

BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

Issue #709 | Bamidbar | June 7, 2024 | 1 Sivan 5784

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

MAZEL U'BRACHAH

Mr. Ganz worked in the diamond exchange. "I have a batch of diamonds that I'm selling," a colleague, Mr. Fried, offered him one Friday morning. "Good diamonds at a fair price!" "I'd like to see the certificates and examine several of the diamonds," replied Mr. Ganz. "Certainly," Mr. Fried responded. "I have the certificates with me and several samples."

Mr. Ganz was satisfied with what he saw. After bargaining, they agreed upon a price. "I'd like to head home now for Shabbos, so we'll transfer the diamonds sometime next week," Mr. Ganz said. "But we are agreed on the deal."

"Yes," replied Mr. Fried. "Mazel u'brachah!"

Mr. Ganz entered Shabbos happy about his purchase.

Over the weekend, the diamond market crashed; prices dropped 25% by Monday evening! Mr. Ganz contacted Mr. Fried. "Although we concluded our agreement last week, due to the extreme market drop, I cannot follow through with the purchase," he said. "The diamonds were not yet delivered, and no other act of transaction (*kinyan*) was done,"

"We finalized the sale with *mazel u'brachah*," Mr. Fried immediately responded. "You know very well that in diamond commerce this expresses a final, binding deal! You can no longer retract. I'll sue you for breach of contract!"

"Between observant Jews, what halachic validity does that statement have?" argued Mr. Ganz. "You need an act of transaction! After such a market crash, I don't think that it's unethical to retract."

"I've been in the diamond business twenty years," Mr. Fried said. "I've never had such a thing happen!"

The two decided to approach Rabbi Dayan and accept his ruling. They asked:

"Is Mr. Ganz halachically allowed to retract?"

"Usually, a *kinyan* must be made for a transaction to be binding, whereas retracting from a verbal agreement carries only the stigma of *mechusar amana* - lacking trustworthiness," replied Rabbi Dayan. "Nonetheless, stating '*mazel u'brachah*' is considered a binding obligation in diamond commerce, according to many *poskim*." The *Gemara* (B.M. 74a) teaches that *situmta* - a common commercial practice of marking barrels to indicate that they were sold - is binding, even if a proper



BHI HOTLINE

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

L'CHAIM! BUT WHO PAYS?

Q. Two impoverished families were struggling to cover the costs of their children's wedding, cutting whatever corners they could. They spent quite some time making phone calls to find the least expensive whiskey to serve at the

wedding, but an hour before the *chasunah*, the store from which they ordered sent extremely expensive whiskey to the hall where the wedding was being held. Neither family understood why they had received that whiskey, and they figured that some kindhearted Jews must have paid for it to be sent, so they served it to their guests.

It turned out that the whiskey was delivered to the wrong address; it had been intended for a different event in a nearby *Beis Medrash*.

Who must pay for the expensive whiskey?

A. The most obvious culprit in this case is the delivery person, and if it is possible for the storeowner to get him to pay for the whiskey, that would be ideal.

If that is impossible, for some reason, we must consider whether anyone else is liable.

The *halachah* is that if a person died after renting a cow, and his children, mistakenly assuming the cow was his, slaughtered it and ate the meat, it is not considered *hezek* (damage) that they are required to pay for because it is an absolute *ones* (circumstance beyond their control). But they must pay for the benefit they derived from the meat, which *Chazal* estimated at two-thirds of its market price, because that is the type of discount that would entice a person to buy meat even if he had no plan to do so (*Shulchan Aruch*,

Helping You Navigate Monetary Halacha In Daily Life



BEIS HORAAH

Ask the Rav. Email correspondence / Arbitration and Mediation / Small Claims / Wills and Estate Planning / Halacha Hotline



AWARENESS & EDUCATION

Business Weekly / Hebrew Masa Umatan / Shiurim and Chaburis / Kollel Dayanis Choshen Mishpat Curriculum / Seferim & Publications / Self-learning Program / Halacha on the Daf



