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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

SAVING LIVES

This article was written amid the lingering shock after the tragic events of Simchas Torah in Israel. Our hearts go out to the dead, the wounded, the captives, and their families. May the Torah of this article be a merit for them and for

the safety of all of Klal Yisrael.

Mr. Landau discussed the *parashah* with his family at the Shabbos *seudah*.

"In *Parashas Lech Lecha*," he began, "Avraham Avinu fights against the four kings and rescues Lot from them. Try to imagine this scenario..."

"Lot!" exclaimed a neighbor. "There are marauding armies outside led by Kedarla'omer. You need to escape!"

Lot fled out the back door, but he found the way blocked by his neighbor's fence. Lot grabbed an ax and quickly hacked down the fence.

Lot hadn't gone far when he was captured by Kedarla'omer's forces. He was dragged to captivity with other people from Sodom and Amora.

A survivor of the onslaught reached Avram some days later. "Lot has been captured by Kedarla'omer!" he said. "He's being taken north!"

"Eliezer, quick!" Avram called out. "Gather our household members! We need to go save Lot!"

Avram and his men began pursuing the forces of Kedarla'omer. They ran after them till the Golan.

"Eliezer, you take one group and I'll take another!" Avram commanded. "We'll attack them from two directions and try to save Lot."

At midnight, Avram and Eliezer attacked Kedarla'omer's forces. In the darkness of the night, some of Avram's servants trampled the ceramic wares of the local people and shattered them. The forces of Kedarla'omer fled and Avram and Eliezer continued to pursue them until Syria, saving Lot and the people of Sodom.

Mr. Landau finished his dramatic rendition of the War.

"I have a question," said his son. "You said that Lot broke his neighbor's fence and that some of Avram's servants trampled the ceramic wares of the local people. When someone damages other people's property while trying to save lives, is he liable for the financial damage to the property?"

"Good question," said Mr. Landau. "I'm not sure; we can ask Rabbi Dayan." At *Minchah*, they asked:

"Would Lot and Avram's servants be liable for the financial damage?"

"The *Gemara* (B.K. 60b; 117a) teaches that a person cannot save himself through monetary loss of others," replied Rabbi Dayan. "*Tosafos* explains



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

MISSED MAFTIR YONAH

Q: This past Yom Kippur, someone in our shul bought *Maftir Yonah* for a large sum

of money. When he went home to rest after *Mussaf*, he fell into a deep sleep, and didn't make it back to shul on time for the *aliyah*, which was then resold to a different person for the same amount. Does the first person have any obligation to pay for the *aliyah*?

A: The key to answering this *she'eilah* lies in first delineating what occurs in *halachah* when someone purchases one of the *kibbudim* (honors) in shul.

Some *Poskim* rule that the sale of *aliyos* is akin to any other sale of an object (*Shiyarei Knesses HaGedolah, Orach Chaim, Hagahos HaTur* 147:3; *Taz* ibid. 153:11; *Magen Avraham* 306:15 with *Levushei Srad; Emes L'Yaakov, Hilchos Sefer Torah* 6). Although these honors are a *davar she'ein bo mamash* (intangible) for which typical *kinyanim* (acquisitional acts) don't work (*Choshen Mishpat* 212:1), a *kinyan situmta* does work. *Situmta* is any type of transaction that is considered binding in typical commercial interactions (ibid. 201), and some *Poskim* rule that a *situmta* works even on a *davar she'ein bo mamash* (*Yam Shel Shlomo, Bava Kamma* 8:60). Since the way the *aliyos* are sold in your shul is typical of shuls everywhere, this would be a *kinyan situmta* (*Emes L'Yaakov — Algazi, Toras Ha'olin I'Sefer Torah* 38; *Shu"t Panim Me'iros* 2:25; see BHI issue 519 for an additional approach for this *kinyan*).

Other *Poskim* rule, however, that even *situmta* doesn't apply in this case, either because they rule according to those who say *situmta* does not work for a *davar she'ein bo mamash* (see *Pischei Teshuvah* 201:2 and *Shu"t Maharshag* 2:77), or because they rule according to those who say that words (i.e., placing a bid) cannot create a *kinyan situmta* without a concrete action (see *Shu"t HaRosh* 12:3;

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that he may damage as necessary to save his life, but is liable to pay afterwards. Nonetheless, when someone rescued another person and caused monetary damage in the course of rescuing, *Chazal* instituted that the rescuer be exempt from financial liability, so that people should not be discouraged from rescuing others (C.M. 359:4; 380:3).

