

# 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

## MONTHLY PAYMENTS

Mr. Simon had borrowed \$15,000 from Mr. Goldstein, to be repaid in 15 monthly payments of \$1,000. They drafted a formal loan document, signed by witnesses.

Mr. Simon usually repaid through a Zelle transfer at the beginning of each month.

A year later, Mr. Simon called Mr. Goldstein. "My records indicate that there were only 11 Zelle transfers," he said. "You skipped a payment four months ago."

"Indeed, there was no Zelle payment that month," Mr. Simon replied, "but I paid you in cash. I brought the money to your house one evening."

"I never received a cash payment from you!" Mr. Goldstein stated. "Do you have any receipt for that?"

"No," answered Mr. Simon. "Since I paid regularly every month, as we'd stipulated, I didn't expect that there would be a problem. It seems that you forgot."

"Thank G-d my memory is intact!" Mr. Goldstein exclaimed. "Had you paid, I would remember it! Maybe you planned to bring the money over, or perhaps you paid someone else in cash."

"No, I'm absolutely sure that I paid you," Mr. Simon insisted. "I couldn't Zelle you at the beginning of the month, but I received cash a few days later and paid you that evening."

"It's basically your word against mine," Mr. Goldstein said. "I hold the loan document, which indicates that you haven't repaid the loan yet."

"That proves nothing!" Mr. Simon argued. "You hold the loan document because there are still another few remaining payments. It indicates nothing, though, about whether I paid the monthly installment four months ago."

"That may be," Mr. Goldstein replied. "But bottom line, I hold a loan document and you have no proof of payment."

"But I'm in possession of the money," Mr. Simon insisted, "and your document doesn't indicate anything."

The two approached Rabbi Dayan and asked:

**"Is Mr. Simon believed that he paid in cash without proof?"**

"When the lender holds a formal loan document signed by witnesses," Rabbi Dayan insisted, "the borrower is not believed that he repaid without proof. The simple rationale is: If the loan was repaid, why does the lender still hold the uncanceled loan document? (B.B. 70a)

"Rashba (Teshuvos 1:1065) addresses a loan that calls for several timely payments, and the borrower claims that he paid some of them.

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## BHI HOTLINE

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

## CHILD DOING BUSINESS

**Q.** I have two she'eilos revolving around the same issue:

1. My 9 year-old son received a new MP3 player from his grandfather for Chanukah. A

few days later, I asked him if I could use his old one, and he told me that he had sold it to his friend for \$5.00. I told him to get it back from him, because he cannot sell anything without my permission. May we void the sale?

2. This same son has a card collection, which he trades with his friends. In one such trade, he gave his friend a few cards in return for a single card. He later regretted making this deal. May he renege on the trade?

**A:** Since your son is a minor — under the age of *bar mitzvah* — the Torah does not recognize any transaction he makes, even if the MP3 player belongs to him. *Chazal* estimated that a minor does not have enough *daas* (grasp of reality) to be able to engage in commerce. Even a particularly astute child may not engage in commerce as a minor. The age limitation is a *halachah l'Moshe miSinai* (see *Shu"t Chasam Sofer, Yoreh De'iah* 317).

But *Chazal* recognized the need for children to engage in commerce if they must support themselves, so they validated a sale (of anything other than real estate) made by such a minor, from the age of "*onas hape'utos*" (see *Gittin* 59a and *Shulchan Aruch, Choshen Mishpat* 235:1). They extended this validity even to cases where the child does not need this particular sale in order to support himself (*ibid.*, according to the ruling of the Ramban).

The age *Chazal* set for this is six or seven, depending on the child's aptitude (some *Rishonim* write that females always mature younger than males, so the age is six for a girl and seven for a boy — see *Nimukei Yosef, Gittin* 59a; cf. *Kesef Hakodashim* 235:14). There are several opinions regarding up to what age we must test the child to determine whether he understands how business is transacted (see *Rema* 235:1 with *Sma* 3).

The child's sale is valid even if it involved *ona'ah* (exploitation), as long as the amount overcharged or undercharged was less than a sixth of the item's actual value (*Choshen Mishpat* 235:3; see *Nachal Yitzchak* 66:24, 3,



## CASE FILE

Although the aforementioned rationale seemingly does not apply, since the lender holds the document for the remaining payments, Rashba rules that the borrower is still not believed without proof. He should have requested a receipt or adjusted the loan document (*Rema C.M. 82:2*).

