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UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA



STORY LINE

By Rabbi Meir Orlian

SUBCONTRACTING Aryeh needed some repairs done on the pathway to his house, which he was renting out. He sought recommendations for an experienced, reliable contractor and received good reports about Josh, who provided a reasonable price quote. Aryeh bargained for a lower price, which Josh finally agreed to, and they closed.

One of Josh's workers, Manny, had recently begun to work independently also. Josh thought this would be a good way to help Manny get underway and suggested that he handle the job. Manny accepted.

Josh came over a few times to inspect Manny's work and make sure that it was done according to standard and to his satisfaction. Here and there Josh pointed out spots that needed to be done better or redone.

When the work was finished, Josh called Aryeh and showed him the work, in Manny's presence. Aryeh wrote out a check to Josh, who provided the formal receipt.

Some years later, the path began sinking slightly in certain places. Aryeh called Josh to complain. Josh explained that the actual work was done by Manny and provided his number.

Manny insisted that he had done the job properly, according to standard, and that Josh even inspected the job and approved it. He explained that earth moves a lot in that area, and it is common that after a while there will be slight settling. The warranty period was over, so he had no responsibility to correct the job.

Aryeh complained to Josh for handing the work over to Manny. Josh insisted, though, that he trusted Manny and that the job was done according to standard and approved by him.

Aryeh refused to accept this. He summoned Josh before Rabbi Dayan and demanded a refund of his money. "I chose Josh because I wanted an experienced contractor," he claimed. "Josh had no right to hand the job over to Manny!"

"This issue can be resolved from a case (B.K. 56a) regarding the liability of a head shepherd," replied Rabbi Dayan. "A guardian who handed an entrusted item over to others is usually liable. However, a head shepherd, who is known to have others working under him, is not

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BHI HOTLINE

ESROG WITH NO PRICE TAG

My brother-in-law sells esrogim and when I found a nice one, I asked the price and he told me that he would figure it out later. I insisted on making a kinyan kesef — the proprietary act of paying with money. I paid him a small amount, which thus constituted a valid kinyan, and we arranged that I would pay him the rest after we agreed upon the cost after Yom Tov. After Yom Tov I mentioned this arrangement to a friend and he questioned the validity of the kinyan since without an agreement regarding the price, there cannot be a kinyan.

Q: Did I fulfill the mitzvah or is my friend correct?

A: Your friend is referring to the halachah in Shulchan Aruch (C.M. 200:1) that states that a kinyan cannot be made without setting a price. This is repeated again (ibid. 7) when Shulchan Aruch rules that kinyanim are ineffective if the two parties did not decide a price per unit, per weight or per volume. The reason is that before the price is set, the two parties do not have semichus daas — reliable intent, since the other party may not agree to that price. When the price is fixed or if the two parties agree that the item will be sold in accordance with the appraisal of three experts (or even one expert — Sma 200:14), the transaction is binding since they have semichus daas even without the parties knowing the result of the appraisal.

An esrog is something that does not have a fixed price, since the price is determined by its quality and the timing of the sale. Accordingly, without agreeing upon a price, the kinyan should be invalid. Moreover, even to agree to accept the price of an expert is not effective since people will appraise esrogim differently depending on the customer's taste, timing, etc., and thus an appraisal does not determine its



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directly liable, but the shepherd to whom he handed the animal is liable. The owner cannot claim that he did not want his animal handed over to others, since it is known that this is the practice of the head shepherd" (C.M. 291:22; 396:9).

"Similarly, contractors often do not do the actual work themselves; instead they supervise and have underlings do the work," continued Rabbi Dayan. "Certainly in this case, since the worker was one who the contractor used on a regular basis and had confidence in, and the contractor even checked the work and took formal responsibility for the payment, you cannot demand that he should have done the work himself.

"Furthermore, even if the contractor had no right to hand the work over, you would still have to pay for the job, based on yored l'sedei chaveiro," added Rabbi Dayan. "The work was needed and you were willing to pay for it, so that even had the worker acted of his own accord, you would have to pay him the current going rate, provided that the work was done properly" (C.M. 375:1).

"In regard to your complaint that problems later developed in the work, since it was done according to standard and the warranty period is already over, you cannot demand that it be redone," concluded Rabbi Dayan. "Any work done is with the understanding of the customary local practice, unless explicitly stated otherwise" (C.M. 331:2).



BHI HOTLINE

value and thus does not generate a semichus daas. Therefore a kinyan cannot be made without an agreement on the price (Teshuvos V'hanhagos 3:189).

Some authorities assert that the prerequisite for setting a price for the kinyan to be valid is limited to circumstances where the object to be sold will remain intact. The buyer takes the object to decide whether he wants to keep it and if not, he will return it. In such a circumstance, since there is no agreement about the price, there is no semichus daas for the kinyan. If the object cannot be returned intact, e.g., it is a food that will be consumed, there is most certainly semichus daas even though the price was not set, and thus a valid kinyan could be made since the object cannot be returned intact. Therefore, once the food was consumed, the seller may claim the amount the item would cost in the market.

An esrog is in the same category as food since it loses most of its value after the first day of Sukkos, and after the chag it is worth less than an apple. Accordingly, it is evident that the seller intends to sell it completely and collect what he could have collected for the esrog before Yom Tov (see Ateres Moshe, O.C. 230 and Ginzei Chaim, O.C. 306:5).

Since you and your brother-in-law agreed to determine the price later, its price is determined by what its value was before Yom Tov, despite the difficulty involved in determining its exact value, as mentioned above (see Erech Shai 182:12). Moreover, since your transaction was with your brother-in-law, it is clear that there is a semichus daas on the kinyan and the two of you intended to reach an agreement in the future.

Obviously, it is preferable to reach an agreement before Sukkos rather than waiting until Chol Hamoed or after Sukkos.

For questions on monetary matters, Please contact our confidential hotline at 877.845.8455 ask@businesshalacha.com



MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shlitza

PARTNERSHIP # 1

Forms of Partnership

Q: What forms of partnership does Halachah recognize?

A: Halachah recognizes three basic forms of partnership:

- Classic partnership, in which each party has personal ownership of his share in the joint property.
- Group partnership, in which each partner does not have personal ownership. Examples of this are inheritors who have not yet divided the estate; tithes that are awarded to Kohanim, Leviim, or the poor. In this kind of partnership, the right of the partners is to receive their share in the group property as their exclusive property. Some apply this also to tzedakah money in a gabbai's hands (B.B. 141b).
- Public partnership, in which the right of the individual is to use the public property, but not to receive a private share in it (unless the community leaders decide to grant it to him). There are also communal responsibilities in which each individual must take part, such as the municipal infrastructure (C.M. 170:1).

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