



BUSINESS WEEKLY

Restoring the primacy of Choshen Mishpat

WERDIGER EDITION

Issue #310 | Behar | Friday, May 27, 2016 | 19 Iyar 5776

UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

FIREWOOD

The fiery spirit of Lag BaOmer was in the air! Groups of children, of all ages, were scavenging for whatever scraps of wood and branches they could find. They hauled the wood to an abandoned lot, where each group piled its wood to prepare a bonfire honoring Rabi Shimon bar Yochai.

Mostly the wood was individual branches or pieces of lumber. Sometimes the children would come upon a "treasure," a broken wooden pallet tossed from a construction site.

"Look!" seven-year-old Shlomie called out to his friends, "Someone put out a broken coffee table for garbage collection." He loaded the broken table onto his cart and transported it to the wood pile, to be burned in the bonfire.

Yankel, a ninth-grader, saw them dumping the table on the wood pile.

After Shlomie and his friends returned home, Yankel went over and examined the table. "It needs some repair," he said to himself, "but would be just right for our clubhouse. The little kids are foolish to burn this."

"Look what these kids plan to burn!" Yankel exclaimed to his friend, Boruch. "This table would be perfect for our clubhouse. Help me take it over."

"You can't take it without their permission," said Boruch. "They found it and it's theirs! If you want, we can offer them other wood tomorrow, in place of the table."

"Do you really think it's theirs?" asked Shlomie. "They're only kids."

"Why not?" responded Boruch. "They found it. What difference does the age make?"

"You really think that a child has *daas* (legal intent) to be able to acquire something?" said Shlomie. "It's probably still considered *hefker* (disowned property)!"

"I think it's theirs," insisted Boruch.

"Let's check with Rabbi Dayan on the way home!"

"A child acquires a *hefker* (disowned) item that he found," said Rabbi Dayan. "The precise halachic status of this acquisition is a fascinating discussion, though."

"Oh, really?!" said the boys. "Could you please explain?"

"Although a minor does not have legal intent (*daas*), the Sages instituted that taking from a child what he found is considered theft *mipnei darkei shalom* (to avoid fights)," explained Rabbi Dayan. "Therefore the *Gemara* explains that the thief must return what he took, but it is



BHI HOTLINE

REFUNDS AND REBUKES

I went to the supermarket and purchased something that was on sale. After checking out I looked at the receipt and

noticed that I was charged the regular price rather than the sale price. At the time I didn't say anything since I felt uncomfortable because the day before I had to alert them about being overcharged for another item. After returning home I decided that I should go back and ask for a refund since the item was on sale.

Q: Am I permitted to go back to the store and ask for a refund for not receiving the sale price?

A: In a previous issue (*Business Weekly*, Issue 195) we explained that while an item is on sale, the sale price is considered its price. Consequently, if the item scans at the regular price rather than the sale price, the store has stolen from its customers. Even if it was done inadvertently, the stolen money must be returned.

Accordingly, when one realizes that he was overcharged, he may ask for a refund. Even if he did not realize it for an extended period of time, he may ask for a refund. The time limitation that *Chazal* placed on demanding a refund (*C.M. 227:7*) is limited to collecting money when one was overcharged (*onaah*); it does not apply when recovering stolen funds. When there is a fixed price for an item and the seller collects more money than the agreed upon price, the overcharge is categorized as theft, rather than *onaah*.

However, since you realized that you were overcharged while you were in the store but decided not to pursue a refund, there is a dispute whether your mental decision to forgo the money (*mechilah b'lev*) is binding (*Ketzos 12:1; Nesivos 5*). Many authorities maintain that a mental decision to forgo

Annual BRUNCH
Sunday, May 29, 2016

Mark Your Calendar:
YOU'RE INVITED TO BHI'S ANNUAL BRUNCH

SHMIRAS SHABBOS AND MODERN COMMERCE

Learn what you need to know about Shmiras Shabbos and Modern Commerce

THE HALACHIC angle
RABBI CHAIM KOHN, SHLITA
Dean Business Halacha Institute

THE BUSINESS angle
AVI SCHRÖN,
Principal Connolly's International

THE LEGAL angle
STEVEN GOLDSCHMIDT, ESQ.
Connolly's International

SUNDAY, MAY 29 | 10:00-12:30
1937 OCEAN AVENUE BROOKLYN, NY 11230

PLEASE CONTACT BHI TO PLACE YOUR AD.



