THE WERDIGER EDITION

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

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

LEKET, SHIKCHAH AND PE'AH

Mr. Hertz owned agricultural plots in both Israel and outside of Israel. Each year, he harvested his grain and fruit and earned his living from them.

This year, as he read *Parashas Kedoshim*, he began to wonder. The Torah (*Vayikra* 19:9-10; *Devarim* 24:19-21) commands us to leave for the poor certain gifts -- *matnos aniyim* -- namely: *leket* (or *peret*) – individual stalks of grain or grapes that fall while harvesting; *shikchah* – bundles of wheat or trees that were inadvertently overlooked when collecting the harvest; and *pe'ah* – the final corner of the field or certain orchards that are picked in one harvest.

"I never heard of anyone giving these gifts," Mr. Hertz said to his wife. "The profit margin that we earn is not so great; if I have to give these gifts, it will cut further into our profit."

"If no one gives them, then presumably there is no need!" replied Mrs. Hertz. "You're not the only observant famer in this region. And it's not a new question; presumably this has been the situation for generations!"

"The plots outside of Israel I'm not so worried about," replied Mr. Hertz. "I assume that these agricultural *mitzvos* apply only in Israel, like almost all other agricultural *mitzvos* (*mitzvos hateluyos baAretz*). I'm more concerned about the plots that I own in Israel. I don't know what the practice is there. Maybe farmers there do give these gifts to the poor."

"You could try speaking to an Israeli Rav," suggested Mrs. Hertz. "I assume they deal with this question regularly."

"I don't know who to ask, though," said Mr. Hertz.

"Well, then consult with a Rav here," replied Mrs. Hertz. "I'm sure that someone is knowledgeable about this also. If not, he can always look up the *halachah*."

"I wonder if Rabbi Dayan might know about this," wondered Mr. Hertz. "Ultimately, it relates to my business."

"It doesn't hurt to ask!" said Mrs. Hertz

Mr. Hertz called Rabbi Dayan and asked:

"Am I obligated to leave *leket, shikchah* and *pe'ah* from my fields? What about those in Israel?"

"The Torah requires us to leave *leket, shikchah* and *pe'ah* for the poor from our fields and certain orchards," replied Rabbi Dayan.

"Like other agricultural *mitzvos*, it applies *mid'Oraysa* only in Israel, but the *Gemara* (*Chullin* 137b) teaches that *pe'ah* applies mid'Rabbanan even outside of Israel;

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STOLEN SCOOTER

Q. Two *bachurim*, Moshe and Chaim, decided to collect *tzedakah* together on Purim. Moshe had two scooters, and he lent one of them to Chaim to facilitate their efforts.

On Purim afternoon, after a few cups of wine, Chaim fell off the scooter and got hurt. Rather than step back onto the scooter, he limped home to tend to his wounds. Moshe went along, dragging that scooter to Chaim's house and waited for him to come back out and continue collecting. When twenty minutes had elapsed and Chaim did not emerge, Moshe left the scooter outside Chaim's house and continued collecting by himself.

At some point, the scooter was stolen.

Chaim claims that when he fell and Moshe took possession of the scooter, he effectively returned it to Moshe and was no longer a *sho'el* (borrower).

Moshe argues that his taking possession of the scooter did not qualify as Chaim's having returned it, and although he concedes that he left the scooter unguarded, he says he had no other recourse because he had no way of securing the second scooter at that point.

Who is correct?

A. If Moshe's taking possession of the scooter does qualify as Chaim's returning it, it is obvious that Chaim is absolved from payment, because he was no longer a *sho'el* and was not responsible for its safety. It is questionable, however, whether a borrowed item may be returned on the street, far from the lender's home (see *Shulchan Aruch Choshen Mishpat* 293:1-2).

In this case, though, Chaim never returned the scooter, because he planned to use it to continue collecting after recovering from his fall, but due to his inebriation and injury, he simply forgot to do so. Chaim was therefore still responsible for the scooter.

Nevertheless, it is possible that Moshe became a *shomer chinam* (unpaid guardian) for the scooter when he began to navigate it back to Chaim's house while Chaim limped along. Whether he became a *shomer chinam* depends on the respective mindsets of the

presumably the same is true also for *leket* and *shikchah* (*Rambam, Hil. Matnos Aniyim* 1:14).

"Nonetheless, the purpose of these *matnos aniyim* is for the benefit of the Jewish poor. Moreover, the *Mishnah* (*Pe'ah* 8:1) teaches that once the last of the poor have finished going through the field, anyone can take what remains, since it then becomes *hefker*. This is because there is no inherent sanctity to these gifts, just the monetary obligation involved.

