

# BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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BUSINESS WEEKLY FOR THE MONTH  
OF KISLEV HAS BEEN DEDICATED

לעלוי נשמת  
מיכל שרה אידל בת ר' יוסף  
BY SHAMMAI BIENENSTOCK

## STORY LINE

by Rabbi Meir Orlan

Halacha Writer for the Business Halacha Institute

## Unreasonable Rental

Fall was turning to winter. Shlomie vividly recalled the previous winter, when his family had been without power for two weeks in the aftermath of Hurricane Sandy. He was seriously considering buying a portable gasoline generator, but could not afford the expense.

Shlomie called his neighbor Ezra, who ran a rental business for construction equipment. "Do you have any portable generators available to rent for the winter?" he asked.

"Yes, I do," said Ezra. "What size do you need?"

"Just a small one," answered Shlomie. "One that will cover the lights, kitchen appliances, and a few other small appliances around the house."

"I can rent you one for \$250," said Ezra. "That's what it runs."

"Okay," said Shlomie. "I'll come over today

to pick it up, before a storm hits!"

A month later, Shlomie's cousin Dovid came to visit.

"I hope we don't get caught without electricity like we did last year," he joked.

Shlomie showed his cousin the generator that he had rented.

"How much did you pay?" asked Dovid.

"It was only \$250 for the season," replied Shlomie.

"Really?" replied Dovid, shocked. "That seems extremely high to me!"

"How much should it be?" asked Shlomie.

"For that size unit, rental prices range anywhere from \$140 to \$200," he replied. "What you paid is way out of line!"

"Well, I paid him already," said Shlomie, "so there's nothing I can do."

"Why not?" said Dovid. "If a person overcharges a customer, there's a claim of

ona'ah (unfair pricing) and the customer is entitled to restitution."

"First of all, I didn't buy the generator," said Shlomie. "I just rented it. And anyway, it was a month ago."

"I don't know if that makes a difference," said his cousin. "Let's ask Rabbi Dayan. I keep his hotline number in my phone." He whipped out his phone and handed it to Shlomie.

Shlomie called Rabbi Dayan and asked, "A month ago, I rented a portable generator and was significantly overcharged. Do I have an ona'ah claim?"

"Just as an overcharged customer has an ona'ah claim, an overcharged renter also has an ona'ah claim, since rental is viewed as a sale for the day," answered Rabbi Dayan. "Thus, if the rental owner overcharged by a sixth or more, he is required to return

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## IOU

I found an IOU that stated that I lent Shimon \$1,000. I contacted Shimon, but neither of us recalls whether the loan was repaid. I am usually very careful to destroy or return a loan document to the borrower upon payment.

**Q: Is the loan still in force? Can I insist that Shimon repay me?**

**A:** Generally, when a claimant has a definite claim (bari) and the defendant is uncertain

(shem'a), the halacha depends on the nature of the uncertainty. If the defendant is uncertain whether he ever incurred a debt, he is exempt from liability but should go beyond the letter of the law and pay the claim. If he recalls incurring the debt, but is uncertain whether or not he repaid it, he is obligated to repay, because he admits to having incurred the debt in the first place (C.M. 75:9).

If both parties are uncertain whether the debt was paid, the defendant is exempt. Ac-

cording to many authorities, the defendant then does not have any obligation to pay the debt (C.M. 75:10, Taz, 75:18). In your case, since both of you are uncertain, it would seem that Shimon is not obligated to repay the loan. The question that remains is whether the presence of a loan document changes the halacha. When a lender is in possession of a loan document but does not recall whether the loan was repaid, and the borrower insists that he repaid the loan

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the excess amount. I should mention, though, that real estate is excluded from ona'ah claims, so it wouldn't apply to a house rental; ona'ah applies only to portable items (B.M. 56a-b; C.M. 227:32, 35)."

"What about the fact that a month has passed?" asked Shlomie. "I thought there was a brief time limit for ona'ah claims."

