

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

RECKLESS DRIVER

Mr. Goodman lived near a busy intersection. From his front porch he easily observed the traffic.

Most of the drivers drove carefully and obeyed traffic laws, honoring the traffic lights and giving right-of-way to pedestrians. However, he did see his fair share of poor driving and near accidents, whether between cars or with

pedestrians. He also witnessed several accidents.

He recently noticed that a new neighbor, Mr. Rusher, was involved in several near-misses. Mr. Rusher would approach the intersection faster than other cars, run the yellow lights (occasionally even going through a red) and honk away pedestrians who were trying to cross.

After several such incidents, Mr. Goodman decided to speak with Mr. Rusher.

"Welcome to our neighborhood," Mr. Goodman approached him. "I live at the corner, near the intersection."

"I thought I saw you sitting on the porch," said Mr. Rusher. "What a frustrating intersection that is! It sometimes delays me!"

"Yes, I noticed," said Mr. Goodman. "But I saw several times that you drove dangerously through the intersection."

"I have a clean driving record!" boasted Mr. Rusher. "Not one accident on my insurance history."

"That doesn't mean that you drive safely," replied Mr. Goodman.

A week later, Mr. Goodman was sitting on his porch. He again saw Mr. Rusher speed up as the light turned yellow, run through a red light, and narrowly miss a pedestrian who had stepped into the street.

"That does it!" Mr. Goodman exclaimed. "Mr. Rusher has got to stop — or be stopped!"

Mr. Goodman approached Rabbi Dayan and asked:

"Can I report Mr. Rusher to the police for driving recklessly?"

"Mesirus (informing on a Jew to the authorities, endangering him or his assets), is a grievous sin," replied Rabbi Dayan. "The moser (informer) can be liable for any damage he causes (C.M. 388:2).

"Nonetheless, the Rishonim write that if someone harms or endangers the public, it is permissible to inform on him. For example, if someone was involved in producing counterfeit money, which could lead to pogroms, it is permissible to inform on him to the authorities. He is considered a potential rodef (pursuer) due to his illicit



BHI HOTLINE

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

INVESTMENT INQUIRY

Q: A defendant hired a lawyer to represent him in a case in which he was being sued for a very large sum of money, agreeing to pay the lawyer one-third of

whatever he would manage to reduce from that sum. That lawyer then hired me to assist him with the case and promised to pay me 20% of whatever he would earn on the case.

We were able to reduce the defendant's payout significantly, and the lawyer was paid his fee in full. He took that money and invested it to flip some real estate, and he made a handsome profit on that investment.

I was quite surprised when he wrote me a check for only twenty percent of the fee he was originally paid, despite having withheld my pay for two months while it was invested in that real estate deal.

Do I have a right to 20% of what the money he earned is worth today, or only to 20% of the original sum?

A: As with any case, we would have to examine the exact details of the deal you made with the lawyer, because even the slightest discrepancy in the terms of the deal can affect the resolution of your case.

First, we must note that the funds that the lawyer was paid for his work belonged to him, in their entirety. Since you never made a kinyan (acquisitional act) or gained control over the money that was owed to you, it did not belong to you. Of course, his pledge to pay you for your work obligates him to remit that payment even if the two of you did not make any kinyanim to formalize the arrangement, but that obligates him only to pay you in general, not to give you a percentage of the specific funds that were remitted to him. Moreover, the Poskim write that when an employer promises to give his employee a certain object as payment, he isn't required to fulfill that commitment (although it is inappropriate, ethically, to renege); he may pay him the monetary value of the object instead (Rema 332:4 with Shach 18; see Inyan, Dec. 15, 2021/BHI #588).

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CASE FILE

activities" (C.M. 388:12; 425:1).

The Gra (388:74; 425:11) adds that this applies even if the perpetrator does not intend to endanger (see also Pischei Teshuvah 356:1).

Based on this, Minchas Yitzhak (8:148) addresses people who speed or drive recklessly. He cites the responsum of the Rosh (101:5) that a person should not run in a public place, even on foot, unless he can safely stop. Certainly, a person should not gallop with a horse in a place where people are riding, lest he not be able to stop in time; he is liable if he damages (C.M. 378:8-9).