STORY LINE

not enforceable in *beis din* (against the opinion of R. Yosi that the Sages instituted enforceable ownership)" (*Mishnah Gittin* 59b; *B.M.* 12a).

"Elsewhere, though, the *Gemara* (*Gittin* 64b) teaches that a young child who discerns between a worthless item, such as a stone, and a usable one, such as a nut (*tzror v'zorko, egoz v'notlo*) acquires for himself, but not for others," continued Rabbi Dayan. "It indicates that he has full legal acquisition, even of Biblical nature" (*Nekudos Hakesef, Y.D.* 305:11).

"How do we resolve this discrepancy?" asked Boruch.

"Many *Rishonim* distinguish between something that the child found and took on his own, which is only Rabbinic *mipnei darkei shalom*, and something granted to him by an adult," replied Rabbi Dayan. "When an adult grants, his intent can transfer (*daas acheres makneh*), so that even a young child acquires from him with Biblical nature" (*Rama, C.M.* 243:15; 270:1; *Pischei Choshen, Kinyanim* 11:31; *Aveidah* 9:23).

"The Shach (*C.M.* 243:6), however, questions this distinction and rules based on the Yerushalmi that even a young child acquires what he finds with full Biblical, legal capacity," added Rabbi Dayan. "He applies *darkei shalom* to a very young child, below the age of discernment. Later *Acharonim*, though, reject the Shach's interpretation of the Yerushalmi. They accept the Rama's distinction between an item taken by the child and one granted by others, whereas a very young child does not acquire at all" (*Machaneh Ephraim, Zechiya* #4; *Ketzos* 243:5; *Nesivos* 243:9).

"Regardless," concluded Rabbi Dayan, "those children acquired the broken table and it cannot be taken without their permission."



MONEY MATTERS

RENTALS #4

Confirming the Rental Part II

(Adapted by Rabbi Meir Orlan from the writings of Harav Chaim Kohn, shlita)

Q: Does signing a rental contract or confirming via e-mail or the internet make a rental agreement binding?

A: Real estate is acquired through *shtar*, a contract that the seller hands to the buyer stating that he sells him the property. Similarly, a rental contract that the landlord hands to the renter for the purpose of finalizing the agreement would make it binding (*C.M.* 191:1, 3; 315:1).

Simply signing a rental contract, however, would not be included in *shtar* if it were not handed over. Nonetheless, it would likely be binding nowadays based on *situmta*, the common commercial practice (*C.M.* 201:1).

Similarly, any common commercial practice would make the agreement binding. The Rosh writes that a practice to finalize through speech alone, with no additional action, is not binding, whereas the Radbaz rules that even such a practice is binding (see *Minchas Pitim* 176:3). The current practice is that an e-mail or web confirmation is also binding.



BHI HOTLINE

a claim is binding only when it is clearly evident that the person decided to forgo his claim. On the other hand, if he became aware of an error before the transaction was completed and completed the transaction nonetheless, he may certainly not demand a refund.

It is important to point out, that as uncomfortable as it may be, you should inform the store owner that he is overcharging for the item and that the additional money that he takes is stolen. One basis for this obligation is the *mitzvah* of *hashavas aveidah* – returning lost objects. This *mitzvah* includes preventing others from suffering a financial loss, in this instance, the future customers who will be overcharged.

A second reason you must speak to the owner is the *mitzvah* of *tochachah* – rebuke. The Torah commands us to rebuke potential sinners to prevent them from sinning. One may not be satisfied with the fact that he is not sinning and disregard others who sin (Rambam, *Sefer Hamitzvos, Assei* 205). The root of this obligation stems from the principle, *kol Yisrael areivim zeh lazeh* – all Jews are responsible for one another (*Sotah* 37b). Therefore one must make an effort to prevent someone else from sinning. One who refrains from protesting a transgression that he was capable of protesting is punished for that transgression (*Shabbos* 54b). Many people erroneously think that only Rabbanim have an obligation to rebuke others, but the truth is that the obligation applies to everyone (*Ruach Chaim, Avios* 2:1). In light of the above, you must certainly communicate with the store owner so that he should refrain from continuing to overcharge his customers. Additionally, an effort should be made to rectify the transgressions that were already committed.

For questions on monetary matters,
Please contact our confidential hotline at 877.845.8455
ask@businesshalacha.com

To subscribe send an email to subscribe@businesshalacha.com or visit us on the web at www.businesshalacha.com

The Business Weekly inspires and informs thousands across the world.
Sponsor a week to join us in this mitzvah.
Email sponsor@businesshalacha.com to reserve your week.

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