"Based on this, Shulchan Aruch (*Y.D.* 332:1) writes that if there are no Jewish poor in the area, there is no need to leave these *matnos aniyim*. Rema adds that, therefore, the common practice is not to leave these *matnos aniyim*, since mostly they will be taken by gentiles.

"Shach (*Y.D.* 332:1) indicates that this leniency is only outside of Israel, where the obligation is *mid'Rabannan*, but most *poskim* rule that the Rema's leniency was intended even in Eretz Yisrael (*Gra* and *Pisc'hei Teshuvah* 332:1).

"Furthermore, Chazon Ish (*Maasros* 7:10) writes that even nowadays in Israel – where most of the people are Jewish – the law of the Rema doesn't change," concluded Rabbi Dayan. "Seemingly no poor person will go to collect grain from the fields. It is not financially worthwhile for him, in addition to the effort involved in processing the grain (*Mishpetei Eretz*, *Terumos u'Maasros* 5:11-12).

Verdict: The primary obligation of *matnos aniyim* is for the Jewish poor. Therefore, *poskim* write that nowadays, there is no need to give them, since seemingly they will not accomplish their intended purpose. When the poor have no interest in these gifts – there is no obligation.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial Practice #18
No Price Quote

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

Q. I hired a plumber without getting a price quote from him. How much must I pay?

A: When the wages were not specified beforehand, the plumber is entitled to his wages according to the *minhag hamedinah* (*C.M.* 331:2; *Pis'chei Choshen, Sechirus* 8:4).

If there is not one clear practice, but rather there is a range in the wages, the worker – who claims his wages from the employer – has the weaker hand. He is entitled only to the lower end of the range, even if most workers charge the higher amount, since in monetary matters we do not follow the majority when taking from the one in possession (*Ketzos Hachoshen*, 331:3).

However, we consider the professional experience, accreditation, etc., of the worker. Similarly, if the worker has a fee scale, and it is known that he charges more than others – he is entitled to his standard fee (*Pisc'hei Choshen, Sechirus* 8:[11]).

Therefore, it is advisable to establish the wages beforehand, to avoid misunderstanding and potential *gezel* by either party (*Ahavas Chesed* 1:13).

two parties. We would need to determine whether Chaim tacitly asked Moshe to guard the scooter, and whether Moshe accepted upon himself the responsibility to guard it (see ibid. 291:2 with *Nesivos* 2, and BHI issue 447).

If Chaim did indeed request that Moshe guard the scooter, and Moshe agreed, then Moshe was obligated to guard it, which would absolve Chaim from his responsibility. The *poskim* rule that if a *shomer sachar* (paid guardian) or a *sho'el* (borrower) asks the owner of the item to safeguard it, and he accepts it, he becomes a *shomer chinam* for it. But the *shomer sachar* would still be liable if the item is stolen or lost, and the *sho'el* would still be liable for *onsim* (circumstances beyond his control) as well (ibid. 72:3).

If Moshe did become a *shomer chinam*, he was negligent in his obligation to guard the scooter when he left it on the street instead of bringing it into Chaim's house, and Chaim would therefore not be liable for it.

But it is possible that Moshe is exempt despite his negligence due to the *halachah* of *b'alav imo*, in which case Chaim is obligated to pay.

The Torah states that if a *mafkid* (person giving an item to another person to safeguard) has some sort of obligation toward the *shomer*, then the *shomer* is not liable if something happens to the object (ibid. 346:1; see BHI issue 437 regarding whether there is an obligation to pay *latzeis yedei Shamayim*).

In your case, even if Moshe agreed to guard the scooter, Chaim had an obligation toward him, because he was required to pay for *onsim*. It would seem, therefore, that Moshe's negligence should not exempt Chaim from payment (*Taz, Choshen Mishpat* 291:28).

But some *poskim* explain that Chaim's responsibility for *onsim* alone does not qualify to make it a case of *b'alav imo*. Only if he had a responsibility to guard the item or to do a service for Moshe would he be exempt because of *b'alav imo*, but responsibility for loss and *onsim* alone does not suffice. In our case, Chaim is not required to guard the scooter while Moshe accepted that responsibility (*Nesivos* 305:3; see there for an additional reason why this is not a case of *b'alav imo*, and see *Nachal Yitzchak* 72:4).

In addition, this might not be a case of *b'alav imo* if the scooter does not belong to Moshe himself, but to one of his family members, in which case Chaim's obligation as a *shomer* was toward the actual owner, and Moshe's obligation to Chaim was a separate requirement (see *Choshen Mishpat* 346:17).

If there is indeed no exemption due to *b'alav imo*, then Moshe was obligated to guard the scooter, and Chaim is therefore not obligated to pay him for it.