"Nonetheless, if the borrower claims definitively that he paid, he can demand that the lender take a severe oath before collecting the disputed amount, like any other loan document (unless it stipulated that the lender is believed in the absence of proof — *ne'emanus*). *Beis din*, though, will not initiate such an oath (*Shach 82:10*).

"Moreover, Aruch Hashulchan (82:5) writes that if the lender acknowledges that several payments were made, this case is treated like other cases in which the loan document is partially paid (*pogem shtar*), and *beis din* will require a severe oath of the lender of its own initiative (*C.M. 84:1*).

"Nowadays, almost all *batei din* do not impose oaths, but rather rule a compromise in accordance with the severity and likelihood of the oath (*C.M. 12:2*).

"Thus, Mr. Simon is not believed that he paid, but *beis din* will likely compromise in lieu of the oath incumbent upon Mr. Goldstein.

"Had the loan document been an informal one, though, like an IOU," concluded Rabbi Dayan, "the borrower would be believed with a lesser oath (*shevuas heses*) that he paid, unless stipulated that he be believed only with proof, since people often are not concerned to back an IOU upon payment (*C.M. 69:2*)."

Verdict: When the lender holds a formal loan document calling for timely payments, the borrower is not believed without proof that he made some payments, since he should have requested a receipt.



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS

Yored L'sedei Chaveiro  
(Enhancing Another's Property) #25  
Summary/Conclusion

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

**Q: A person who enhanced another's property, even without being asked, is generally entitled to payment. Some explain that this is because of the inherent benefit and increased monetary value that he provided the owner; others explain because we presume that post-facto the owner consents to the work done for him, unless he has reason or clearly indicates that he does not want the enhancement.**

A: Depending on the aforementioned rationales, the *Poskim* dispute under what circumstances the owner can tell the enhancer to remove the enhancement, or can claim that he would have preferred to do it himself, rather than paying for it. There is a fundamental distinction between properties fit for such enhancement and those not fit, regarding both the claim to remove the enhancement and the amount of payment due to the enhancer, whether the going rate or the lesser of the expenditure/benefit.

The rules of *yored l'sedei Chaveiro* apply not only to physical enhancements but also to services provided to benefit another person.



## BHI HOTLINE

s.v. *Uvagittin*). Furthermore, the sale is considered final even if the *ona'ah* was more than a sixth, but the amount of time in which one is allowed to void the transaction on the basis of the *ona'ah* has elapsed (*Giddulei Shmuel, Bava Metzia 49b*). For the buyer (who overpaid), this is the amount of time it takes to show the object to an expert or a relative who knows the value of such an object (*Choshen Mishpat 227:7*). For the seller, it is until he comes across a similar object for sale and realizes that he was underpaid (*ibid. 227:8*).

These *halachos* do not apply to your case, however, because *Chazal* established these *halachos* out of concern for minors who had to support themselves. If a child has a guardian (*apotropus*) overseeing his finances, *Chazal* did not see a need to allow him to engage in commerce without the consent of his guardian (*Kesubos 70a; Choshen Mishpat 235:2*). Certainly when a child's father is supporting him, he may not sell anything without his father's consent (see *Darkei Moshe 235:3* with *Nesivos 10; Aruch Hashulchan 235:1 & 10-11*; cf. *Shulchan Aruch Orach Chaim 658:6* and *Shu"t Minchas Yitzchak 5:65*).

In addition, certain objects belong to the father, not the child, and it is obvious that the child may not sell them without his father's consent (see *Choshen Mishpat 270:2* with *Chiddushei R' Akiva Eiger*). Had your son been an adult and the object been his, he would not be permitted to cancel the sale unless the *ona'ah* was more than a sixth and the claim was made within the applicable time frame delineated above (see *Choshen Mishpat 227:2,7-8*).

Given all of the above, although your son has passed *onas hape'utos*, you may void the sale even if there was no *ona'ah*. This is certainly true if the object he sold belongs to you, but it is also the case if it belongs to him — assuming that you are supporting him.

Regarding the card collection, since you allow your son to trade cards, it appears that a specific trade cannot be voided now that your son regrets it. The *halachah* is that if a minor engaged in commerce and sold an object (as opposed to real estate) or gave a gift, if the *apotropus* approved the transaction, it is final (*Choshen Mishpat 235:2*). Seemingly, the same would apply if the *apotropus* gave prior consent to engage in such dealings. Obviously, then, if you, as his father, agreed to allow him to trade cards, and certainly if they belong to you and you consent to his commercial transactions, then those transactions are final.

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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