

# 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

### PURIM RAFFLE

Congregation Simchas Hatefillah was having a collective Purim *seudah*. Raffle tickets were being sold at the door.

"I'm going to arrive late at the *seudah*," Binyomin told Mordechai, "towards the very end. Could you please buy a raffle ticket for me?"

"Sure," replied Mordechai. "I'm also planning to buy one."

When Mordechai arrived, the *gabbai* asked: "Do you want to buy raffle tickets?"

"Yes, I'd like two," Mordechai replied. "One for me and one for Binyomin, who will arrive later."

Mordechai paid for the two tickets. The *gabbai* tore two numbers off the roll, 108 and 109.

After festive eating, drinking, singing and *divrei Torah*, the *gabbai* announced: "And now, we will hold the raffle draw! First prize is a silver goblet!"

The *gabbai* put his hand in the box containing the stubs. He pulled out a stub and announced: "First prize winner is number ... 109!"

Binyomin had just walked in. He hurried over to Mordechai and asked. "What number did you get for me?"

"I received numbers 108 and 109, but didn't have in mind which was for me and which for you," replied Mordechai. "Had you come it two minutes earlier, I would have already given you one of the tickets."

"Either way, that's great!" replied Binyomin. "One of us won first prize!"

"That's true," replied Mordechai. "The question is who?"

"Rabbi Dayan is sitting there," said Binyomin. "We can ask him."

The two went over to Rabbi Dayan. "We have a question," Mordechai said.

"I'm very, very sorry," apologized Rabbi Dayan effusively. "I've drunk several cups of wine, though, and can't rule now. Ask me tomorrow."

The next day, the two asked Rabbi Dayan. Mordechai



## BHI HOTLINE

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

### TOO LATE!

**Q.** I ordered a *Megillas Esther* for my future son-in-law, and I gave the *sofer* (scribe) a deposit. He committed to have it ready for Purim, but at the last minute, he called

and apologized that he had been sick for two weeks and it would not be ready for Purim, but a week later.

When I told the *sofer* that I wanted to void the purchase because I had intended to give it to the *chassan* during the engagement, and demanded a refund, he claimed that he was not obligated to refund my money because this situation was an *ones* (circumstance beyond his control).

Furthermore, he said that since I would not be able to find such a *megillah* at this point, I should buy the one I commissioned, which can be used in the future.

Who is correct?

**A.** Had this situation not been an *ones*, it is clear that the sale would be void, because you stipulated that you needed the *Megillah* for Purim, and the *sofer* failed to meet that deadline (*Shulchan Aruch, Choshen Mishpat 207:5*). The question is whether the *ones* releases him from having to meet that deadline.

The *Poskim* discuss a case in which a seller agreed to furnish certain merchandise for a buyer in time for a *yerid* (market), which is the suitable time for the buyer to sell it, and an *ones* prevented him from having it ready on time. The *Taz* (*Yoreh Dei'ah 236:13*) states that it is obvious that the buyer is no longer obligated to purchase the merchandise.

Generally, if a person agrees to pay a fine if he fails to have an item ready for purchase at a certain time, and an *ones* prevents him from meeting the deadline, he is not required to pay, due to the principle of *ones Rachmana patrei* (the Torah released a person who was the victim of an *ones* from his obligation), because he would never have agreed to pay a fine in a situation of *ones*. In the case of the person buying for the *yerid*, however, he would never have agreed to purchase the merchandise if he couldn't resell it, even if the delayed delivery was caused by an unforeseeable circumstance. In this case, the operating principle would be *ones Rachmana lo*

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## CASE FILE

asked:

### 'Who is entitled to the prize?'

"When you buy a raffle for another, even with your own money, you acquire it for him as his agent," replied Rabbi Dayan. "All the more so, if he asked you to lend him the money" (C.M. 183:4; *Divrei Chaim C.M. 2:21*)

"Even if you later claim that you intended to buy it for yourself, you are not believed if you did not indicate so before the transaction (*ibid.*)

"When you buy for yourself and another, you should initially decide which is for yourself and which is for him. Even a mental decision suffices for this, since you intend to acquire this specific ticket for him as his agent (*Pischei Choshen, Pikadon 12:21*[63]).

