

BUSINESS WEEKLY

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



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זכות חודש אדר נתנדב ע"י ידידינו ר' יהושע עסטרייכער נ"ר לע"נ אביו ר' חיים משה יוסף בן ר' צבי ז"ל ת.נ.צ.ב.ה.



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

PARAH ADUMAH

Enter a time machine, backward or forward...

"The available ashes of the *Parah Adumah* are dwindling," said the *Kohen Gadol*. "People will be coming for Pesach to the Beis Hamikdash, and there might not be enough ashes to mix in the water and sprinkle on all of them, to purify them from defilement to the deceased."

"We will send out emissaries to locate and purchase a *Parah Adumah*," concurred the Temple treasurer.

The emissaries, accompanied by Rabbi Dayan, went from ranch to ranch, checking all the auburn cows (the *Parah Adumah* was reddish-brown). However, almost invariably, upon careful inspection, they found two black hairs, which disqualified the cow from being used as a *Parah Adumah*.

Finally, in Mr. Braun's ranch, they found an auburn cow, without black hairs.

"We'd like to buy this cow," the emissaries said. "How much does it cost?"

"I sell my cows mostly by the pound; cows generally run about \$1,500 apiece," Mr. Braun replied. "I must say: I've never had any buyer check an animal so thoroughly!"

"I have to share something with you," Rabbi Dayan said. "We are seeking a *Parah Adumah*, which will be slaughtered on Har Hazeisim to make ashes to purify people coming to the Beis Hamikdash. This is not a regular cow for milk or breeding. It's worth more than a regular cow."

"Then I'll sell for \$10,000!" said Mr. Braun.

"Deal!" said the emissaries.

After they left, Rabbi Dayan said, "Mr. Braun could have asked for \$20,000 or even \$50,000, and you would have paid. You got a good deal!"

"Why did you say anything?!" asked the emissaries. "Had you not told him it's for use as a *Parah Adumah*, we could have bought it for \$1,500, like any other cow!"

"There must be a reason," said one emissary. "Let Rabbi



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

DRUNKEN DONATION

Q: On Purim, I collected money for hachnasas kallah, and one person I visited, who was highly inebriated, gave me a

significant sum of money.

Do I have to be concerned that perhaps he gave me that much only because of his impairment? Should I therefore offer to return the money?

A: The *halachah* is that any transaction a drunk person engages in — i.e., he buys, sells or gives something as a gift — is final, unless he has reached the level of impairment of Lot (Avraham's nephew), who drank to the point of severe intoxication. At that level of impairment, he is considered a *shoteh* (imbecile), whose actions have no halachic validity (*Shulchan Aruch, Choshen Mishpat* 235:22). It would appear, then, that you must try to ascertain whether that donor had reached the level of inebriation of Lot, and if he did, you must return the money.

The question is what "drunk as Lot" means; the *poskim* struggle to delineate what it means that a person does not know what he is doing and is therefore akin to a *shoteh* (see *Toras Emes* (Sasson) 154).

We find, for instance, that if a person is on the level of Lot's inebriation and he instructs people to write a *get* for his wife on his behalf, we do not follow his instructions (*Even Ha'ezer* 121:1), but the *Kadmonim* write that there are instances in which it can be uncertain whether the person has actually reached that level of inebriation (see *Beis Yosef*, *ibid.*, and *Aruch Hashulchan*, *ibid.* 5).

Some write that a person is considered to have reached Lot's level of inebriation only when he has no idea of what he is doing, just as Lot was unaware of what he was doing (*Bereishis* 19:33. But see *Rashi*, *ibid.*; [and *Nazir* 23a; and *Gur Aryeh*).

If, when he sobers up, he remembers what he did, then he is not considered to have been inebriated as Lot, and his transactions are binding (*Maggid Mishneh, Yibum* 2:4; *Pri Chadash, Even Ha'ezer* 121:3).

Some *poskim* add that if he recalls only some of what he did, like someone who recalls part of a dream but can't determine whether it happened one way or another, then he was considered as inebriated as Lot (*Maharitzatz*

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CASE FILE

Dayan explain."

"Why did you alert Mr. Braun that the cow was a *Parah Adumah*?"

"Rare items, such as a *Parah Adumah*, do not have a definable 'fair market value,'" replied Rabbi Dayan. "Therefore, according to many authorities, there is no *ona'ah* (unfair pricing) claim (*Hilchos Mishpat* 227:29[28]).

"Nonetheless, clearly a *Parah Adumah* is worth much more than a regular cow, so paying the cost of a regular cow is deceitful!