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Issue #704 | Acharei | May 3, 2024 | 25 Nissan 5784

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CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

EXPENSIVE WATCH

Last summer, the Glicks ordered a gold-plated watch for their new son-in-law, who wore it on Shabbos and Yom Tov.

Over Pesach, Mr. Glick noticed that the watch was not the brand that he had ordered. He discreetly asked his daughter, and was shocked to hear that they received a high-end watch in place of the one he had ordered.

After Pesach, Mr. Glick contacted the storeowner, Mr. Zeigler, and inquired about the watch.

"Let me check into the matter," Mr. Zeigler replied.

Later that day, Mr. Zeigler called. "It seems that there an error in processing the order form," he said. "Indeed, the watch that was sent is worth much more, five times the price that you paid. I'm willing to grant you a 20% discount, but cannot leave the watch with you without a fair payment."

"I never would have agreed to pay so much!" objected Mr. Glick.

"Well then, I'll have to ask that the watch be returned," replied Mr. Zeigler. "I'll send what you ordered."

"You can't do that!" Mr. Glick said. "It was your error, not ours! Anyway, so much time passed. You'll embarrass me terribly."

"Admittedly, it was my error," acknowledged Mr. Zeigler. "However, errors can be corrected; I didn't know about this until now. I realize that it can be awkward for you; that is why I'm willing to grant you consideration and allow you to buy it at a 20% discount."

The two decided to approach Rabbi Dayan with the issue, and asked:

"Does Mr. Glick have to pay for the more expensive watch?"

"The *Mishnah* (*B.B.* 83b) teaches that when the seller provides the buyer a different item than he ordered, the transaction is null and void, so that either party can retract, even if discovered much later," replied Rabbi Dayan. "For example, if he ordered white wheat and received brown wheat, instead, or ordered olive wood and received sycamore wood" (*C.M.* 231:1).

"However, if the parties stipulated a certain quality, and it was a different quality, such as grade A

NEWS FROM THE BHI

Last week, the **Business Halacha Institute** collaborated with **Zahav** Senior Resources and Support, a division of **Agudat Yisrael**, to organize a **Halachic Will Event** in Lakewood. The event aimed to assist seniors with estate planning and halachic guidance.

The BHI introduced the new easy-to-use online tool that helped seniors draft their own Halachic Tzavaah. During the event, seniors had the opportunity to consult with Rabbonim and legal professionals in the estate planning field and received their medical directive documents and Halachic Tzavaah.

The response to the event exceeded expectations, and we were delighted to have helped so many people in a meaningful way

If you would like to organize a similar event in your shull, neighborhood, or community, please contact BHI at 18778458455#201

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

DOES A PASSIVE PARTNER DESERVE A PAYOUT?

Q. My partner and I rent a storage unit to store merchandise we plan to sell, and it was recently flooded due to heavy rain.

When the owner of the storage unit realized it was flooding, he called to tell me that I should come save as much as I could, and I called my partner to come help. He responded that he didn't feel like coming, and that I could handle whatever we had there on my own. I told him I wasn't interested in shlepping all those heavy boxes for his sake, and that if he didn't join me, I would save all the merchandise for myself.

He didn't show up, and I managed to save most of the merchandise. Am I entitled to keep it?

A. Partners who joined in a venture for a specific amount of time may not dissolve the partnership until that time is up (*Shulchan Aruch, Choshen Mishpat* 176:16). Even if they agreed to the partnership when they were friends and then got into a quarrel, neither one is permitted to unilaterally dissolve the partnership (*Pis'chei Teshuvah* 162:6). If they did not set a certain duration for the partnership, but bought merchandise together, the default duration is the length of time it takes to sell the merchandise (ibid. 176:17).

If, however, one of the partners wants to dissolve the partnership in order to prevent an impending financial loss, by saving whatever he can for himself only, he may insist on dissolving it (ibid. 28), because there is an absolute *umdena* (presumption) that no one joins a partnership with a plan of remaining in the partnership up to the point of losing money. He may therefore split from his partner, because it is considered as though the term of the partnership has expired (*Shiltei Gibborim,* beginning of *Bava Basra*). But he must inform his partner, if possible, so he, too, can salvage what he can (*Nesivos* 181:2).

Based on this, if two partners issued a loan that they are having trouble collecting (because the borrower is a thug, for instance), and one of the partners did manage to collect, if he did so without specifying on whose

wheat instead of grade B, or vice-versa, the one who suffered can retract. However, he cannot force the other party to uphold the sale at the fair price. Nonetheless, this is not considered merely *onaah* (unfair pricing), but rather *mekach ta'us* – mistaken purchase (*ibid.*; *Maharashdam C.M.* #385; *Aruch Hashulchan* 233:2).

