

# 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

### RAINY DAY TICKETS

An outdoor, Jewish-music concert was planned for the Sunday after Tishah B'Av. Group-rate tickets were offered through shuls in the community.

Mrs. Joseph bought tickets for herself and her husband.

A week before the event, though, Mrs. Joseph – who was waiting for a medical procedure – was notified that a slot had opened that Sunday afternoon.

"I'm glad there's an available slot," Mrs. Joseph said to her husband. "However, it's a shame that we will have to miss the music event."

"I'll give the tickets to the shul," replied Mr. Joseph. "This way, someone else can use them."

Mr. Joseph took the tickets to shul the next morning, and gave them to the *gabbai*, Mr. Fried.

"We bought tickets, but my wife is now scheduled for surgery that afternoon, so we can't attend," Mr. Joseph said. "You can give the tickets to other people who want to attend."

"Thank you," said Mr. Fried. "That's very kind of you. *Refuah sheleimah* to your wife!"

As Tishah B'Av approached, the weather forecast predicted heavy rain over the weekend, including Sunday. There was no choice but to postpone the event to the following Sunday.

"We can attend the concert then," Mrs. Joseph said to her husband. "See if Mr. Fried still has the tickets."

Mr. Joseph approached Mr. Fried. "*B'e'H*, we will be able to attend the concert next week," he said. "Do you still have the tickets?"

"One I already gave away; one I told someone I would give him," Mr. Fried replied. "Under the circumstances, though, I think the tickets should be returned to you!"

"Do you really?" asked Mr. Joseph. "But one of them you already gave away."

"That's only because you didn't think you could use them," said Mr. Fried. "But now that you can, why should you lose out?"

"Do you really think it's OK?" asked Mr. Joseph.

"I can't say for sure," replied Mr. Fried, "but we can ask Rabbi Dayan."

The two called Rabbi Dayan and asked:

**"Should the ticket(s) be returned to the Josephs?"**

"A transaction made initially in error is void," replied Rabbi Dayan. "However, this does not apply here, since when Mr. Joseph gave the tickets, the concert was still planned as scheduled."

"Nonetheless, the *Gemara* (*Kiddushin* 49b; *Kesubos* 97a) addresses the case of people who sold property for a specific reason, such as to move



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

### LOST... AND RETURNED?

**Q:** I'm in high school, and I need to use a scientific calculator for math classes. The school lends them to the students, and they must be returned when the year ends. As the year was coming to an end, I brought the calculator back to school and put it down in my classroom, and a short time later it went missing. Then, one of my classmates found two calculators and asked who lost them. I wasn't sure that either one was mine, so I didn't claim one, and my classmate returned them to the school, where they were placed in the basket containing all the calculators.

I went to the office and asked whether I had to compensate the school for my calculator, or whether I could assume that one of the calculators my friend found was mine. They said I should ask a *she'eilah*, because they don't know if one of those is mine and they don't have a clear listing of all of the calculators.

What's the *halachah*?

**A:** Halachically, you are considered a *socher*, renter. Even if the school doesn't charge an annual fee for the use of the calculators, it is included in the tuition.

By *gezeiras hakasuv* (Biblical decree), if someone borrows an item (or rents, or serves as any other type of *shomer* on an object), and while he is borrowing the item, the owner provides a service for the borrower — *b'alav imo* — then the borrower is not liable for damages to the object (*Shulchan Aruch*, C.M. 346:1). The people who run the school and own the calculators are "hired" to do tasks for the students, such as hiring teachers and other staff for their benefit (*ibid.* 333:8).

The *poskim* debate whether this *halachah* of *b'alav imo* applies if the owner is not the one doing the task, but rather sends a *shaliach* (agent) to do those tasks on his behalf (*ibid.* 346:6).

In the case of a school, the owners are not the ones

### 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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## CASE FILE

to Eretz Yisroel or to buy a different property, but their plans fell through. The *Gemara* teaches that if the seller verbally expressed his intent and purpose at the time of the sale, he can later void it" (C.M. 207:3; *Pischei Choshen, Kinyanim* 20:29-30).

"Rema (*ibid.*) rules, though, that this applies only to real estate sales, since generally people sell real estate only for a clear reason, but not to sale of movable items, which people sometimes sell even without a clear purpose for the money.