BUSINESS SERVICE DIVISION

Robbinical Consultation / Banking and Iska / Contract Drafting / Shabbos Initiative / Industry-specific Seminars

RABBONIM AND STAFF

BHI Brooklyn

- Harav Chaim Kohn
- Rav Yanason Katz
- Rav Shaul Neuman
- Rav Yisroel Rubinfeld
- Rav Bentzion Meisels
- Rav Moshe Y. Bochner
- Rav Yitzchak M. Pesach
- Rav Leibish Lemel
- Rav Moshe Y. Friedlander
- Rav Meir Orlian
- Rav Eluzer Gips
- Rav Naftuli Lerner

BHI Chicago

- Rav Zev Cohen
- Rav Yosef Wainkrantz
- Rav Yerachmiel Pickholtz
- Rav Gershon Schaffel
- Rav Shmuel Cohen

BHI Florida:

- Rav David Schoen
- Rav Yaacov Wineberg
- Rav Yisroel Moshe Janowski
- Rav Yisroel Webberman
- Rav Zecharia Zwiweg

profit with purpose

June 17-18 2024



Follow our campaign at

causmatch.com/bhi



CASE FILE

kinyan was not made. The validity of this action also depends on the common practice there, whether to subject the one who retracts to *mi shepara* (like when money was paid) or even to transfer ownership (C.M. 201:1).

"The *poskim* derive from this that actions that the *minhag hamedinah* considers as binding are tantamount to a *kinyan*. Other possible examples mentioned in *Shulchan Aruch* are a handshake or handing over the key to a property, where such common practices exist (C.M. 201:2).

"Nesivos (201:1) views *situmta* as a *kinyan d'Rabbanan*, whereas Chasam Sofer (Y.D. 314) and Dvar Avraham (1:1:3) view it as a *kinyan d'Oraysa*.

"Nonetheless, the *poskim* dispute whether a verbal statement alone can serve as *situmta*, in places where the common practice is to view verbal commitments as binding (*Responsa Rosh* 12:3; *Kesef Hakodoshim* 201:1; *Maharshag* 113-114).

"Therefore, some *poskim* write that '*mazel u'brachah* cannot be considered a valid *situmta* (*Haaros Kiddushin*, R. Eliyashiv, *zt"l*, p.5). Even so, it seems that *mazel u'brachah* is more than just a regular verbal statement. In diamond commerce, this is the code phrase for expressing a binding commitment and is mentioned in some trade laws. Thus, many *poskim* do consider *mazel u'brachah* as binding (*Pis'chei Choshen, Kinyanim* 10:2[3]; *Teshuvos v'Hanhagos* 1:803).

"Seemingly, though, the commercial practice of *mazel u'brachah* does not transfer ownership as other halachic *kinyanim*," concluded Rabbi Dayan. "Thus, for example, if the diamonds were stolen or otherwise lost, it remains Mr. Fried's loss. Rather, the common practice is that the parties are bound to the transaction, and that one who retracts is subject to monetary sanctions and potential lawsuits."

Verdict: According to many *poskim*, "mazel u'brachah" in diamond commerce is halachically binding as a form of *situmta*, common commercial practice. Therefore, one may not retract, and would be subject to the sanctions of one who breaches contract and retracts from a final sale.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Minhag Hamedinah
Common Commercial Practice
#22
Stolen Item

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

Q. I bought an item which turned out to be stolen goods. The owner already replaced the item and chalked it up as a loss. Must I return it to him?

A: According to the letter of *Halachah*, this constitutes *yei'ush v'shinui reshus* – abandonment and change of ownership, so that you have acquired the item. Nonetheless, there is a *middas chassidus* to return it to the owner (at least if he will reimburse you) (C.M. 356:3; 369:5; 259:5).

However, Rema (356:6; 368:1) rules that the practice now is to return the item even after *yei'ush* and *shinui reshus* on account of *dina d'malchusa*, but the owner must reimburse you. Some *Acharonim* question the applicability of *dina d'malchusa* to this case between Jews, but write that if the practice is to return the item in such cases, it is binding at least on account of *minhag hamedinah* (*Shach* 356:10).

