



# BUSINESS WEEKLY

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Restoring the primacy of Choshen Mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlian

### RECOVERED COAT

Mr. Meyer bought a new Shabbos overcoat, 100-percent wool. He had it checked for *shaatnez* and put his name on the label.

One Friday night, when *davening* was over, Mr. Meyer realized that his coat was missing from the coat rack. Nearby hung a similar coat. He waited to see if somebody would claim it, but the shul emptied and the other coat remained.

"I guess that someone mistakenly exchanged coats," Mr. Meyer said to himself. He left the coat there, hoping that the other person would return Shabbos morning or the following week. He checked the coat rack weekly and posted a sign in shul, but his coat was not returned.

After a month, Mr. Meyers decided to take the other coat home. "Otherwise, this coat is liable to get lost," he reasoned. "This way, if the other person ever returns my coat, I'll be able to return his."

Pesach arrived, but Mr. Meyer's coat was not returned. "I guess the coat is gone for good," he finally told his wife.

The following winter, an acquaintance, Mr. Goodman, asked Mr. Meyers: "Did you ever check *shaatnez* on your coat?"

"No," replied Mr. Meyers with a puzzled look. "Why do you ask?"

"Last February I bought a woolen coat on eBay," Mr. Goodman said. "I saw your name on the *shaatnez* label."

"You're kidding!" exclaimed Mr. Meyer. "That's my missing coat! Someone exchanged coats with me last year in shul. Funny that it wound up in your hands!"

"Please take the coat back then," said Mr. Goodman.

"But you bought it in good faith and paid for it," said Mr. Meyers. "It's yours!"

The two decided to approach Rabbi Dayan.

"Whom does the coat belong to?" asked Mr. Meyers. "And what about payment?"

"When someone takes an item belonging to another, the owner retains ownership of it," replied Rabbi Dayan. "The thief has a *mitzvah* to return the item, so long as it is intact, even if the owner subsequently abandoned hope (*yei'ush*) of retrieving it."

"What if the thief sold or gave the item to a third party?" asked Mr. Goodman.

"This is called *shinuy reshus* — change of possession," answered Rabbi Dayan. "As long as the owner retained hope of retrieving his item it remains his,

### DID YOU KNOW?

**Buying and/or serving non-kosher food in business settings can present *shailos* of benefiting from *basar b'chalav* and *shailos* of doing commerce with *neveilos*?**

If your business purchases and/or serves non-kosher food, please speak to your Rav or contact the Business Halacha Institute for guidance.



## BHI HOTLINE

### UGG SHATNEZ SHOES

I purchased a pair of Ugg kids' canvas shoes. I was subsequently informed that

they contain *shaatnez* that cannot be removed.

**Q:** Do I have the right to a refund, or can the merchant refuse to issue one since he was unaware that they contain *shaatnez*?

**A:** A defect cancels a sale when most people would return it because of the defect (*C.M.* 232:6). Accordingly, discovering *shaatnez* in a garment purchased in a store owned by *frum* people qualifies as a defect and the sale is void, even though nothing was stipulated (*Mishpat Shalom* 232:6; see *C.M.* 232:11). Although the merchant was not aware or expected to know that the garment contains *shaatnez*, the sale is void (*C.M.* 232:18).

Whether the sale is void if the *shaatnez* could be removed depends on how much *shaatnez* is present. If replacing the *shaatnez* with other material is extensive and essentially creates a new garment, the sale is void. If replacing the *shaatnez* is not that extensive, the sale is valid but the merchant must pay for the *shaatnez* removal (*C.M.* 232:5; *Nesivos Chiddushim* 7 — see issue 317). If the *shaatnez* is minimal and could be removed for a nominal fee, the garment is not considered defective, since most people would not return a garment in such a case, nor may the customer even demand a refund for the expense of removing the *shaatnez*.

**Q:** If the merchant posts a sign stating that he is not responsible for *shaatnez*, does that protect him from responsibility?

**A:** A customer may void a sale if the merchandise is defective, even if the merchant stipulated that he will not accept returns of defective merchandise, unless the specific defect was disclosed. The reason is that the customer can claim that he did not take the merchant seriously and assumed that the stipulation was added to give the customer confidence



## STORY LINE

and the third party is required to return it. Nonetheless, *Chazal* instituted a *takanas hashuk* (commercial enactment) that the owner, if he wants his item back, must compensate the third party whatever he paid in good faith, whether at value, more, or less" (C.M. 356:2;8).