Similarly, Minchas Yitzhak rules that someone who speeds, doesn't stop where required, drives in a reckless manner or without a valid license — endangering the public — is considered a potential rodef and it is permissible to inform on him to the authorities, even if he does not intend to endanger.

However, he writes that the laws of rodef or moser require warning the person that he is endangering others before informing, where possible. Here, also, the issue of reckless driving should be brought before the beis din to publicize the severity (C.M. 388:10; 425:1).

Nonetheless, when time is of essence, or where not possible to warn the perpetrator, it is permissible to inform on him to the authorities to spare others from danger (Rema 388:10; Sma 425:3; Pischei Choshen 4:7[22]).

"Furthermore, on issues of public safety, the law of the land that is accepted has halachic sanction," concluded Rabbi Dayan. "Therefore, requiring the driver to conform to safety laws, with the associated penalties, is not considered as damaging or informing" (see Beis Yitzhak C.M. #77:3).

Verdict: Drivers are required by halachah to observe traffic safety laws. A person who drives recklessly should be warned, when possible, that he endangers others. If he continues afterwards, or if it is not possible to warn him, it is permissible to report him to the authorities.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Minhag Hamedinah

Common Commercial Practice #7
Common Practice in Damages

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

Q: If a cleaning woman accidentally broke a dish while washing it, is she liable?

A: Chavos Yair (#106) writes that, in principle, she is liable as a shomer sachar (paid guardian). However, he writes that — following the common practice — if almost no one is particular about this, she is exempt (Pischei Teshuvah C.M. 331:1; Aruch Hashulchan 331:7).

This seemingly extends the concept of minhag hamedinah to liabilities that are not contractual, such as damages.

However, some explain that this case is also contractual, relating to laws of workers and guardians. They point to a dispute between Rishonim whether self-adopted practices (as opposed to communal regulations) can override default halachah, but nonetheless write that they can be considered as a stipulation for contractual issues (Teshuras Shai 1:381)

They further question whether we should negate even a small minority, and therefore write that if the plaintiff-employer is in possession and is unusually particular, he/she cannot be made to pay the full wages without deducting the value of the dish (Erech Shai 331:2).



BHI HOTLINE

You have even less of a claim to the money the lawyer was paid than that employee, because those funds were not in the lawyer's possession when he made the deal with you, and a person cannot transfer something that is not in his possession (ein adam makneh davar shelo ba birshuso). (Shach 122:21 and Ketzos HaChoshen 176:4; see Shu"t Imrei Yosher 1:91).

Therefore, although the lawyer is obligated to pay you the value of 20% of what he was paid, that percentage of the actual money he received is not yours. When he made the investment, then, it was his money he invested, not yours, and he is only obligated to pay you 20% of what he was paid.

Nevertheless, if the understanding was that he was investing for you as well, then you are a partner in the real estate investment and you are entitled to your representative portion of the profit.

Even according to the Poskim who rule that there must be a kinyan for a partnership to take effect (see Choshen Mishpat 176:1&3), and there was no kinyan between you and the lawyer, you are still a partner in this case because of the halachos of shelichus (agency).

If Reuven owes Shimon money, and Shimon tells him to buy merchandise with the money and they would be partners in that venture, and Reuven bought the merchandise based on that instruction, Shimon acquires his portion of the merchandise even though he didn't buy it with money that belonged to Reuven (ibid. 183:4). Here, too, although the lawyer bought the real estate with his own money, he is still considered your shaliach (agent) to buy a portion of the real estate on your behalf (ibid. 176:7 with Nesivos 13; cf. Ketzos Hachoshen 4).

But if there is no clear, mutual understanding between you and the lawyer that he is investing on your behalf, you have no claim against him even if he delayed paying you.

If, however, there was money that already belonged to a partnership — such as if two partners lent money to someone, and one partner was repaid on behalf of both of them — and he then invested that money, that investment certainly belongs to both partners (Aruch Hashulchan 176:19).

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

