

# 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

### WAIVED FEE

The Leiners moved overseas two years ago and were still establishing themselves financially. Now they were making a wedding.

"We'll need another \$12,000," Mr. Leiner said to his wife.

"Interest rates are relatively high, though, and I'd prefer not to take a loan from the bank."

"How about turning to our former neighbors, the Blums," suggested Mrs. Leiner. "When we said goodbye, they offered us help if we should ever need it."

"That's a good idea," replied Mr. Leiner. "We should have no problem returning \$1,000 a month, so that the entire loan will be repaid in a year."

Mr. Leiner called Mr. Blum. "*B'ezras Hashem*, we're making a *chasanah* in another month," he said. "You offered help before we left. Could we borrow \$12,000 and return \$1,000 a month?"

"*Mazel tov!* Certainly!" exclaimed Mr. Blum. "I'm happy to share in your *simchah* in this way. How can I get the money to you?"

"The simplest way is to make an international wire transfer to our account," said Mr. Leiner. "Can you do that?"

"Yes, I can," said Mr. Blum.

"Does your bank charge an international wire fee?" asked Mr. Leiner. "I'm happy to pay it, if there is."

"There usually is a \$40 wire fee," replied Mr. Blum. "You can add it to the first payment."

Mr. Blum arranged the wire transfer. When he checked the bank statement a few days later, though, he noticed that no fee had been charged. He notified Mr. Leiner.

"But I agreed to pay the fee," said Mr. Leiner. "If the bank waived it, it's your gain!"

"I'm not sure I can take the \$40 from you," replied Mr. Blum. He called Rabbi Dayan and asked:

**"Can Mr. Leiner pay me for the waived fee?"**

"We mentioned (*BHI* No. 607/ May 4, 2022) that reimbursing the lender's fees and expenses in granting the loan is not *ribbis*," replied Rabbi Dayan. "This is not considered repaying more than the amount borrowed, but rather covering the lender's associated loss. Thus, had the bank not waived the wire fee, Mr. Blum can ask for reimbursement (*Bris Yehudah* 9:1).

"However, if the bank waived the fee and never charged the lender this amount, he cannot ask the borrower for it, even if the borrower initially agreed to cover the fee. In this case the lender suffered no loss to reimburse, and the borrower is not allowed to agree to pay the lender extra.



## BHI HOTLINE

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

### SECOND SALE

**Q:** I was in an antique shop, and I found something I wanted to buy. The store owner told me that he's happy to sell it to me, but explained, in the process of

processing my purchase, that this item had actually been bought already, by a buyer who forgot it in the store. Several months had passed since then, and the buyer never came to claim it. He did not remember who the buyer was, so he couldn't contact him.

When I brought the item home and told my husband what happened, he said he wasn't sure that I was allowed to buy the item, because it belonged to the first buyer, not to the store owner, and that I might have to return it.

Is he correct?

**A:** The item you bought is an *aveidah* (lost item). It is most likely that the first buyer already noticed that he lost it, but didn't remember where he misplaced it and was *meya'eish* (despaired) of retrieving it. The *halachah* is, however, that if someone finds an object prior to *yi'ush*, the subsequent *yi'ush* does not make it his, because at the time he found it he was obligated to return it. The *halachah* is, therefore, that it must be set aside until Eliyahu Hanavi arrives and reveals to whom it belongs (*Shulchan Aruch, Choshen Mishpat* 362:3). If the store owner lifted the item (thereby making a *kinyan*) for the first time only after *yi'ush*, then it became his at that point, and he was therefore allowed to sell it to you (*Nesivos* 362:1; see, however, *Shach* 362:1&368:2).

Although the object came into your hands after *yi'ush*, at which point it was not prohibited for you to take possession of it because you have no obligation to return it (see *Divrei Mishpat* 360:2), there are *Poskim* who rule that you still have no right to acquire it (*Ritva Hayeshanim, B. M.* 21b), while others say that the *Rishonim* are in dispute as to whether you may acquire it (*Imrei Moshe* 37, *Mishnas Hamishpat* 181-182, *Kehillos Yaakov, B. M.* 25:6).