"In most cases, a different model is considered a different item, since often a person may want specific features or styles in that model, like different kinds of wheat or wood. Even if we would not consider it a different item, e.g., the features and style of the watch were similar, but rather a higher quality than the one ordered, Mr. Zeigler, who suffers, can void the sale (*Pis'chei Choshen, Geneivah* 12:29-30).

"Nonetheless, if the watch was devalued through use, Mr. Zeigler cannot require Mr. Glick to cover the loss in value, since his son-in-law acted as expected with the item (*C.M.* 232:22-23).

"If the sale is voided, it is questionable whether Mr. Zeigler can charge a fair rental fee for use of the watch, since the Glicks did not have any intent to rent the item. Moveable items may be different from real estate sales that were voided, where the buyer must pay rent for his use meanwhile (see *C.M.* 232:15; *Or Same'ach, Mechirah* 16:8).

"To avoid an awkward situation, the two of you would do best to reach a compromise," concluded Rabbi Dayan. "However, Mr. Zeigler cannot force Mr. Glick to pay the higher price of the expensive watch, and Mr. Glick cannot force Mr. Zeigler to relinquish the expensive watch for the lower price."

Verdict: When a different item was provided, the sale is null and void; either party can retract. When a different quality was provided, the one who suffered can retract. However, he cannot force the other party to uphold the sale at the fair value. To avoid an awkward situation, it is best to reach a compromise.

MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial Practice #17
Partners

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

Q. I own a store with a partner. A neighbor, who is struggling financially, asked me if I would be willing to sell on credit. May I do so unilaterally?

A: Business partners are required to act according to the *minhag hamedinah* for that business, unless they initially stipulated or mutually agree now otherwise (*C.M.* 176:10).

Thus, for example, one partner may not unilaterally sell on credit, or entrust the merchandise to a third party, unless it is commonplace to do so in such stores.

If one partner acted unilaterally not in accordance with *minhag hamedinah* and thereby a loss ensued, he is solely responsible for it. However, if he earned a profit, the partners split it.

Moreover, one partner can demand not to sell on credit, even if the practice is to do so. If the other partner sold on credit and a loss ensued – he is responsible. Some require that the first partner object when forming the partnership, and some maintain that he can object even afterwards (*Rema* 176:10; *Nesivos* 176:22; *Aruch Hashulchan* 176:29).

behalf he was collecting the loan (*stam*), he must split the funds with his partner, because the assumption is that anything a partner does is on behalf of the partnership. But if he told his partner in advance that he was going to collect the loan and keep it for himself, he is entitled to do so (*Shulchan Aruch* loc. cit.).

Now, if Reuven and Shimon are partners, and Reuven decides to split up due to an impending loss and he saves only his own portion of the investment, then he may keep it for himself (unless there was already a loss prior to his splitting off, in which case the loss is split evenly between the partners, and he may keep only half of what remains; see *Nesivos* 176:45).

If Reuven managed to retrieve more than his own portion, the *halachah* will depend on what retrieving that portion involved. If he had to endanger himself to do so, or it was saved through an unnatural course of events, and he told Shimon that he was not willing to do this for the partnership, he may keep all of it for himself, because it was considered ownerless. (This is due to the *halachah* of *zuto shel yam*; see *Shulchan Aruch* 181:2 with *Nesivos*. In certain cases, however, he would be expected to go beyond the letter of the law and return Shimon's portion — see *Pis'chei Teshuvah* ibid. 2.)

If there was no danger involved, but the retrieval required hard work, then the only reason Reuven is entitled to his own portion is because he dissolved the partnership, but the remainder belongs to Shimon. Furthermore, he would be obligated to retrieve Shimon's portion under the rubric of *hashavas aveidah*, which mandates that we do whatever we can to prevent financial loss to other Jews.

Nevertheless, if Reuven informed Shimon in advance that he should join him, if retrieving it required hard work and Shimon was not interested in investing the effort, then he was *meya'eish* (gave up) on his portion, and Reuven may keep it. But if retrieving it was easy, then Shimon's portion belongs to him, because even if Reuven said specifically that he was keeping it for himself, we assume that Shimon was not *meya'eish*.

Based on the above, since your retrieval of the boxes from the storage unit presumably required hard work, your partner not having joined you is considered *yi'ush*, and you may keep his portion. But if was easy to retrieve the boxes, then you must give your partner his portion.

[This is true only if the merchandise was not insured. If it was insured, and the insurance company would have covered the entire value of the merchandise even if you did not make any effort to retrieve it, you clearly are not entitled to your partner's portion, because he may claim that he would have preferred that you not retrieve it so that he would receive the insurance payout.]

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