

# 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

### LOST HAT

The school year was coming to an end. Yeshiva Emunas Torah had emptied out, and many of the *bachurim* were off to summer programs.

Shalom and Yosef lived locally and remained home for the summer. They went to learn in the yeshiva. Since the air conditioner was off in the *Beis Medrash*, they learned in one of the classrooms. Shalom noticed a hat on the floor.

"Someone must have dropped his hat and didn't know where he left it," he said.

"A chance to do *hashavas aveidah!*" Yosef responded.

Shalom picked up the hat and looked for a name inside. "There is no name," he said. "Not even embossed initials."

"What kind of hat is it?" asked Yosef.

"It's a Borsalino, like many of the hats here," replied Shalom. "I don't see any other specific identifying feature."

"Do you think that the owner realizes he lost his hat?" asked Yosef.

"For sure," said Shalom. "Everybody left last week, before Shabbos. The hat's in pretty good condition; much better than mine."

"Then maybe you can keep it," suggested Yosef.

"Do you really think so?" asked Shalom,

"I don't see why not," replied Yosef. "There's no name, no identifying feature, and you found it lying on the floor in a classroom!"

"I can still send out a message to all the *bachurim* that I found a hat," replied Shalom.

"What will that help?" said Yosef. "Even if someone would come and claim that he lost his hat, how could he identify it? What *siman* – identifying feature – can he give to show that it is his?"

Shalom called Rabbi Dayan and asked:

#### "Am I allowed to keep the hat?"

"The primary means of *hashavas aveidah*, returning lost items, is through *simanim*, identifying features," replied Rabbi Dayan. "Therefore, when a person loses an item without any identifying features, we presume that when realizes that he lost the item, he abandons hope of retrieving it – *yei'ush*. Whoever finds it afterwards can keep it" (C.M. 262:3).

"Even so, a person can often recognize his used possessions through slight, barely noticeable clues: a minor stain, wrinkle, scratch, etc. This is called *tevias ayin*, visual recognition. People can usually identify their hat on a shelf among others, even in the absence of definable *simanim*. In normal situations, we do not return an item based on *tevias ayin*, since we cannot necessarily trust the



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

### BROKEN BRIDGE

**Q.** My son learns in a yeshiva in Boro Park. He called me on a Thursday to tell me that the bridge of his rimless glasses broke. I told him to go to a local

optical store to have it fixed. Stores were already closing, but he found one store that was still open and had it repaired for \$65. When he returned to yeshiva, his friends pointed out to him that the new bridge did not match — the temples of his glasses are gold, and the new bridge is brown. He tried to return to the store to get it changed, but it was closed. The next day, Friday, he was planning to come home to Monsey, and the store here would replace the bridge for significantly less. Is he permitted to void the sale with the store in Boro Park and get it fixed in Monsey?

**A.** If someone purchased a defective item, the buyer may void the sale. If he used it after he realized it was defective, however, then he may no longer return it. Using the defective object constitutes an implied *mechilah*, forgoing his claim (*Shulchan Aruch, Choshen Mishpat 232:3 with Pis'chei Teshuvah 1*; see BHI issue #669). The same would seem to apply if he received a different item than requested (see *Shu"t HaRadvaz 4:1206*).

Therefore, if your son continued wearing the glasses after his friends informed him about the issue, this would be considered *mechilah*.

Yet there is a mitigating factor here that might cause his wearing the glasses not to be considered *mechilah*: if your son had to keep wearing the glasses when the store was closed because he truly needed them and had no other recourse. This is akin to a case discussed by the *poskim* in which someone bought a horse to go on a trip, and in the middle of that journey, he noticed that it was injured, and travelled back on it. The *poskim* rule that this is not considered *mechilah* since he was compelled to ride the horse — an *oness* — because he had no other way to travel (*Pis'chei Teshuvah 232:1*). In this case, however, since no other shop was open at that time, he would not have had glasses to wear without that store repairing it. As desperate as he may be for his glasses, he would not be permitted to use the bridge that belonged to that store without permission. If he would void the sale, he would retroactively have been stealing that bridge when he wore the glasses, so we assume that he chooses to forego his claim rather than be a thief.

But even if the buyer did not use the item after noticing the



## CASE FILE

person who claims it. He may say that he recognizes this item as his, without clear recognition of it.

