



# 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 Orlian

**GENTLE JUSTICE** Rubin's Retail received a letter of claim from Gross Suppliers demanding payment for a shipment of merchandise. Mr. Rubin sighed. "I've already explained to them three times that I don't owe them for that order," he said to himself.

Mr. Rubin contacted his lawyer. "We received an official letter from Gross Suppliers about the questionable order," he said. "Please respond with an official letter of denial. If this keeps up, I'm going to seriously consider switching suppliers."

A month later, Mr. Rubin received a summons to Rabbi Dayan's beis din regarding the disputed claim of Mr. Gross.

The case proved more complex than it initially seemed, and litigation carried on for a number of sessions. The Dayanim tried numerous times to achieve a compromise, but the two sides were adamant.

Rabbi Dayan and his colleagues deliberated the issue. The halachah clearly was in favor of Mr. Gross; payment was due for the shipment, even though the order was not handled in the ideal manner. However, the sum owed was a drop in the bucket for Mr. Gross but a significant amount for Mr. Rubin. Paying the full amount due was liable to threaten the viability of his store, which was already in a precarious financial position.

The Dayanim reached the conclusion that Mr. Rubin was legally liable for the full sum. Rabbi Dayan issued the ruling to the parties.

After issuing the ruling, Rabbi Dayan called Mr. Gross into his private office.

"You are entitled to full payment," he said to Mr. Gross. "However, for the benefit of your ongoing business relationship, and on account of Mr. Rubin's difficult financial circumstances, I would advise you to suffice with 75% of the amount."

"If I am entitled to collect the full amount, why should I settle for 75%?" asked Mr. Gross. "Anyway, the time for mediation was before we came to beis din. Isn't the role of beis din to rule?"

"The Gemara (Sanhedrin 6b) teaches that beis din should offer the option of compromise as a means of bringing peace, and

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## BHI HOTLINE

### AUCTION OF ALIYOS IN SHUL

Shuls where they sell aliyos there are schemes used to raise the cost of an aliyah. For example:

1) A non-member wishes to purchase an aliyah for someone else. He informs the gabbai of his intent to purchase the aliyah and the maximum he is willing to pay. Is the gabbai permitted to bid close to that amount to generate more money, even though the next closest bid is well below that?

2) May someone submit a bid to increase the cost of the aliyah without intent to win the auction?

3) The gabbai notices that a wealthy person is interested in purchasing an aliyah but since no one else is bidding for the aliyah he motions as though he received a bid to increase the cost of the aliyah.

**Q: Is the use of such methods permitted? If not, does the purchaser have to pay the inflated price?**

**A:** In the first scenario, the purchaser does not have to pay more than the lowest amount he would have had to bid to win the aliyah. Since the gabbai was charged with representing the purchaser's interest, his job is to secure for him the lowest, not the highest, cost and if he disregards his fiduciary responsibility, he is not acting as the buyer's agent (C.M. 182:3).

In the second scenario, since the one submitting a competing bid will be obligated to pay if his bid wins, the winner must pay the amount that he pledged (even though the other bidder's intent was to increase the cost of the aliyah).

The question arises in the third scenario described above.

Someone had a deal with the gabbai that he would bid on aliyos to increase the bidding, and if he actually won the



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can sometimes even impose one,” replied Rabbi Dayan. “Once the verdict has been issued, though, the Dayanim cannot impose a compromise. That would be an injustice. If they were to do so, some consider it a ta’us bidvar mishnah (blatant misruling), which is null and void” (C.M. 12:3).

“Tosafos maintain that once the judge knows what the ruling is, he should no longer advocate compromise,” continued Rabbi Dayan. “However, the Shulchan Aruch and Shach (12:4) rule that until the verdict is issued, the Dayan can still advocate compromise, since it is a mitzvah to achieve a peaceful resolution. This is especially true nowadays when the arbitration agreement explicitly empowers the beis din to rule or compromise.”

“But you already issued the ruling! Why are you suggesting that I compromise?” asked Mr. Gross.

“The Shulchan Aruch (C.M. 12:6) writes that one who is not a Dayan can mediate even after the ruling has been issued,” replied Rabbi Dayan. “This should be done outside the beis din. The Shach (12:6) is even more lenient and maintains that if the Dayanim do not impose the compromise upon the litigants in an authoritative capacity but rather gently persuade them, they are also allowed to do so. Most authorities do not accept this, but some still allow words of advice.”

A story is told of the Chazon Ish, who ruled in favor of a landlord. Afterward he said, “Although you are right, you should let him off” (Pischei Teshuvah 12:5; Moznaim Lamishpat; Mishpetei Tzedek 12:2; Maaseh Ish, vol. 5, p. 30).



## MONEY MATTERS

Adapted from the writings of Harav Chaim Kohn, shitta

### BEIS DIN AND CIVIL COURT #26

#### Ill-Gotten Gains and Yom Kippur

**Q: I took money unlawfully from someone, but will not have a chance to return it before Yom Kippur. What should I do?**

**A:** A person should try to enter Yom Kippur pure, without sin or overdue debts to others. Certainly he should free himself of theft and withheld wages. If you are unable to return the money before Yom Kippur, you should at least contact the person and arrange his permission to pay afterwards (Mishnah Berurah 606:1). Alternatively, if you have the money available, you can give it to someone else to accept on behalf of the person from whom you took it. The money is then the owner’s, based on the concept of zachin l’adam shelo b’fanav, but you nevertheless remain responsible until it reaches his hands (C.M. 125:1).

It should be noted that there is a mitzvah of “V’heishiv es hagezeilah — Return the theft,” that requires you to return stolen money as soon as possible and not wait until Yom Kippur (Shaar Hatziyun 606:2).



## BHI HOTLINE

bidding, he would pay half of his final bid. The Chida (Yosef Ometz 57) rules that such an arrangement violates the prohibition against deceiving a person in the context of a sale — geneivas daas (C.M. 228:6). He further violates the prohibition of performing iniquity and speaking falsehood.

Moreover, Chazal warn (Bava Basra 8b) against pressing a person to give tzedakah since he may not have the pledged funds, and this warning is certainly applicable regarding communal matters.

In addition to the prohibition of geneivas daas this practice may involve theft since the aliyah is not actually worth the inflated amount, because no one else was willing to pay even close to the winning bid. The fact that this person agreed to pay more is because someone else was submitting false bids he never intended to fulfill. For this reason, as we will explain, even b’d’ieved he may not be required to pay any more than the amount that would have won the bidding.

There are two views regarding the sale of an aliyah — depending on circumstances. In one scenario someone bids on an aliyah simply because he is interested in the honor of having the aliyah and it is not a vow to give tzedakah (see Panim Meiros 2:25, cited in Shaarei Teshuvah, O.C. 154). The aliyah is not worth the amount he pledged since the bidding was dishonest; consequently, he is not obligated to pay any more than its actual value. Even in other instances, where the bidder intends to also make a vow to give tzedakah (Tzemach Tzedek 72, cited in Magen Avraham 154), it is possible that the vow is not binding since it was made in error (see also Maharsha, Sukkah 29a; Minchas Yitzchak 3:97; and Tzedakah U’mishpat 7:[5]).

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

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