

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

EXPENSIVE RETURN

Shimmy was browsing in his favorite *sefarim* store, 'Quality Sefer.'

He ambled through the aisles of bookcases. In the *halachah* section, his eye caught a *sefer*, *Practical Business Halachah*. He thumbed through the *sefer*, and considered buying it.

"How much is this *sefer*?" Shimmy asked the salesman.

"It's on sale for \$24.99," replied the salesman.

"Fine, I'll take it," replied Shimmy.

Shimmy purchased the *sefer* and left the store. Three blocks away, he met his friend, Eli.

"Where are you coming from?" Eli asked.

"I was just at the *sefarim* store," replied Shimmy. "I bought a copy of *Practical Business Halachah*. It was on sale for \$24.99."

Eli wrinkled his nose. "I don't know that I would call that a sale," he said. "I always buy my *sefarim* at 'Zol Sefer' around the corner. They're cheaper than most other stores. I saw that *sefer* there for \$22.99."

"Really?" asked Shimmy. "It's a shame I didn't know that beforehand!"

"I know that 'Quality Sefer' allows returns," said Eli. "If you want, you can simply return what you bought, and buy it, instead, at 'Zol Sefer'. You'll save \$2!"

"Is that really fair?" asked Shimmy. "I already bought the *sefer* and do want it ..."

"If the store allows returns, I don't see the problem," replied Eli. "If you want, you can ask Rabbi Dayan."

"I normally wouldn't bother just to save \$2, but I am interested in knowing the *halachah*," said Shimmy. He called Rabbi Dayan and asked:

"Can I return something that I find cheaper elsewhere?"

"If the store has a price-matching guarantee, which offers a rebate even after the item is bought, it is certainly acceptable to utilize the guarantee," replied Rabbi Dayan. "Even if there is no price guarantee, you can ask the owner or manager if he is willing to match the price, which is better than returning the item."

"If price-matching is not an option, you can return the item. Although a person who verbally committed to buy an item and retracts without good reason is considered *mechusar amana* — lacking



BHI HOTLINE

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

DIDN'T GET TO THE ROOT

Q: I had terrible pain in my tooth, and I went to a dentist who determined that I needed a root canal. I then visited a specialist who charged me \$2,000 to

do the root canal and seal it with a crown. Two weeks later, the awful pain returned. When I went back to the specialist, he said that the pain was emanating from the tooth adjacent to the one he had worked on, and that I should go to my regular dentist to deal with it. My regular dentist could not find anything wrong with the adjacent tooth, so he sent me to a top specialist. In the regular x-rays, he couldn't find any problem, but when he did some more advanced imaging he found that the specialist who did the root canal had not dealt with all of the infected nerves in the tooth, and it had to be redone.

When I returned to the specialist and showed him the advanced images, he admitted that his treatment had been inadequate, and said that he would redo it. I told him that I no longer felt confident in his skills at that point and I wanted my money back so I could have a different specialist redo it.

He insists that he isn't required to give me back money, only to fix the tooth.

Who is correct?

A: One of the 5 payments a person is obligated to remit to someone he injured (*chovel*) is *ripui* (paying the medical bills to cure him). The *Gemara* (B. K. 85a, cited as *halachah* in *Sma* 420:24) teaches that if the *chovel* is a doctor, and he tells his victim that he will cure him, the victim is entitled to reject the offer with the claim, "To me, you are like a lion waiting in ambush." The *Rosh* (B.K. 8:1) explains that a person who is ill must feel comfortable with his doctor.

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CASE FILE

trustworthiness, if the store policy allows returns, the purchase is made with that stipulation and understanding. All the more so if the price differential is significant. The same applies in Israel, where consumer law allows returns within 14 days, which to many poskim establishes a common commercial practice (*minhag hamedina*) about this (*Rema C.M. 204:11*).