"Moreover, if the seller did not verbally express the reason for the sale, even if it didn't pan out, *dvarim shebalev einam devarim* – thoughts are not of legal consequence – unless they are blatantly obvious and self-understood to everyone" (C.M. 207:4).

"All this is regarding a sale. However, regarding a gift, Rema (*ibid.*) rules that an *umdena* – strong estimation of intent – is of legal consequence, even if not expressed verbally. This is true even regarding a gift of movable items" (*Pischei Choshen, Kinyanim* 15:52-53; 20:34).

"Thus, had the Josephs sold the tickets, they could not demand them back based on their expressed intent, since they are movable items," replied Rabbi Dayan. "However, since they gave them as a gift, we follow the estimation of their intent, certainly when expressed verbally. They gave the tickets only because they thought that they couldn't attend. Since the event was postponed, the tickets should be returned, even the one that was already given."

**Verdict: Regarding a gift, there is legal significance to the understood intent of the giver, even if not expressed verbally at the time of the gift, and certainly if expressed.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

### MONEY MATTERS Yored L'sedei Chaveiro Property #6 Removing the Enhancement

לע"נ ר' יחיאל מיכל ב"ר חיים זוגו' ח'ל' בת ר' שמואל חיים ע"ה

**Q: When I returned home after a long weekend, I found that a gardener had planted flowers in my garden and left me a bill. Can I tell him that I refuse to pay, and that he should remove the flowers?**

A: The *Rishonim* write that the owner can tell the enhancer to remove the enhancement (*tol eitzecha va'avanecha* – take away your wood and stones). They dispute, though, whether this applies only to something not fit for enhancing, or whether it applies even to something fit for enhancing, like our case (C.M. and *Gra* 375:2; *Sma* 375:4).

Some explain that the issue is subjective, whether the owner has a real reason, even if personal, for not wanting the enhancement, or whether it seems that he is merely looking for an excuse to evade paying the enhancer (*Chazon Ish, B.B.* 2:3).

When the owner can demand removing the enhancement, if the enhancer cannot do so himself, he is required to hire others at his expense (*Tur* 375:1).



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who generally run the school's day-to-day operations; they hire administrators and principals to run it, and it is subject to the aforementioned debate. Furthermore the school setting might be considered even more of a case of *b'alav imo* because the owners carry the primary responsibility for everything that happens in the school (see *Shu"t Chasam Safer, C.M.* 168, cited in *Pischei Teshuvah* 346:1).

There is another perspective on this, though: Even according to the *poskim* who rule that the presence of the owner's *shaliach* qualifies as *b'alav imo*, that would work only if the borrower hired the owner, who then decided to send a *shaliach* instead of himself. But if, for instance, a person rented an object and rented a servant alongside it, that is not considered *b'alav imo*; rather, it is similar to renting two cows (*Nesivos ibid.* 2, based on *Tosafos B.M.* 99a s.v. *B'omer*).

Earlier, we asserted that the owner of a school is personally responsible to ensure that the school is staffed properly, and is therefore considered *b'alav imo* in regard to something a student rents or borrows. But if the owner of the school only hires an administrator and principal to do that work, he is not personally responsible for anything that happens in the school, and it would not be a case of *b'alav imo*, because even according to the opinion that a *shaliach* is also *b'alav imo*, this case would be akin to renting two items (see *Mishpetei Hachoshen* 346, fn. 12).

Returning to your case, if your school setting were considered *b'alav imo*, you would certainly be exempt.

What if *b'alav imo* doesn't apply?

The *halachah* in a case of a *pikadon* (item given over for safekeeping or for use, such as the scientific calculator) is that if the owner says he didn't receive it back, and the *shomer* says he isn't sure he gave it back, he is obligated to pay for it (*ibid.* 75:9, see *Ketzos* 340:4).

In your case, even though the school is uncertain about their claim, which would usually mean that *beis din* cannot obligate a *shomer* to pay, the situation is slightly different because the school was not expected to know whether you returned it, so some *poskim* say that you are obligated to pay (see *Ketzos ibid.* and 75:6).

Nevertheless, it would seem that you are not obligated to pay, even *latzeis yedei Shamayim* (to avoid Heavenly justice), since it is very likely that the calculator you lost was returned by your friend.

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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