However, the *Gemara* (B.M. 23b) teaches that a *talmid chacham* is believed with *tevias ayin*, when he is presumed to be honest and does not lie or bend the truth other than in certain specific areas in which a person is allowed to avoid stating the truth. Therefore, if the item is found in a place where *talmidei chachamim* are common, such as in a *yeshivah*, the finder is required to announce it and show it to them (C.M. 262:21)

Even if a place where *talmidei chachamim* are not common, if a *talmid chacham* comes and asks to see the item and recognizes it – it should be returned to him; he is believed that it is his. There is at least an element of *lifnim mishuras hadin*, like other situations in which the owner identifies the item after *yei'ush*, and perhaps even an absolute obligation (C.M. 259:5; *Minchas Pittim* 362:21; *Pis'chei Choshen, Aveidah* 5:16[35]).

"There are several other *halachos* that grant special monetary laws to *talmidei chachamim*. Although the *poskim* question whether they apply nowadays, here, since there is no actual loss to the finder, we apply this *halachah* (*Taz* 262:21; *Pis'chei Teshuvah* 262:2).

"Therefore," concluded Rabbi Dayan, "you are required to announce the hat, and return it if one of the *bachurim* claims that he recognizes it as his."

**Verdict: A *talmid chacham* is presumed honest and believed to recognize his lost item through *tevias ayin*, visual recognition. Therefore, where *talmidei chachamim* are common, one should announce even an *aveidah* without definable *simanim*.**



## MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

**MONEY MATTERS**  
Minhag Hamedinah  
Common Commercial  
Practice #24  
Uniform

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

**Q. I work as a bus driver for a certain company, which provided shirts with the company's emblem as a uniform? When I leave the company, can I keep the shirts?**

A: In a case that the employer did not stipulate anything when granting clothing, Ketzos (331:2) cites the Rosh, who differentiates whether the worker left early – in which case he must return them -- or upon completing his employment term – in which case he can keep them. However, *Minchas Pittim* (331:3) writes that other *Rishonim* argue, and allow the employer to demand the clothing back even if the worker completed his term.

Nonetheless, several *Acharonim* write that regarding a uniform, which is intended for use only during work, clearly the owner can demand it back when the worker ceases employment (*Shevet Halevi* 4:220; *Pis'chei Choshen* 7:9[23]).

Like other aspects of employment, though, if there is a common commercial practice regarding returning clothing, books, programs or other professional materials, we follow the *minhag hamedinah* (C.M. 332:2).

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defect, some *poskim* still maintain that he might have forgone the opportunity to void the sale.

The Maggid Mishneh (*Hilchos Mechirah* 15:3, cited in *Sma* 232:10) writes that if the buyer could have inspected the object for defects and chose not to, it is considered *mechilah*. The majority of *poskim* limit this ruling (see *Pis'chei Teshuvah* *ibid.* 1; see *Mateh Shimon* 233, *Hagahas Tur* 1).

Some say that the Maggid Mishneh's ruling applies only if the buyer had an opportunity to inspect the item *before* the sale was finalized and didn't do so (*Shu"t Shvus Yaakov* 3:169; *Terumas Hakri* 232). Others write that having an opportunity to inspect is considered a *mechilah* only if he used the object without inspecting it (*Nesivos* *ibid.* 1).

According to these approaches, in your case, it is possible that even if your son did not notice the issue when he wore the glasses, it might still be considered *mechilah*.

But other *poskim* limit the ruling of the Maggid Mishneh to cases of a defect, in which the object is what the buyer intended to purchase, so we can assume that if he chose not to inspect it for defects, then it is *mechilah*. But if the item the seller delivered wasn't what the buyer agreed to purchase, we cannot assume that his not inspecting it means that he accepted the substitution (*Shu"t Pnei Moshe [Benvinisti]* 2:55; see *Nesivos* *loc. cit.*; cf. *Shu"t HaRadvaz* 4:1206).

Others write that if it is uncommon for a mistake to have occurred, and there was no reason for the buyer to inspect it, then his failure to inspect it does not constitute a *mechilah*, and he may void the sale when he realizes that the item he received was defective or not what he ordered (*Chochmas Shlomo* and *Mishpat Shalom* 232:3; *Maayanei Chochmah, Bava Metzva* 60a; see *Pnei Moshe* *loc. cit.*)

Especially, if the buyer clearly would not have agreed to accept the merchandise that was actually delivered — such as in your son's case, in which no one would wear glasses in which the bridge and temples do not match — even the Maggid Mishneh agrees that in the case of a severe defect, the buyer's failure to inspect the item is not considered *mechilah* (*Shu"t Beis Shlomo, Choshen Mishpat* 62).

Given all of the above, if your son did not wear the glasses once his friends pointed out that the bridge didn't match, then he may void the sale. But if he did wear them, then it is subject to the above discussion regarding *ones*.

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