Some explain that on account of the common practice, it is similar to a case of acquiring before *yei'ush* (*Tzemach Tzedek* C.M. #46; *Pis'chei Choshen, Geneivah* 3:21).

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



BHI HOTLINE

Choshen Mishpat 341:4 with *Sma* 10).

If, however, someone stole food and someone else ate it, the owner of the food may demand payment from either the thief or the person who ate it, who is also considered a thief (ibid. 361:5). Why is this case different from the case of the slaughtered cow? The *Rishonim* and *poskim* offer two approaches. Some explain that in the latter case, the eater is obligated to pay only if he knew that the food was stolen, or he intended to steal it from the original thief, which means that his eating was not an *ones*. In the former case, the orphans' claim that had they known that the cow did not belong to their father, they would not have eaten it is reasonable (*Ramban, Rashba, Ritva* on *Kesubos* 34b; see *Chavos Daas* 177:27 and *Erech Shai, Choshen Mishpat* 361).

Other *poskim* explain that in the latter case, even had the eater not known that the food was stolen, but he did intend to transfer it from someone else's possession to his own, he is obligated to pay (see, however, *Ketzos* and *Nesivos*, beginning of *Choshen Mishpat* 25). But if there was no attempt to acquire it for himself, as was the case with the orphans who ate the cow they thought they inherited from their father, they are not obligated to pay (*Machaneh Ephraim, Gezeilah* 7; *Shaar Mishpat* 72:31; *Zichron Shmuel* 56:7).

Applying these principles to our case, according to the approach of the first set of *poskim*, those who drank the whiskey obviously are not obligated to pay full price of the whiskey, only for the amount of pleasure they derived from it. But even according to the second approach, since they merely intended to drink the whiskey as guests at the wedding — not to acquire it (see *Even Ha'ezer* 28:17 and *Sfas Emes, Sukkah* 35a) — they are required to pay only for the pleasure they derived from it. In reality, this would be only a minimal amount per guest, and it would be extremely difficult to collect.

If the *mechutanim* were pouring drinks for their guests, however — or even if they placed it on the tables for the guests — then the *halachah* would depend on the two approaches above. According to the first approach, since they didn't know that the whiskey wasn't intended for their *simchah*, the situation is one of *ones* and they are not obligated to pay. But according to the second approach, since they did intend to acquire the whiskey, they are obligated to pay according to the *halachah* that applies to a thief. The *mechutanim* can ultimately rely on the *poskim* who say that they are not obligated to pay full price for the whiskey, but they will still have to pay for the pleasure they derived from having expensive whiskey at their *simchah*. (Even if the guests took the whiskey themselves, it is possible that the *mechutanim* are still obligated to pay for the benefit they derived, depending on a dispute between *Acharonim* on how to explain a *Tosafos* [*Bava Kamma* 101a, s.v. *O Dilma*; see *Shu"t R' Eliezer Gordon*, v. 2, *Bava Basra* 4b and *Ohr Samei'ach, Hilchos Nizkei Mammon* 3:2]).

The people who actually ordered the expensive whiskey for the other event are certainly not required to pay because they didn't receive what they ordered. So if the storeowner cannot collect from the person, he will have to absorb the loss.

Kvation
Kosher Rentals
Instantly Book at
kvation.com
Have a rental?
Free for hosts on kvation.com

לזכר נשמת ר' שמואל
בן ר' ראובן ז"ל וואלף

לזכר נשמת ר' שמואל בן ר'
דוד הכהן ז"ל

PLACE YOUR LOGO HERE IT WILL BE SEEN BY
30,000 PEOPLE
NL@BUSINESSHALACHA.COM
(877) 845-8455 #201

DISTRIBUTION IN LAKEWOOD IS
לעילוי נשמת ר' מאיר בן ר' ישראל ז"ל

CAPITALx10
WWW.CAPITALX10.COM
LOW RISK HIGH REWARD