

# BUSINESS WEEKLY



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

Issue #674 | Ha'azinu | Sep 22, 2023 | 7 Tishrei 5784

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

### PROMPT PAYMENT OF PLEDGES

The shul was packed with people for *Kol Nidrei*. Before *Ma'ariv*, the shul president held the annual *Kol Nidrei* appeal. Mr. Rubin pledged \$360, adding, "*bli neder*."

On Motzoei Yom Kippur, Mr. Rubin wrote out a check to bring with him the following morning to shul.

"*Zerizin makdimin l'mitzvos!*" exclaimed his son, Hillel. "I see that you are really prompt in honoring your pledge!"

"It's not just general *zerizus* (alacrity)," replied Mr. Rubin. "One is required to fulfill his *tzekadah* pledges promptly."

"Really?" asked Hillel. "Why is that?"

"I'm not 100% sure," replied Mr. Rubin, "but that's what I learned from my father."

"But you said '*bli neder*,'" said Hillel. "I thought that then you're not really obligated at all."

"I don't think that's true!" exclaimed Mr. Rubin. "You still have to uphold your commitments."

"Then why do you say '*bli neder*' if you're obligated, anyway?" asked Hillel.

"I learned that also from my father," said Mr. Rubin, "but I can't explain exactly what it does."

"I see that you learned many good things from Zeide," Hillel noted, "but I'd like to understand this better."

"Zeide could probably explain it," replied Mr. Rubin. "But if you want, we can also ask Rabbi Dayan tomorrow. I'm sure he can explain."

"I would love to!" replied Hillel. "I'll go with you to shul!"

The following morning, Mr. Rubin gave the check to the *gabbai*. He approached Rabbi Dayan with Hillel and asked:

**"Why should one honor his pledges promptly? What does saying '*bli neder*' accomplish?"**

"Regarding pledges of sacrifices," Rabbi Dayan replied, "there is a *mitzvas ase* to bring them by the first holiday, and a prohibition of *bal t'acher* in delaying past the *Shalosh Regalim* (R.H. 4a-b).

"The *Gemara* (R.H. 6a) extends the prohibition of delaying to *tzedakah* pledges. Moreover, Rava rules that one is required to fulfill *tzedakah* pledges immediately, since needy people are readily present. *Tosafos* indicates that this is because otherwise one violates *bal t'acher*, whereas *Rashba* bases this requirement on the *mitzvas ase* of '*motza sefasecha tishmor v'asisa* (observe and fulfill what you utter)' (*Devarim* 23:24; *Tzedakah Umishpat* 8:1-4).

Nonetheless, Rosh writes that a person can dedicate a certain sum of money for *tzedakah*

### 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

### RETURN EXCHANGE

**Q:** A store is selling a coat for \$500, and it allows customers to return items for up to three months for a full refund. This store holds annual sales later in the fall. I would like to buy the coat now at the full price and start wearing it. When it goes on sale, perhaps for \$100 less, I'll purchase another one at the sale price and then use the first receipt to return the second, brand-new coat. I'll benefit by enjoying the coat in the interim but paying the sale price instead of the full price. Is this permissible?

**A:** This *shtick* clearly isn't ethical or *mentchlich* and perhaps shouldn't even be addressed in this column, but due to the volume of this type of question, we will address it nonetheless. And, as we will see, it is not merely an issue of *mentchlichkeit* — it is categorically prohibited as well.

You obviously cannot return the first coat in a few weeks, because return policies generally don't cover used items. When returning the new coat, even if the store permits returns on sale items, you certainly wouldn't be allowed to accept a refund for more than you paid for it, so you could get back only the sale price.

Even if you were to wait until after the sale ends and then return the second coat when the price is once again \$500, it would still be prohibited.

A store doesn't buy items at the retail price, which is the price at which you want to "sell" the coat back to them. They allow returns only as a service to customers, to allow them to try on the item a bit more at home and make sure they want it, but the store has no intention of buying it back for more than the customer paid. By presenting the first receipt, you would be deceiving the store owner into thinking that he is obligated to buy the coat back for \$500, when he had no intention of paying more than you paid.

Now, one might argue that a return *is* considered as though the store purchases the item back from the



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and initially stipulate that he will distribute it over time as he sees fit (Y.D. 257:3).

Therefore, to avoid potential violation, when a person commits to give *ma'aser kesafim* or designates money for *tzedakah*, *Poskim* recommend that he stipulate to distribute it slowly or that the money not be considered *tzedakah* until he is ready to give it (Aruch Hashulchan Y.D. 275:3-5; Derech Emunah, Hil. Matnos Aniyim 8:1[8]).