"There is a dispute between the *Achronim* if the person intended to save himself along with others. *Nesivos* (340:6) maintains that if someone borrowed weapons, even without the owner's permission, to protect lives, and the weapons were taken, he is exempt based on this enactment, even if it included protecting his own life as well.

"*Minchas Pittim* (340:3) questions this, because the rationale is that people should not be discouraged from saving others, whereas if the person's own life is also in danger this rationale does not apply. *Pnei Yehoshua* (B.K. 60b) similarly writes that the enactment is not applicable in this case.

"Furthermore, Harav Moshe Feinstein, *zt"l*, writes that the enactment does not exempt one who borrowed money or stole to save lives. Moreover, he maintains that the rescuer is exempt only from damaging items that were in his way when actively pursuing the perpetrator, but from other damage — even if to ultimately save lives (such as burning a field where enemy soldiers are hiding) — he remains liable. Other *Achronim* do not distinguish between forms of damage (*Igros Moshe* C.M. 2:63).

"Thus," concluded Rabbi Dayan, "Lot would be liable, but not Avram's servants (see *Chashukei Chemed Nedarim* 22a)."

Verdict: *Chazal* enacted to exempt a person who damaged in the course of saving others. There is a dispute whether this enactment applies when saving oneself along with others, and whether it applies also to other monetary obligations, such as borrowed items.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Yored L'sedei Chaveiro
Property #17
Canceled Sale

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

Q: Someone bought a property and renovated it. The sale was later voided for some reason. Is the buyer entitled to compensation for his enhancement?

A: *Mahara Sason* (#117, #124) rules that the buyer is considered as one who enhanced with permission (*yored b'reshus*); he is entitled to the going rate, even if the property was not fit for such an enhancement (C.M. 375:4).

However, if the buyer renovated the property according to his taste without any capital gain, *Mahara Sason* compares this to a creditor who collected a property and renovated it without any capital gain, and the borrower later redeemed the property. There is a dispute whether the creditor is entitled to compensation for his expenses; *Shulchan Aruch* rules — on account of this dispute — that he is not (C.M. 103:9).

Similarly, if a customer made a garment from what turned out to be defective cloth, so that the sale was voided, he is entitled to compensation for his efforts only if he enhanced the cloth (C.M. 232:14; *Nesivos* 205:4; *Pischei Choshen*, *Geneviah* 8:[41]).n



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Knesses Hagedolah, Hagahos HaTur 201:5; *Shu"t Maharashag* 3:113 & 114; see *Kesef Hakodashim* 201), or because those who bid on such honors have no intention of making a real *kinyan* (*Shu"t Eretz Tzvi* 39; cf. *Shut Panim Me'iros* loc. cit.).

According to this latter approach, bidding for a *kibbud* is, at most, a *neder* that the person will pay that amount to the shul (see *Shu"t HaMabit* 3:60; *Shach, Yoreh De'ah* 256:12; *Shu"t Tzemach Tzedek* 72).

The *Poskim* discuss several consequences of this dispute, which we discussed in *BHI* issues 519-520).

In your case, according to the *Poskim* who say that purchasing *aliyos* is akin to a *neder*, it is quite plausible that there is an *umdena* (halachically binding presumption) that the bidder made the *neder* only on condition that he would actually receive the honor for which he bid. The person who overslept clearly did not intend to make the *neder* given that circumstance, so he is not obligated to pay (see *Schach, Yoreh De'ah* 251:9). On the other hand, it is possible that since he knows that if he oversleeps, the shul stands to lose a lot of money, perhaps the *umdena* is not strong enough to absolve him from payment (see *Hayashar Vehatov* 14 p. 86 and 21,p. 143).

According to the *Poskim* who consider this an ordinary purchase, it would appear that he cannot absolve himself from paying due to the *oness* (circumstance beyond his control) of oversleeping; since the *kinyan* already took place and the *aliyah* belonged to him, he may not void the sale, just as someone who bought an object and has no use for it may not decide not to pay for it.

In the specific story that happened in your shul, however, since the *aliyah* was ultimately resold for the same amount, the first purchaser clearly is not obligated to pay for it (see *Magen Avraham* 154:23).

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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