In our times, when most objects are readily available for sale, the *Poskim* write that rather than set the object aside until Eliyahu Hanavi arrives, the person who found

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By: Harav Chaim Kohn Shlita

Dean, Business Halacha Institute

Subject: Hasogas Gevul

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## CASE FILE

"This would seemingly apply even if, for accounting purposes, the bank listed the fee as having been charged and a credit was automatically applied, such as if the account features allow a certain amount of transfers for free or if the lender has VIP profile of waived fees. We would not view this as a gift from the bank to the lender himself, but rather as negating the fee.

"However, if the account features do not include a waiver of fees, and the fee was charged regularly, but afterwards the lender called the customer service department of the bank and requested a credit/ waiver of the fee — the *halachah* seems different.

"Although one could argue that here, too, the refund retroactively waives the fee, so that the expense was never incurred, here the fee was, in fact, charged, and it seems that the lender is entitled to reimbursement for it. We can view the refund of the fee as a gift to the lender in this specific instance resulting from his own efforts in obtaining the refund, on account of his good standing, etc.

"Clearly," concluded Rabbi Dayan, "the bank has no interest in refunding the fee for the benefit of the wire recipient, but rather gave the refund to the lender."

Verdict: If the bank waives the wire fee or credits it automatically due to the lender's account features, he cannot collect it from the borrower. However, if he afterwards requested and was granted a one-time waiver, this would seem a credit granted to him.



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

**MONEY MATTERS**  
Yored L'sedei Chaveiro  
Property #15  
Tenant

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

**Q: My tenant enhanced the property while living there. He repaired a broken window, and installed an air conditioner and shelves. He is leaving now and wants me to pay for all the enhancements. Must I pay or can I tell him to take them with him?**

A: Regarding enhancements that were necessary for the property, the tenant is considered as one who enhanced with permission; he is entitled to the going rate for such enhancements.

However, if he made enhancements that are not necessary, he is considered as one who enhanced of his own accord. The *halachah* is subject to what was discussed earlier, i.e., whether the property is fit for such an enhancement or not; whether the landlord can say, "Remove your wood and stones," etc.

If the tenant initially intended to take the air conditioner or shelves with him when leaving, the landlord cannot demand that he leave them, provided that removing them now will not damage the property (*Pischei Teshuva*, *Geneivah* 8:25).



## BHI HOTLINE

it may write down all the identifying characteristics of the object (i.e., where he found it, the amount, etc.), which can easily be achieved by taking a picture of it with any identifying characteristics clearly visible, and saving the picture by sending it to an email address. He may then use the object (or sell it or throw it out). If witnesses later testify as to whom it belongs, or when Eliyahu Hanavi comes, the finder will then return its value to the owner (*Mishpitei HaTorah*, B. M., *Hashavas Aveidah* 2:13).

This applies only if the finder will be able to compensate the loser when he is required to do so. But if he found a large sum of money, and it is possible that if he spends it, he will not be able to repay it when the time comes, then he must set it aside and wait for it to be claimed (see C. M. 367:27 and *Hashavas Aveidah K'halachah* 6:3).

In your case, if the store owner's intention was that he would sell this item to you and compensate the buyer if he eventually returns to claim it, it may be okay for you to keep it. It is a weak assumption, however, that this was the store owner's intention. Perhaps you may keep it if you decide that you will compensate the first buyer if he ever comes to claim it.

The problem with the above logic is that since an antique item is unique, it is possible that neither one of you will be able to compensate the buyer adequately, because he may want the specific item he chose. The sale to you was therefore prohibited.

But even if we consider the store owner a thief for having sold an item that wasn't his, you were not allowed to buy it *l'chatchilah*, because you were helping him finalize his act of theft (C. M. 369:1 with *Nesivos* 1). Nevertheless, *b'di'evd* you may keep it, because the *halachah* is that although a thief has an obligation to return a stolen item and may not keep it even after *yi'ush*, since in your case the *yi'ush* is accompanied with a *shinui reshus* (change of location), that is, when you purchased it and took it home, you are not obligated to return the actual item, and the thief — i.e., the store owner — has a monetary obligation to the original buyer (*ibid.* 353:3&356:3. Also see *Pischi Choshen, Geneivah*, 12, fn. 27). n

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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