"If you bought two tickets without specific intention, and one turned out winning - if you still hold both tickets, you can retain the winning ticket for yourself. You do not have to share the prize with the other person, since - although you bought two tickets - there was no intent to be partners, but rather that one should be for you and one for the sender. You are in possession of the winning ticket, so that *hamotzi meichaveiro alav hare'ayah* - the burden of proof is on him (*ibid.*)

"Even if after buying the two tickets, you intend that a specific one should be for the other person, but did not yet give it to him, he might not acquire the ticket with your intent alone; you can still retain the winning ticket for yourself. It would be a *middas chassidus* (virtuous act), though, to honor your intent (Tur C.M. 200:15; *Pis'chei Choshen, Kinyanim 1:1*).

"However, if you laid out the money, and when the other person paid, you agreed that a specific ticket should be his but didn't hand it over, this likely constitutes at least *kinyan kesef* to invoke *mi shepara* (condemnation of one who retracts after payment) or possibly even *bereirah* (retroactive designation) to acquire it (*Pischei Choshen, Pikadon, ibid.*).

"Clearly, once you give a ticket to the other person," concluded Rabbi Dayan, "he acquires it with any potential gain inherent in it."

**Verdict: Mordechai is entitled to the prize, since he didn't designate which ticket was for Binyomin. Binyomin would be entitled to the prize if Mordechai intended at the time of purchase that this specific ticket is for him, or if he already handed it to him. Intent alone after purchase would be considered a *middas chassidus* to honor.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

## MONEY MATTERS Minhag Hamedinah

Common Commercial Practice #12  
Partition Between Neighbors

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

### Q. What form of partition are neighbors required to construct between them?

A: The *Mishnah* (B.B. 2a) teaches that neighbors with adjoining courtyards can require each other to construct a partition to afford privacy.

The material from which the partition is made depends on the *minhag hamedinah* (C.M. 157:4).

Some *Rishonim* maintain that if the common practice is to use a flimsy material, substandard to the lowest-quality material mentioned in the *Mishnah*, each party can demand a sturdier partition despite the common practice. It is considered a *minhag garua* - inferior practice (Rema 157:4; Sma 157:12).

If there isn't a clear practice in that locale, some say they should build the partition as seen fit by the *Dayan*, based on professional recommendation. Others say, according to the lower-quality material listed in the *Mishnah* (Rema *ibid.*; Sma 157:13; Ketzos 157:2).

Even if initially there was a partition of a better kind or height, which fell, they can only force each other to rebuild according to the *minhag hamedinah* (C.M. 157:13).



## BHI HOTLINE

*chivei* (the Torah did not obligate a person who was the victim of an *ones* to follow through on a deal). But the Taz writes that this is true only if the condition that was stipulated to was necessary for the deal to be worthwhile - e.g., the time is of essence. If it is not so significant that the seller fulfill the stipulation, then the buyer may not void the sale.

The Shach (*Nekudas Hakesef* *ibid.* and *Choshen Mishpat 21:3*) disagrees, stating that even if the stipulation is not necessary, it must still be met, and if the seller delays in delivering the merchandise, the buyer may refuse to accept it when it arrives, because he agreed to the deal only on condition that his stipulation is met.

The later *Poskim* rule according to the Shach, but they deliberate whether this ruling would still apply if it means removing money from the *muchzak* (the person who is currently in possession of it; Beis Meir, *Even Ha'ezer 38:1*; cf. *Shu"t Beis Ephraim, Choshen Mishpat 46*, cited in *Pis'chei Teshuvah 207:2i*, who maintains that it is not powerful enough to take money away from a *muchzak* if the condition is not significant; see *Mishpat Shalom 200:7* and *Mishmeres Shalom 15*).

Some *Poskim* write that the entire discussion of the Taz and the Shach was only referring to cases in which the condition was stipulated clearly. If it was not stated clearly that the purchase was conditional on the deadline being met, but the deadline can rather be understood as an estimated delivery date, it is quite common for deadlines to be missed, and no one considers voiding the sale because of it (*Shu"t Maharshag 3:108*; see also *Pis'chei Choshen, Kinyanim 20*, note 30).

Accordingly, in your case, where the time of delivery is vital, and the *sofer* missed the deadline, all *Poskim* would agree that you may void the sale and the deposit must be refunded.

We find a similar *halachah* regarding someone who bought an object that turned out to be defective, but can be repaired. The *Poskim* rule that according to the letter of the law, the buyer may not demand a refund if the seller is willing to fix it (*Shulchan Aruch 232:5*; see BHI issue #317). But if the buyer made it clear that he needs the object immediately, the seller may not insist that he wait for it to be repaired (see *Ulam Hamishpat 232:17*; see Bach 232:4).

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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