"Moreover, some maintain that because of the item's special status, it is considered a different item from a regular cow. Thus, if Mr. Braun was unaware of the special character of his cow, it is considered a *mekach ta'us* — a mistaken sale, like one who intended to sell a cow and sold a deer. Or, at least, like one who stipulated to sell low-grade wheat and mistakenly sold high-quality wheat, in which case the seller can retract (*C.M.* 233:1; *Pischei Choshen*, *Ona'ah* 10:13[25]).

"Thus, if I hadn't alerted Mr. Braun that his cow is not a regular one but rather has special value, there could be *geneivas daas*, and, moreover, he could possibly even claim to void the sale!

"A similar situation can arise in day-to-day commerce regarding collector's items, such as a stamp dealer who buys stamps from someone and notices that there is a rare mistake in a stamp so that it has great value.

"According to this opinion, the dealer may not feign that he is buying a regular stamp for the standard price but must alert the seller to the fact that the stamp is irregular and worth more.

"Nonetheless, he does not have to tell him the full value of the rare stamp, but it suffices to say that this stamp is irregular and worth more than usual. This is because there is no clear value so that *ona'ah* does not apply, and it is no longer *geneivas daas* or like buying a different quality item. [Of course, the dealer may not mislead the seller and falsely say that it is worth less than he evaluates it but can offer what he wants.]

"Furthermore," concluded Rabbi Dayan, "if the dealer bought a collection, without evaluating the value of each and every stamp but rather priced the entire lot, the rare stamp is included and the seller would have no claim" (*C.M.* 227:28).

Verdict: If a buyer realizes that an item has exceptional qualities granting it hidden value more than usual, and the seller sells it unaware, there is potential *geneivas daas* and even concern of *mekach ta'us*.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS

Pesach and Chametz

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Kinyanim of Mechiras Chametz

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

Q: How does the non-Jew acquire my chametz from the Rabbi?

A: We should first clarify that you do not sell your chametz to the Rabbi but rather appoint him as your agent to sell it directly to the non-Jew.

To effectuate the sale, especially since the non-Jew does not take physical hold of the chametz, numerous kinyanim are done (*Mishnah Berurah* 448:17,19):

Kesef — The non-Jew makes a small cash payment. The remainder is granted to him as a loan due right after Pesach.

Chatzer — You authorize the Rabbi also to rent to the non-Jew the location where the chametz is sitting so that he can acquire it through kinyan chatzer.

Agav — The Rabbi stipulates that the non-Jew should acquire the movable chametz along with the real estate rental of the location of the chametz.

Shtar and Situmta — The Rabbi and the non-Jew sign a legal contract confirming the sale and shake hands on the deal. Both actions may be binding as commercial practice (*Aruch Hashulchan* 448:21).

Chalipin — The non-Jew hands the Rabbi a handkerchief or other item as a symbolic exchange.

Odisa — The Rabbi admits that the chametz is sold to the non-Jew, which itself can serve as a kinyan (*Ketzos* 194:3).

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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211, according to *Kapei Aharon* v.2, *Yoreh Dei'ah* 16, cited in *Taalmos Lev* 32).

Some *poskim* rule that in regard to monetary transactions (i.e., as opposed to *gittin* or *yibbum*), even if the person does remember what he did but was unable to weigh the ramifications of his actions at the time he performed them, he is considered to have been as drunk as Lot, and those actions were not binding. According to this approach, when the *Shulchan Aruch* states that "inebriated as Lot" means that the person doesn't know what he is doing, it means that the person doesn't understand the consequences of his actions (*Get Mekushar* [Bulah] 16:1. This also appears to be the approach of Rav Hai Gaon [*Sefer Hamekach* 3]; *Talmos Lev*, loc. cit.; see also *Ohr Somei'ach*, *Hilchos Yibbum* 2:4).

Returning to your *she'eilah*:

If the donor was so drunk that he had no idea what he was doing, then you must either return the money or ask him whether he allows you to keep it.

If he was merely high and was incapable of weighing the ramifications of his actions, the *poskim* dispute whether his actions are binding, and because you are the *muchzak* (in possession of the money), you are entitled to keep it (see *Choshen Mishpat* 235:21).

If he was even less inebriated, then his actions are certainly final.

There is an additional consideration that is specific to this situation. Because this person began the Purim *seudah* knowing that he might get drunk, and he kept money on him with the intention of distributing it to *tzedakah*, then if you believe that he drank only to the level of inebriation that he is accustomed to achieving, his actions are binding, because had he wanted to avoid giving out that much money, he should have deposited his cash with someone who was planning not to drink (*Shulchan Aruch*, *Orach Chaim* 695 and *Yam Shel Shlomo*, *Bava Kamma* 3:3).



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