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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

THREE'S A CROWD

Reuven and Shimon were visiting Levi. They reminisced about the year they had roomed together in yeshivah, three years earlier.

"I found a small, four-volume *Shas* in my house that belongs to you," Shimon said to Reuven. "You must have lent it to me then."

"I wondered where it had gone," said Reuven. "Anyway, I bought a new *Shas* last year."

"I can use a small *Shas*," said Levi. "I use my *chavrusa's* all the time."

"Fine; give the *Shas* to Levi," Reuven said to Shimon. "He can have it."

After Levi left, Reuven said to Shimon: "The truth is, my brother also wants a small *Shas*. Forget what I said earlier; give the *Shas* back to me."

"But you already told me to give it to Levi," said Shimon.

"I'll deal with Levi later," said Reuven. "I'll explain to him that my brother needs it."

"But maybe it's already Levi's?" asked Shimon. "I can't give you what's already his!"

"How could it be Levi's already?" asked Reuven. "Since when does a verbal statement transfer ownership, without any accompanying act of acquisition (*kinyan*)? Levi didn't make any *kinyan* on the *Shas*, so it's still mine."

"I'm not willing to return the *Shas* to you without consulting Rabbi Dayan first," announced Shimon.

"That's fine," replied Reuven, "but I'm sure that nothing will come of it!"

Reuven and Shimon went to Rabbi Dayan. "I'm holding a small *Shas* that belongs to Reuven, who told me to give it to Levi," Shimon said. "Reuven would now like it back. Should I return it to him?"

"Was Levi also present when Reuven instructed you to give him the *Shas*?" asked Rabbi Dayan.

"Yes, we were all sitting together," replied Shimon. "Does that make a difference?"

"Indeed," answered Rabbi Dayan. "If the three of you were all together, the *Shas* already belongs to Levi through a special institution of the Sages, called *maamad shloshtan*."

"What is that?" asked Reuven.

"*Maamad shloshtan* means that the three involved parties — the giver, the recipient, and the third party holding the asset — are present together," explained Rabbi Dayan. "Then, if the giver instructs the holder to transfer the asset to the recipient, either as a gift or to cover debt, he immediately



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MATZAH RIBBIS

During Chol Hamoed Pesach we realized that we did not have enough matzah, so I

borrowed a box of handmade matzah from my neighbor, stating that I would return it the next day. I forgot to return them during Yom Tov and am prepared to do so now that Yom Tov has passed.

Q: Do I repay him by giving him boxes of matzah, or should I pay him what the boxes cost during Pesach?

A: It is permitted to return to your neighbor the same type of matzos (i.e., the same brand with the same number of matzos) or money equal to the amount it would cost now, *after* Yom Tov, to purchase those matzos. However, it is prohibited to repay your neighbor the value of the matzos at the time of the loan. In the event that the lender suffered a loss by having to purchase matzos on Pesach for his needs, you should compensate him (see *Bris Yehudah* 17:26).

Borrowing merchandise and returning the same merchandise is Biblically permitted. However, *Chazal* prohibited it in many situations, since the value of the merchandise may increase by the time the loan is due and the borrower would effectively repay more than he borrowed (Y.D. 162:1). This prohibition is called *se'ah b'se'ah* (a measure for a measure).

The injunction against structuring such a loan applies even if the price of the merchandise did not increase in value. If one did borrow merchandise but the cost did not increase, the borrower may repay the loan with merchandise. If the cost of the merchandise increased, the borrower should repay the lender the cash value of the merchandise at the time of the loan. If the merchandise lost value, he repays the loan with merchandise and may not pay anything additional, since doing so would violate the prohibition of *ribbis*.

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STORY LINE

acquires it. The transfer is binding and none of the parties can subsequently retract" (C.M. 126:1).

"How does this work?" asked Reuven.

