suggested various *sefarim*, but Shlomo didn't consider them suitable.

"A new *sefer* just came out about *tefillin*," Yehuda said. "Take a look at it!"

Shlomo perused the *sefer*. "This looks very interesting!" he said. "I think my cousin will like it. How much is it?"

"It's new, so I don't remember the exact price," replied Yehuda, "I have to check the price list, but it's about \$30."

"That should be fine," said Shlomo.

Yehuda checked the price list. "The *sefer* costs \$28," he said.

"Great!" said Shlomo. "I'll take it. Please gift wrap it!"

Yehuda wrapped the *sefer*; Shlomo took it.

The following week, Yehuda met Shlomo. "How was the bar mitzvah?" he asked.

"It was lovely!" replied Shlomo. "My cousin read the *parashah* really well and gave a *lomdishe drashah*. He loved the *sefer*!"

"I'm glad to hear," said Yehuda. "I wanted to tell you, though, that I misread the price list. \$28 was the line above, but this *sefer* is actually \$31, so you owe another \$3."

"You can't change the price now," objected Shlomo. "I already gave my cousin the *sefer*!"

"I'm not changing the price," argued Yehuda.

"\$31 was the price all along. I just misread the price list."

"Anyway, small price differentials, less than a sixth, don't carry a monetary claim of *onaah* - unfair pricing," added Shlomo. "We learned about that last year (*Bava Metziah* 49b)."

"This was a clear error, though," replied Yehuda.

Yehuda and Shlomo approached Rabbi Dayan and asked:

"Does Shlomo have to pay the correct amount listed in the price list?"

"Indeed, *onaah* has a three-tier system: 1) A differential of less than a sixth is considered *mechilah*. 2) A sixth must be returned, but the sale remains intact. 3) More than a sixth, the aggrieved party can nullify the sale" (C.M. 227:2-4).

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.



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

UN-GUARANTEED?

Q: My friend asked me to serve as an areiv (guarantor) on a loan. When I agreed, he brought me the loan contract that he received from the lender, and I signed on as an areiv kablan.

After signing, I found out that my friend's financial situation is unstable, and I'm concerned that he will not be able to repay the loan and I will be obligated to pay. May I renege on signing on as an areiv, or is it too late for me to back out?

A: As long as the loan has not been issued, an areiv is entitled to renege on his guarantee, even if he already signed the contract and performed a kinyan to formalize the agreement (Shulchan Aruch, C.M. 131:1).

Although a kinyan usually finalizes a transaction, guaranteeing a loan has an *asmachta* element to it: the obligation is not absolute, because if the borrower pays the loan, the guarantor does not owe any money. In many cases, an *asmachta* invalidates a commitment a person has made. When it comes to an areiv, however, the *asmachta* generally does not invalidate the guarantee. The guarantor's willingness to follow through on his commitment, because he benefits from being considered credit-worthy by the lender, overrides the *asmachta*. In your case, however, you would prefer not to gain this benefit of being deemed credit-worthy, so you may renege (Sma *ibid.*).

According to this approach, if the kinyan was made in a "beis din chashuv" — which negates the issue of *asmachta* (C.M. 207:15; see BHI #599). — the guarantor is not allowed to renege (Ulam *Hamishpat*).

In addition, other *poskim* rule that the Sma's explanation does not apply to an areiv kablan, because there is no issue of *asmachta*. Since the lender may approach an areiv kablan for payment without approaching the borrower first, his guarantee is absolute (Tiferes Shmuel 131; see Machaneh Ephraim, Areiv 1, and Avnei Nezer, Even Ha'ezer 407), and he is therefore not entitled to renege.

Other *poskim* argue that even a guarantee issued by an areiv kablan has an *asmachta* element, because we don't know for certain that the lender will approach



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"Nonetheless, these laws apply only to a misjudgment in evaluating the price. However, if there was a concrete error, like an erroneous scale measure, error in quantity, etc. – the error must be corrected, even less than a sixth, and even much later. This does not fall under the laws of *onaah*, but rather those of *mekach taus* – an erroneous sale. If not possible to correct, the sale can be voided" (C.M. and Sma 232:1).

"Similarly, if the price was agreed according to a catalogue or price list, and the seller mistakenly read the wrong price, or he mistakenly read from an outdated catalogue rather than the current one, the price should be corrected, even if less than a sixth differential.