Nonetheless, if the return causes the store a hassle, the owner can have *tar'omes* — a rightful complaint. Moreover, there is a *middas chassidus* to honor one's intended commitments, and certainly one's verbal statements and actions, even when permitted to retract (*Sma 333:1; Shulchan Aruch Harav, Hil. Mechirah #1*).

Furthermore, while Eli can point out that in the future you can get better value at 'Zol Sefer,' it is inappropriate to encourage you to return the *sefer*, especially if you regularly patronize 'Quality Sefer' (see *C.M 156:5*).

"Even so, if you return the *sefer*, the storeowner has no claim against Eli for having caused a seeming loss. The storeowner suffers no loss of principal since he receives his *sefer* back, just a loss of potential profit that he could have earned from the sale, which is only *grama* (*Shach 386:25*).

"However, if Eli were to cause an actual loss, he could be liable," concluded Rabbi Dayan. "For example, if someone sold an item to a non-Jew or strongman for a certain price, and upon hearing that the price is high he simply withheld some of the agreed payment, in certain situations the person who told him that the price is high is liable. This may be considered *garmi* — directly caused loss, or possibly even *masur* — ratting inform" (*Rema 386:3; see however, Pischei Choshen, Nezikin 4:23 [58-59]*).

Verdict: Returning an item because you found it cheaper elsewhere is permissible, if the store policy allows returns. However, there is a *middas chassidus* to honor one's intended commitments, and certainly one's speech and actions, especially if the price differential is small.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Minhag Hamedinah

Common Commercial Practice #6
Practiced Based on Law

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

Q: If people act as mandated by law, is this considered minhag hamedinah?

A: We mentioned that regulations established by the city council are binding, as are practices adopted by the townspeople of their own accord.

Furthermore, if people typically act as mandated by law — even if regulated by officials who do not have the halachic status of the city council or in situations not recognized by halachah as *dina d'malchusa* (the law of the land binding between two Jews) — the practice is halachically binding as *minhag hamedinah*.

An example is severance pay, in places mandated by law when laying off a worker. Even if one were to maintain that the law itself is not halachically binding between Jews, once it becomes a widespread, common practice based on the law, the employer is required to pay the worker severance as *minhag hamedinah*, even if not stipulated initially (see *Pischei Choshen, Sechirus 7:7[17]; Chazon Ish B.K. 23:2 s.v. v'chol, Likutim C.M. 16:1 citing Shach*).



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Some *Poskim* limit this *halachah* to cases in which the *chovel* inflicted the injury deliberately or caused it through negligence, but if he caused it by mistake then the victim may not claim that he doesn't trust him as a doctor (*Chashukei Chemed, Kesubos 105b*, quoting Harav Elyashiv, *zt"l*; cf. *Shu"t Divrei Malkiel 3:44*, who writes that from the simple reading of the *Gemara* and the *Poskim* it seems that it applies to all cases of injury). In your case, all *Poskim* would agree that the dentist's having failed to perform the root canal properly the first time would cause the patient to lose confidence in him, so he may not compel you to accept further treatment from him.

In truth, however, regardless of the above dispute, you are entitled to a full refund from the dentist, because your reason for demanding the refund is not due to his having injured you and now being obligated to heal you. Rather, your claim is that you paid him in error, because you assumed that he actually healed you, and since he didn't, you were not required to pay him. He is therefore required to refund your money, and you do not have to agree to have him treat you further (see *Shulchan Aruch, C.M. 232:5*).

Even if you had prepaid for the root canal, the dentist still has no right to keep your money just because he is willing to redo the treatment. The reason some medical offices demand prepayment is to ensure that the client doesn't leave without paying or claim, after receiving the treatment, that he doesn't have money. Even if there had been a contract, of sorts, in which the dentist obligated himself to perform the root canal in exchange for the prepayment, he is not entitled to claim that he is now ready to fulfill his obligation, because that agreement required him to complete the treatment satisfactorily the first time. His failure to do so renders the agreement (along with any *kinyanim* that were made to formalize it) null and void, and you are entitled to a full refund.

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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