"The *Gemara* (Gittin 14a; B.B. 144a) teaches that the Sages instituted this as a law without basis," replied Rabbi Dayan. "It was initially instituted to facilitate commerce. Often a person has money, a loan due, or other movable asset in the hand of a third party and would like to use it to pay for a purchase. Normally, this would require an act of acquisition by the seller/recipient to take ownership of that asset. In order to facilitate the transaction, the Sages instituted that assets or loans held by a third party are transferred through the mere instruction of the owner in the presence of all three parties. It's sort of like a debit card of old" (*Sma* 126:4; *Aruch Hashulchan*, C.M. 126:1).

"Does this require agreement of all parties?" asked Shimon. "What if the holder is not interested in dealing with the recipient?"

"According to many authorities, *maamad shloshtan* works even when the holder dis-sents," answered Rabbi Dayan. "The *Shulchan Aruch* rules this way as the accepted opinion. The *Shach*, however, disagrees and maintains that consent, or at least silent acquiescence, of all three parties is required, but if the holder refused the order, the recipient does not acquire the asset. The *Shach* further posits that for this reason the Sages required that all three parties be present" (C.M. 126:5, 7; *Shach* 126:26, 28; *Pischei Choshen*, *Halvaah* 11:5).



MONEY MATTERS

RENTALS #3

Confirming the Rental

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

Q: What makes a rental agreement binding?

A: A rental agreement, like a purchase, requires a *kinyan* (act of acquisition) to make it binding. In general, the same forms of *kinyan* that apply to purchases apply to rentals, with some differences (C.M. 190:1; 195:9; 331:1; 307:2).

One form of *kinyan* for real estate is *keseif*, money. Thus, a person who gives money to confirm a real-estate rental makes the agreement binding. The *Acharonim* dispute whether money given as a non-refundable deposit, as commonly practiced, is meant to confirm the agreement as binding or only as a fine if the renter retracts (*Pischei Teshuvah*, C.M. 207:13; *Beis Shlomo*, Y.D. 187).

Similarly, there are disputes whether monetary payments other than cash are included in *kinyan keseif*: a personal check or loan obligation issued by the renter (*Machaneh Ephraim*, *Kinyan Maos* #5; *Ketzos* 190:1, 39:8); a check from a third party or made out to "cash" (*Shach* and *Ketzos* 190:1); and payment by credit or debit card (*Chazan Ish*, C.M. 3:17; *Machaneh Ephraim*, *Shluchim* #15; *Ketzos* 195:9).



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There are, however, exceptions to this prohibition, which cover many common cases:

1. **Yesh lo** (he has): If the borrower has even a small amount of the merchandise in stock, he may borrow more of that merchandise, since it is considered as though the lender has already taken possession of it and thus it was the lender's merchandise that increased in value and the borrower is not paying interest on the loan. Because the prohibition of *se'ah b'se'ah* is Rabbinic, we may adopt this perspective. Furthermore, it is even permissible for the lender to give or sell the borrower a small quantity of the merchandise in order to allow borrowing a large quantity (Y.D. 162:2).

2. **Yatza hashaar** (there is a stable price in the market): If the item is readily available at a fixed, stable price, e.g., postage stamps or, possibly, produce after the season is well under way, it is permissible to borrow, even if the borrower does not have any of that merchandise in stock. Since the merchandise is easily accessible, it is as if the borrower has possession of it and the injunction is not in force (162:3).

Therefore, in your case, since matzah sold in a store generally has a fixed value, the prohibition of *se'ah b'se'ah* does not apply when the agreement is to repay in merchandise (in your case, matzah). However, since handmade matzah commonly loses value once Pesach is over, you may not give your neighbor anything more than the boxes of matzos to reimburse him for the loss he incurred for being repaid with matzos after they decreased in value. The agreement was to repay him with handmade matzah, and giving anything additional to that constitutes *ribbis* (*Shulchan Aruch HaRav*, *Ribbis* 33; *Beis Ephraim*, Y.D. 43; *Bris Yehudah* 17:5. Cf. *Machaneh Ephraim* 27). If you would prefer to pay cash, you may repay in cash the current value of the quantity of matzos that you borrowed.

For questions on monetary matters,
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