"This is because here the mutual agreement of the parties was to set the price according to the price listed in the catalogue. The misquoted price was not due to a misjudgment in evaluation, which by its nature fluctuates, but rather to a concrete error, similar to an error in measuring" (see *Hayashar V'hatov*, vol. 18 [5775], pp. 71-107, *Hachiluk bein Onaah l'Psika b'Taus*).

"We find basis for this distinction in the following *halachah*. If an employer hired workers and agreed to pay them like the other workers, but he quoted them a lesser wage, he is required to pay them the amount paid to the other workers, as agreed. This is because the stated wage was erroneous in regard to the intended contractual agreement to pay like the other workers" (*Rema and Nesivos* 332:4; *Sma* 332:10).

"Even the Shach (332:15), who disagrees with this ruling, would presumably agree if the employer also erred unintentionally.

"Thus," concluded Rabbi Dayan, "Shlomo is required to add the \$3."

Verdict: A misquoted price due to a clear error, not a misjudged evaluation, is considered an erroneous transaction, not *onaah*; it should be corrected even if the differential is less than a sixth.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Yored L'sedei Chaveiro
Enhancing Another's Property
#2 Entering to Enhance

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

Q: Is it acceptable to enter another's property to enhance it, or to take assets to invest them on the owner's behalf?

A: Although, in general, a person who takes, or uses, another's property without permission is considered a thief, a person who intends to enhance his fellow's property or invest assets for the owner is not. This is because he does not intend to possess or retain the property for himself (*Rivash* #515; *Beis Yosef*, C.M. 375).

For this reason, the gain is the owner's, and the enhancer is entitled only to compensation for his efforts. The owner cannot exempt himself from paying just because he did not instruct the enhancer. One who benefits another is not presumed to do so gratis, even if he did not state beforehand that he expects compensation (*Rema*, C.M. 264:4).

Nonetheless, a person should not enter another's property to enhance it without the owner's knowledge, even if the owner knowingly left it in disarray. *Beis din* should remove one who enters without permission (C.M. 285:4).



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the areiv and not the borrower. Furthermore, if the borrower offers to repay the loan (even from *ziburis*, a low-quality property), the lender may not demand payment from the areiv (see C.M. 129:15; *Shu"t Rashba* 2:158, cited in *Beis Yosef* 129 *Mechudash* 2; *Ketzos Hachoshen* 129:1, and *Mishpat Haareiv* 22). This *asmachta* element is enough to entitle the areiv *kablan* to renege, according to these *poskim*.

Ultimately, the *Rema* (C.M. 131:1) rules that even an areiv *kablan* may back out before the loan is given.

Other *poskim* offer a completely different reason why an areiv is allowed to renege: We assume that an areiv's commitment to guarantee the loan begins only when the money is actually handed over to the borrower (*Mordechai*, B.B. 652). Therefore, as long as the money hasn't changed hands, the areiv hasn't committed to guarantee the loan yet, and he is therefore allowed to renege — even if there was a *kinyan* that negated the *asmachta* (*Bach*, *Erech Shai* 131:1).

The *poskim* also discuss a case in which an areiv reneged on his commitment (even in the presence of witnesses), but the lender did not find out about it, and he issued the loan only because he was relying on the areiv's guarantee. Some *poskim* write that as far as *hilchos areiv* is concerned he may renege, and although he might be causing damage to the lender, this is not considered direct causation (*garmi*), since it is not clear that the lender will suffer from the areiv's withdrawing from the commitment, as the borrower is likely to repay the loan. If the lender does end up suffering a loss, it is only a *grama* (indirect causation) on the part of the areiv (see *Mishnas D'Rabi Eliezer*, *Mahadurah Basra* 131:1 who rules that the areiv is not obligated to repay the loan in such a case).

Others note, however, that the consensus from the *poskim* seems to be that an areiv cannot negate his guarantee unless he is in the presence of the lender, because the lender is relying on his guarantee when issuing the loan, so unless he makes it clear to the lender, directly, that he is no longer making that commitment, he is still obligated to repay the loan if the borrower does not (*Nesivos* 122:3; *Kesef HaKodashim* 122:2; see *Shu"t Maharashdam*, C.M. 38; *Pischei Teshuvah* 182:4).

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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