

BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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STORY LINE

by Rabbi Meir Orlian

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Out of Luck

At the annual dinner of Kollel Toras Rashbi there was a limited raffle for a plane ticket to Israel. "Only 100 raffle tickets will be sold," the sign read. "\$25 and you might be at Rabi Shimon bar Yochai's kever in Meron next year!"

Toward the end of the meal, Mr. Simon, the director of the Kollel, announced: "And now, the Meron raffle!" He put the raffle tickets into a box, mixed them around and pulled out a name. "Mr. Strauss!" he declared. "Enjoy next year in Meron!"

While Mr. Strauss was being congratulated, Yankel noticed a raffle ticket lying on the floor. "Hold it!" Yankel said to Mr. Simon. "There's a raffle ticket belonging to Hillel that was not in the box."

Mr. Simon examined the raffle ticket. "You're right," he said to Yankel. "Hillel's

ticket was left out inadvertently."

Mr. Simon asked Hillel to come over. "We'll refund your money," Mr. Simon said to him.

"I want a fair chance at the plane ticket," objected Hillel. "If the raffle was erroneous, you'll have to redo it!"

Meanwhile, Mr. Strauss overheard the discussion. "I'm willing to share the prize with you," he offered Hillel. "I'll give you \$100; it's much better for you than the 1-percent chance of winning if we redo the raffle."

Hillel thought for a minute. "OK, deal" he said. "Leave it as is," he said to Mr. Simon. Yankel complained, though. "The lottery was not done properly," he said. "It's got to be redone."

"What's wrong?" Mr. Strauss said to him.

"Hillel doesn't mind. You didn't lose out. If anything, your chances were higher because Hillel was left out!"

"Nonetheless," said Yankel, "the lottery was erroneous and needs to be redone!"

"Rabbi Dayan is sitting here with us," Mr. Simon said. "Let's ask him!"

"Hillel's ticket was omitted from the raffle," Mr. Simon said to Rabbi Dayan. "The winner is willing to settle with him, but another participant wants to invalidate the lottery entirely. Must it be redone?"

"If the lottery was done improperly, it is null and void," replied Rabbi Dayan. "Any participant can insist that it be redone."

"What is the source for this?" asked Mr. Strauss.

"The Gemara (B.B. 106b) teaches that if two brothers divided their inheritance

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Ribbis and Diamonds

I recently attended one of the Business Halacha Institute's seminars at the diamond club and heard that a vendor may not offer his customers two-tiered pricing. This raised the following question for me. I am a diamond broker and often I approach a wholesaler for a diamond that costs, for example, \$50,000. For such a diamond I would like \$2,000 in commission, but the wholesaler refuses to sell me the diamond for \$50,000 if he has to pay me \$2,000.

I respond that if he were to sell the diamond to another broker for \$52,000 (\$50,000 for the wholesaler and \$2,000 commission for the broker) he would have to wait the customary sixty days to receive his money. Since I am prepared to pay for the diamond immediately, it is advantageous for him to sell it to me for \$48,000 (so I can sell it to my customer for \$50,000 and earn my \$2,000 commission) since I will pay him that amount immediately.

FROM THE BHI HOTLINE

Q: Would such an arrangement also be prohibited as a form of two-tiered pricing?

A: For the sake of all our readers we will explain the mechanics of two-tiered pricing. In many industries it is common for a vendor to offer a lower price for customers who will pay immediately and a higher price for credit sales. This two-tiered pricing is often a form of ribbis. The higher price that the vendor charges for purchase

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through a lottery, and a third, unknown brother arrived later, the lottery is null and void and must be redone,” answered Rabbi Dayan. “The Shulchan Aruch rules, based on Tosafos, that this is true even in the following case: There were three fields and two brothers initially took one field and half of the third, and the heretofore unknown brother received the third field through a second lottery. The two brothers can insist on redoing the lottery also on the remaining two fields, even though the third brother has no claim on those fields” (C.M. 175:3).

“How does that apply here?” asked Mr. Simon.

“The Chavos Yair (#61) applies this to our case, where a name is omitted from the raffle,” explained Rabbi Dayan. “Any participant can invalidate the lottery, even though he suffers no direct loss to warrant that the lottery be redone on account of the mistake. The same is true if someone’s name is entered

twice, whether that person won or not” (see Pischei Teshuvah, C.M. 175:1; Pischei Choshen, Kinyanim 21[32].)

“What is the logic?” asked Mr. Simon.

“The Chavas Yair explains that a lottery is dependent on the good fortune that Hashem grants,” replied Rabbi Dayan. “It says in Mishlei (16:33), ‘[When] the lot is cast ... its entire judgment has been decided by Hashem.’ Thus, when the lottery is not just, it cannot be expected that Divine assistance was associated with the lottery.”

“What if no one complains?” asked Mr. Simon. “Must the lottery still be redone?”

“Mishneh Halachos (3:193) infers from the Chavas Yair that only if someone demanded redoing the lottery is it necessary,” answered Rabbi Dayan. “However, if all the participants accepted the results of the lottery, it is not necessary to redo it, despite the error.”

on credit is essentially an interest fee and is prohibited (Y.D. 173:1).

Now, if you were truly working as a broker, the issue would be much more severe than a case of two-tiered pricing (which is violated only when the buyer opts to pay the higher price at a later date). A broker who takes a diamond from a wholesaler does not have to pay for that merchandise until he finds a customer who purchases it. Therefore, if a broker pays a wholesaler for a diamond before selling it to a customer, that money is a loan from the broker to the wholesaler and in your case, if you loaned the wholesaler \$48,000, which he then repays with a \$50,000 diamond, it would be a violation of ribbis in the context of an actual loan which, as mentioned, is more severe.

After discussing the matter with wholesalers, we realized that although you generally conduct yourself as a broker, in this transaction you would be purchasing the diamond rather than acting as a broker.

The reason is that in contrast to a broker, in your case when paying for the diamond the sale is final and if something were to happen to the diamond it would be you, the “broker,” who would suffer that loss. Thus, you are not loaning the wholesaler money; that money affects the actual sale of the diamond.

Accordingly, the offer that you tendered to the wholesaler is permitted since in your case if it will be sold immediately, the wholesaler is offering only one price, \$48,000 for immediate payment.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, please contact our confidential hotline at 877.845.8455 :: ASK@BUSINESSHALACHA.COM

Completing the Transaction # 8

MONEY MATTERS

Q: I sold my house, and agreed to sell also the sofas and dining room set for an additional cash payment when moving out. Can I retract on the furniture sale and take the furniture with me instead of payment?

A: If the agreement stated that the sofas and dining room set were to be sold simultaneously and along with the house,

it is not possible to retract — even if they were not paid for yet and no other kinyan was made on the furniture — based on the concept of kinyan agav. This means that when selling real estate, it is possible to incorporate along with it the sale of movable items. The kinyan finalizing the real estate transaction also accomplishes the sale of the movable items (C.M. 202:1-2).

If, however, the furniture was meant to be a separate transaction, they would require their own act of kinyan to make the transaction binding. Thus, if you arranged to continue living in the house as a tenant after the sale, and only when moving out would the furniture be sold, it is not covered by the transaction of selling the house (see Pischei Choshen, Kinyanim 9:[1]).

DID YOU KNOW?

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