Moreover, Mordechai (B.B. #291) writes that where a *gabbai* collects the *tzedakah* and distributes it, if the *gabbai* knows of the pledge but does not request the money, the person does not violate if he delays, since seemingly the funds are not needed immediately. Some suggest that this applies even if the *gabbai* requested the money, but the donor knows that he will not distribute the money now and it will remain with him anyway (Rema Y.D. 257:1; Derech Emunah, Hil. Matnos Aniyim 8:1[12]).

"Additionally, *Shulchan Aruch* recommends that a person say '*bli neder*' when donating *tzedakah*, to avoid the severity of *nedarim*, which are almost like oaths. Presumably, this also spares the person from *bal t'acher*, since this prohibition is associated with *nedarim*.

"However, '*bli neder*' does not exempt him — without justifiable cause — from honoring his word, as with any other verbal commitment," Rabbi Dayan concluded. "It is questionable whether it eliminates the *mitzvas aseif* of *motza sefasecha* in fulfilling the pledge promptly (Y.D. 257:4; Shevet Halevi 10:156; Teshuvos V'hanhagos 2:476, 3:160)."

**Verdict: *Tzedakah* is included in the prohibition of *bal t'acher* (delaying payment). When needy people are readily available, a person should distribute it promptly, but one can stipulate that he will give little-by-little as he sees fit. Saying "*bli neder*" alleviates the severity of the pledge, but the commitment remains.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

**MONEY MATTERS**  
Yored L'sedei Chaveiro  
Property #13 How Much if the  
Owner Indicated Interest

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

**Q: If the owner subsequently indicated interest in the enhancement, how much must he pay? Does it matter whether the property was fit for such an enhancement?**

A: If someone enhanced another's property, and the owner subsequently indicated positive interest in the enhancement — e.g., he built a fence around trees that were planted or completed a structure that was built — the enhancer "has the upper hand" (C.M. 375:3).

Rashi explains this to mean that if the capital gain is greater than the expenses, the owner pays the going rate of a contractor; if the expenses are greater than the gain, the owner must still pay the expenses, since his actions indicate retroactively that he was interested in such an expenditure (Sma 375:7; Pischei Choshen, Geneivah 8:17-18[37]).

Rosh limits this halachah to a property fit for such enhancement, but most authorities apply it even to a property not fit for such enhancement, since here the owner indicated his positive interest in the enhancement (ibid.).



## BHI HOTLINE

customer, and because the item is being returned at the store's own prices, it wouldn't be considered *gezel*.

This would still be problematic, however, because the prohibitions of both *chamas* (coercing someone to part with something he owns) and *lo sachmod* (coveting) would apply when taking the money back under these pretenses (*Pischei Choshen*, *Geneivah* 1:26; *Erech Shai*, *Even Ha'ezer* 42:1).

There are *Poskim* who rule that if someone ultimately agrees to part with something he owns, even if he has been coerced into agreeing, there is no *chamas*. Regarding *lo sachmod*, there is an opinion that it applies only to possessions, not money (see *Imrei Yaakov*, *Gezeilah* 5; see *Gan Yitzchak* ch. 19-20). According to these *Poskim*, because you are taking money that the store owner agreed to give you, it would appear that *chamas* (and *lo sachmod*) would not be an issue.

Ultimately, however, even these lenient opinions apply only to situations in which both parties are aware of the terms of the transaction, in which case it is still considered valid even if one of the two was coerced. But in your case, the store owner is being forced to engage in this transaction without his knowledge, because he thinks that he is obligated to buy the coat back at the original price. In such a case, the sale of the coat back to him is invalid (see *Nesivos* 205:1), and all *Poskim* agree that it is *chamas* (see *Rema C. M.* 205:12, with *Pis'chei Teshuvah*).

We have assumed until now that a return is viewed as the customer selling the item back to the store. In reality, however, this is probably incorrect. Rather, a return is viewed as the first sale being voided (see *Shulchan Aruch*, *Yoreh Dei'ah* 174:1), as though that sale had been made with a stipulation that the buyer is entitled to renege if the item doesn't meet his expectations (C.M. 207:1). Therefore, when returning the second coat, you may only void the purchase of *that* coat, and retrieve the amount you paid for it, not the amount you paid for the first coat. If you do take the refund for the original sale price, the difference between the two prices would be considered stolen, and you would be obligated to return it.

Asides from all these issues, the prohibition of *geneivas daas* (misrepresentation; see *ibid.* 228:6) also applies, because it likely never dawned on the store owner that you paid the sale price for the coat you are returning at full price, and had he thought that this was the case, he would not have agreed to take it back.

Furthermore, there might be an issue with buying the second coat to begin with, because the prohibition of *ona'as devarim* proscribes deluding a seller into thinking that one is planning to buy something when he has no intention of doing so (*ibid.* 228:4).

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

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