



# BUSINESS WEEKLY

Restoring the primacy of choshen mishpat

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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



## STORY LINE

By Rabbi Meir Orlan

### AT THE DOORSTEP

Mr. Cohen met Rabbi Dayan a week after Purim. "We had a very interesting monetary question over Purim," he said, and proceeded to relate the story:

Mrs. Cohen asked her son Aharon to bring mishloach manos to the Halperins. He rang their doorbell, but there was no response. "The Halperins left half an hour ago," a neighbor said. "They won't be back until after Purim."

"Thanks for telling me," Aharon said. He left the mishloach manos outside the Halperins' door.

When Aharon returned home, his mother asked, "Did the Halperins say anything?"

"They weren't home," replied Aharon. "A neighbor said that they had already left and wouldn't be back until after Purim."

"So where is the mishloach manos?" asked his mother.

"I left it outside their door," replied Aharon.

"I just remembered that we also wanted to give mishloach manos to the Speigels," said Mrs. Cohen. "Since the Halperins won't return until after Purim anyway, take it from them and bring it to the Speigels instead."

Just then Aharon's father walked in. "Are there any more mishloach manos to bring?" he asked his wife.

"Aharon just brought mishloach manos over to the Halperins and left it outside their door," replied Mrs. Cohen. "A neighbor said that they already left for the day, so I told Aharon to take it to the Speigels."

"I'm not sure Aharon can take the mishloach manos from the Halperins," replied Mr. Cohen. "Once he left it for the Halperins, it might be theirs already!"

"Do you really think so?" Mrs. Cohen asked her husband. "I assumed it's not theirs until they receive it!"

♦♦♦

"That's the story," Mr. Cohen said to Rabbi Dayan. "The question is: Were we allowed to take the mishloach manos from the Halperins and give it to the Speigels instead?"

"The answer varies," answered Rabbi Dayan. "It depends on where the mishloach manos was left and what your wife's intention was."

"What difference does it make where it was left?" asked Mr. Cohen.

"A secure, private property acquires for its owner, even without his awareness," explained Rabbi Dayan. "Thus, if the mishloach manos was left in an enclosed yard or porch, it could already belong to the Halperins and you might

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## BHI HOTLINE

### INCOMPLETE TRANSACTION

I hired an employee, and since we were

not able to agree upon a salary, we agreed that he would do the work and we would reach an agreement at a later point. After he finished the job we agreed upon a salary but did not formalize our agreement with a kinyan.

**Q: Is such an oral agreement binding, or can either one of us renege on our agreement?**

**A:** It is clear that when an employer agrees to pay an employee a certain amount, the employer is obligated to pay that amount even if they did not make a kinyan. The question that arises in your circumstance is that you did not agree upon a salary before your employee started working, and thus the question is whether an agreement that is reached after the termination of the employment requires a kinyan to be binding. On the one hand, since a kinyan was not made to solidify the agreement, perhaps it is not binding. On the other hand, since before the term of employment began, the two of you agreed to set an amount in the future, the subsequent agreement is merely the culmination of the original agreement and it should be considered comparable to an agreement made before the term of employment commenced.

A similar question was debated concerning a sale of part of a forest where the parties agreed that the buyer would determine which trees are included in the sale at some



## STORY LINE

not be able to give it to someone else. However, if it was left in an apartment house hallway or on a doorstep open to the public domain, they would not yet have acquired it" (C.M. 200:1; 268:3).

"What role does my wife's intention play?" asked Mr. Cohen.

"Since Aharon brought the mishloach manos at her instruction, her intention is significant," replied Rabbi Dayan. "If she did not want him to leave the mishloach manos after the Halperins had gone, the gift is not valid, even if left in a secure place, so you could take it. Both factors are needed for them to acquire the mishloach manos: a secure area and the intention to leave it for them" (C.M. 182:1-2).

"Are there other considerations?"

"Regarding intention, it can make a difference whether the family was out for a short time, the rest of Purim or longer," concluded Rabbi Dayan. "If the Halperins were not home at the moment, but would return on Purim, it's possible that your wife would have wanted Aharon to leave the mishloach manos for them. Others might intend to leave it for the family when they return home, even if at night. In this case, they would already have acquired it, provided that the area was secure."

"Does it make a difference whether my son was bar mitzvah?" asked Mr. Cohen.

"No," replied Rabbi Dayan. "Either way, the sender's intention counts."

"One thing is clear, though," concluded Rabbi Dayan. "If the mishloach manos was placed in a secure area with intention to leave it for when the Halperins would return home, and only later was there a change of heart, you would not be allowed to take it back; their property already acquired it for them."



## MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlit

### BEIS DIN AND CIVIL COURT #2 SOURCE AND RATIONALE

**Q: What is the source and rationale of the prohibition to adjudicate in civil court?**

**A:** Parashas Mishpatim begins: "These are the laws that you should place before them" (Shemos 21:1). The Gemara interprets this to mean: "before them [=qualified Dayanim]; not before gentiles" (Gittin 88b).

The Rambam (Hil. Sanhedrin 26:7) and Shulchan Aruch are emphatic on this issue: "Anyone who adjudicates before gentile judges and in their courts, even if their laws are the same as Jewish law, is wicked; it is like he blasphemed and rebelled against Moshe's Torah" (C.M. 26:1).

Among the explanations is that judicial systems express authority. Accepting a secular authority over the Divine one is a desecration of Hashem's Name, even if a particular law happens to be identical. Furthermore, each judicial system draws from the philosophical underpinnings of its origin. Thus, civil law draws from philosophical bases that are often at odds with the Divine, fundamental principles espoused and advocated by Jewish law.



## BHI HOTLINE

future date. According to some authorities, once the buyer chooses his trees neither party can renege, since that choice completes the original sale (Beis Shlomo I, C.M. 74). Others disagree and cite precedent from earlier authorities (Teshuvos HaRosh 89:2), who ruled in a similar circumstance that a transaction that was to be completed at a later date is not binding when a decision is made at that later date if the agreement was not formalized with a kinyan (Minchas Pitim 331:3; see Mishpetei Hachoshen 331, p. 23).

Furthermore, there is a general debate concerning the effectiveness of a kinyan performed with the condition that some part of the transaction will be determined at a future date. There is a school of thought that maintains that such an agreement is not considered a kinyan since breirah (retroactive clarification) cannot be used to complete an agreement (see Nesivos 61:3, 301:8; Divrei Chaim, C.M. 2:24-25; Maharsham 1:51; and Pischei Choshen, Kinyanim 13[94]).

Accordingly, in your circumstance it is advisable to perform a kinyan or draft a document that contains language of admission or a binding agreement (see Beis Shlomo, C.M. 3).

It is worthwhile to conclude with the Chofetz Chaim's advice (Sfas Tamim, ch. 5) to employers to agree upon a salary beforehand since not doing so places one at risk for violating numerous prohibitions such as theft or withholding an employee's wages.

For questions on monetary matters,  
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