"What if the owner abandoned hope?" asked Mr. Meyer.

"If both factors are present — *yei'ush* and *shinuy reshut* — the purchaser acquires ownership of the item," replied Rabbi Dayan. "Since the owner severed his connection with the item and it was transferred from possession of the thief to a third party, the purchaser does not have to return it."

"Does the order of these two factors make a difference?" asked Mr. Goodman.

"The *Shulchan Aruch* (C.M. 353:3, 356:3, 362:3) cites the Rambam that the order does not matter," answered Rabbi Dayan. "However, the Rema rules like other *Rishonim* that *yei'ush* must come first. *Shinuy reshut* is effective only *after* the owner abandoned hope of retrieving the item. Otherwise, the third party becomes responsible to return it. Most later authorities rule like the Rema" (*Shach* 353:4; *Pischei Choshen*, *Geneivah* 2:[42]).

"Mr. Goodman bought the coat in February, before Mr. Meyers abandoned hope," concluded Rabbi Dayan. "Therefore, he must return it. Moreover, Rema rules that the practice is to return even after *yei'ush* and *shinuy reshut*, in accordance with *dina d'malchusa* (civil law). Later authorities explain that *Halachah* encourages doing so anyway, *lifnim mishuras hadin*, and it became the common practice enacted among Jews. Nonetheless Mr. Meyer must compensate Mr. Goodman whatever he paid, because of *takanas hashuk*" (*Rema* 356:7; *Shach* 356:10; *Pischei Choshen*, *Geneivah* 3:21).



## MONEY MATTERS

### INHERITANCE #25

#### Shechiv Maira

(Based on writings of Harav Chaim Kohn, shlita)

To complete the topic of inheritance, we will mention the concept of *shechiv maira* — lying ill. *Chazal* instituted that a person who is ill and gave instructions to distribute his assets out of concern that he might die — his words are binding after his death, as if a *kinyan* was made in his lifetime, so that the person should not panic. This grant is presumed to be conditional upon his death from this illness, so that if he recovers, his statements are null and void (C.M. and *Sma* 250:1-2).

The person must either mention that he is granting the assets due to fear of death or distribute all his assets, in which case we presume that he did so due to fear of death (C.M. 250:4, 7).

If assets are granted to beneficiaries that are not halachic heirs, the person must use a language of "giving," not one of inheritance (C.M. 253:2).

Thus, if someone said during his final illness to grant or give his assets according to his will, there is additional halachic basis to uphold this division.



## BHI HOTLINE

in the purchase, not to communicate the presence of an actual defect (C.M. 232:7; *Sema* 15). Therefore, in this situation generic notice to the customers is insufficient. The merchant must inform the customer specifically that the garment contains *shaatnez*.

*Poskim* discuss whether a merchant can absolve himself of responsibility by informing the customer that the merchandise "may" have a specific defect and does not take responsibility if it does. Obviously if the merchant knows that the merchandise is defective and pretends to not know in order to mislead the customer, the sale is void (*Shevus Yaakov* 2:166, cited by *Pischei Teshuvah* 4).

Some authorities maintain that even if the merchant is uncertain whether the merchandise is defective, the customer does not forfeit his right to void the sale. Since the customer was not sure whether it was defective, we cannot say that he knowingly accepted defective merchandise. This is comparable to a customer who states generically that he accepts any defects, but that statement is not a binding agreement. Others contend that the matter is subject to debate (*Machaneh Ephraim*, *Shutfim* 6) and the party that is *muchzak* — in possession of the disputed item — cannot be forced to pay (*Mishpat Shalom* 232:7).

However, some authorities write that stipulations exempting the merchant of liability regarding *shaatnez* are not effective, even when parallel language is effective regarding other defects. The reason is that it is prohibited to sell a garment that must be checked for *shaatnez* without informing the customer. Therefore, the merchant's declaration is understood to be a warning about the prohibition rather than a stipulation that the customer may not return the garment if it contains *shaatnez*, unless the merchant explicitly states that he will not accept a return, even if the garment is found to contain *shaatnez* (*Malbushei Yesha* 1:[18]).

For questions on monetary matters,  
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