"That is true for purchases, but not for rentals," replied Rabbi Dayan. "A customer can submit an ona'ah claim only shortly after a purchase, allowing him time to show the purchased item to friends and relatives and check whether the price was fair. However, once this time passes, if he did not check and submit a claim, he forfeits his right to demand restitution. A renter, though, can submit an ona'ah claim even a long time later (C.M. 227:7)."

"Why does this time limit not

apply to rentals as well?" asked Shlomie.

"There are two explanations," said Rabbi Dayan. "First, a person who buys something often shows it to other people to hear their opinion of the purchase; afterward he forgoes his right. However, people do not typically show rental items to others, so this time frame is not relevant.

"Second, payment for a purchase is due at the time of purchase, whereas payment for rental is due, in principle, only at the end of the rental," continued Rabbi Dayan. "Since a long time is likely to pass in any case between the beginning of the rental agreement and the actual payment, our Sages did not impose a time limit (Sma 227:65).

"Therefore," concluded Rabbi Dayan, "although a month has passed, you can still demand a refund of the excessive rental amount."

(bari v'shem'a), the borrower cannot be forced to repay the loan (C.M. 59:1). If the borrower is also uncertain whether it was repaid, the loan remains in force, since the validity of a loan document cannot be undermined with an uncertain claim (C.M. 82:2).

However, these rules apply when the loan document includes witnesses, and the lender's claim is more credible since the document exists. In your case, since the document is a simple IOU, the decision will be subject to the discretion of dayanim (Rema 69:2). The issue is whether the lender's having the document gives his claim greater credibility. It is reasonable to consider that the borrower, when repaying the loan, would insist that the lender release or destroy the loan document (see C.M. 69:2). Therefore, if it seems to the dayanim that the lender would have destroyed the document, the existence of the document

generates a presumption that the loan was not repaid. Moreover, even if we accept that an IOU alone is not strong enough to force the borrower to repay the loan, we combine two factors: the general practice of a lender to destroy loan documents once they are repaid, and the basic assumption that the loan remains in force - and thereby we consider the lender to have a claim of certainty that the loan was not repaid (see Maharsham, Index to 2:185). However, dayanim must be very cautious regarding such cases, since the fact that neither party recalls whether the loan was repaid points to the possibility that it was repaid, and the inactive loan slipped their minds.

In summary, your possession of an IOU in and of itself does not empower you to force Shimon to repay you. The matter should be presented to dayanim to examine the details of your particular case.

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

## Lost and Found #18

**Q: My friend lost his skateboard. After searching for a month, he lost hope of finding it and bought a new one. Shortly afterward, I found his skateboard in the park. Must I return it to him?**

**A:** Once a person who lost an item abandons hope of reclaiming it (yei'ush), there is no absolute requirement of hashavas aveidah; whoever finds it afterward may take

it for himself, even if the item has a siman (identifying feature). This applies whether the person verbally expressed his loss of hope or thought so in his mind (C.M. 262:5; Hashavas Aveidah K'halacha 5:2).

Nonetheless, you should go beyond the letter of the law (lifnim mishuras hadin) and return the skateboard, even after yei'ush.

Moreover, if the law of the land requires returning it, you must do so on account of

dina d'malchusa dina (C.M. 259:5, 7).

If, however, you found the skateboard before the owner abandoned hope, it does not become yours even after he abandons hope.

Therefore, you may not take an item lost by a Jew for yourself unless you can presume that the owner already knew of the loss and abandoned hope of retrieving it (C.M. 262:3).

## MONEY MATTERS

### DID YOU KNOW?

If an employer and a potential employee reach a verbal agreement regarding an employment opportunity, and then the employer rescinds the offer, the employee may be entitled to compensation.

*For more information, please speak to your Rav, or you may contact our Business Services Division at: phone: 718-233-3845 x41 · email: ask@businesshalacha.com*

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