

# BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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THIS EDITION OF THE BUSINESS WEEKLY IS DEDICATED BY R' SHLOME WERDIGER IN MEMORY OF HIS FATHER  
הרה"ח ר' נחמיה  
ב"ר שלמה אלימלך ז"ל

## STORY LINE

by Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

## Cool Emergency

On Friday morning, the air conditioner began rattling wildly. Mr. Wolf called his regular air conditioner repair man, Mr. Braun. "Sorry, but I'm already booked solid this morning," Mr. Braun said.

Mr. Wolf tried a few other repairmen, but none were available.

Mr. Wolf called Mr. Braun back. "I wasn't able to find anyone," he said. "It's supposed to be sizzling over Shabbos and we're hosting a shiur!"

"I expect to finish about 2:00 p.m.," Mr. Braun said. "I usually don't start a new job so late on Friday afternoon, but I'll come."

At 2:30 p.m. Mr. Braun arrived. "It needs two to three hours' work," he said, "but I should be able to have it working for Shabbos."

By 4:30 p.m. Mr. Braun had replaced the

broken part. "It will take about forty-five minutes to put everything back and check it," he said.

Just then, Mr. Braun got a call from his wife. "Come right away!" she said. "Your mother was admitted to the hospital and wants you immediately!"

"I'm really sorry, but I've got to run," Mr. Braun said to Mr. Wolf. "My mother was just admitted to the hospital."

Mr. Wolf desperately searched the Yellow Pages for an emergency A/C repair service. "We can send a repairman over immediately," one service said. "However, you'll have to pay the premium weekend rate and an emergency surcharge."

"Whatever it is, we need it!" said Mr. Wolf.

The repairman came shortly and finished the job. With the premium weekend rate

and emergency surcharge, the remaining work cost what the entire job was supposed to have cost!

After Shabbos, Mr. Wolf went to pay Mr. Braun. "I understand that you had to pay a pretty penny to have the job finished," Mr. Braun said. "I'll charge you for the part, but not the labor. Why should you pay double?"

"It's not your fault that you had to leave," Mr. Wolf said. "You're entitled to payment for whatever you did."

"I won't take payment unless Rabbi Dayan says that you owe me the money," said Mr. Braun emphatically.

The two men met with Rabbi Dayan. Mr. Wolf related what happened.

"You must pay Mr. Braun for the work he did, even though it cost extra to have the

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## Title Check

Shortly after I purchased a house, a relative of the seller produced a document signed by witnesses in which the seller admitted that although the title was in his name, the property, in fact, belonged to his nephew. The "owner" wants his house back, but I maintain that since the title search showed that it belonged to the seller, it is now mine since the title is now in my name.

**Q: Halachically, who owns the house? In the event that I am obligated to return the house to the "owner," is he obligated to reimburse me for the money I paid to**

**purchase the house, or must I contact the seller (a powerful and difficult person) to get back my money?**

**A:** Your question involves many issues and requires a beis din to address them practically. However, we will outline two basic approaches to this situation.

Shulchan Aruch (C.M. 371:1) rules that land can never be stolen and remains the possession of the owner. Even if it was sold and the owner despaired (yei'ush) of retaking possession of his land, it remains his. Generally, when Reuven steals an object

and sells it to Shimon and the owner did not despair of recovering his object, Shimon must return it to the owner, but the owner must reimburse Shimon the amount he paid for it. The rationale here is that if the customer is not reimbursed people would hesitate to make purchases out of concern that the item is stolen and the owner will take it back, leaving the customer to suffer the loss. To ease the mind of buyers, Chazal enacted (takanas hashuk) that if one innocently purchased a stolen item, the owner must reimburse the buyer to re-

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job completed,” ruled Rabbi Dayan.

“Why is that?” asked Mr. Braun. “A job that is clearly time-bound is referred to as a *davar ha’avud*,” explained Rabbi Dayan. “In general, a worker may not back out in the middle of such a job unless an equivalent worker is available. If the employer needs to pay extra to procure a replacement, he can deduct this amount from the work done by the first worker, even the entire amount” (C.M. 333:5).

“Nevertheless, the Gemara (B.M. 77a-b) teaches that if the worker had to stop because he became sick or a close relative passed away, he is not penalized,” replied Rabbi Dayan. “He is entitled to full payment for the work he did.”

“It was not I who became sick,” said Mr. Braun. “I chose to stop working to go take care

of my mother.”

“Terumas Hadeshen (#329) rules, based on the Gemara (Nedarim 27a), that if a person’s child became sick that is also considered an *ones* (uncontrollable circumstance),” replied Rabbi Dayan, “since he has to be with him. Terumas Hadeshen adds, “all the more so one’s wife, who is like him and for whom he is responsible.”

“What about a parent?” asked Mr. Wolf.

“The Rivash (#127) extends this halachah also to a father, since a child is required to serve him in his illness,” replied Rabbi Dayan. “Presumably, the same is true for a mother. Thus, Mr. Braun is entitled to full payment for the work he did” (See Pischei Choshen, Sechirus 11:18[43]).

retrieve his object and it is up to him to pursue the thief for reimbursement (C.M. 356:2).

However, when land is stolen and sold, the owner need not reimburse the buyer. Since the purpose of the enactment is to assure confidence in the market for facilitating commerce, there is no need for such an enactment regarding land since one can easily research whether the land was stolen or not (Sema 371).

The question is whether this rationale applies nowadays. In earlier times, since ownership of properties was known, any buyer of land researched the ownership by inquiring from others, and there was no need for this enactment. Nowadays title is recorded in the name of the legal owner, so a buyer need perform only a title search. Therefore, if the title does not reflect the true owner, perhaps Chazal’s enactment should apply to ensure confidence in the market.

Some authorities maintain that it is uncommon for property to be recorded in the name of someone other than the

actual owner, so we apply the principle that enactments were not made for uncommon occurrences (Maharash Engel 7:129). Even though nowadays property is sometimes recorded in the name of someone other than the actual owner, it is uncommon for the recorded owner to betray his trusting friend or relative (the true owner) and sell property that is not actually his, and thus Chazal’s enactment does not apply. Therefore the true owner would not have to repay the buyer of the property, and the buyer’s recourse will be from the one who sold him the land illegally.

Others contend that based on *dina d’malchusa dina* the one who has title to the property can sell that property since the government recognizes the title holder as the owner. Such a law serves the interest of citizens and thus, according to some opinions, is binding in Halachah as well (Teshuras Shai 2:54).

As stated, the matter must be presented to *beis din* for an actual ruling.

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

## Copyrights and Patents # 1

**Q: Copyright and patent law have become very relevant legal issues in the past two centuries. What is the halachic approach to copyright?**

A: This question has been addressed by contemporary authorities; there are widely divergent opinions. B’ezras Hashem, we will deal with some of the fundamental questions relating to this issue. Among them:

Is there halachic ownership of intangible objects, such as Torah thoughts,

professional techniques, a computer program, or musical work?

Is there a time limit to these rights?

Do heirs have rights in works of their predecessor?

Is there a difference between Torah *sefarim*/*shiurim* and other [mundane] items?

Can a person sell something, yet restrict its use? If so, what recourse does the seller have?

What role, if any, does state law play here?

## MONEY MATTERS

What status do common commercial practice and local customs have?

What is the idea behind *haskamos* (approbations) of *sefarim*?

Is there a difference between copying for personal and for commercial use?

Once something has been made public on the internet, legally or illegally, does that impact the Halachah?

Based on our discussion of these issues, *iy”H*, we will attempt to address practical cases.

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