

# BUSINESS WEEKLY

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HaRav Chaim Kohn, shlita



Restoring the Primacy of Choshen Mishpat

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THIS EDITION OF THE BUSINESS WEEKLY IS DEDICATED BY R' SHLOME WERDIGER IN MEMORY OF HIS FATHER  
הרה"ח ר' נחמיה  
ב"ר שלמה אלימלך ז"ל

## STORY LINE

by Rabbi Meir Orlian

Halacha Writer for the Business Halacha Institute

## Intended or Unintended?

Aharon and Yosef were sitting in the public library, browsing some of the books on display and doing research for a project.

As Aharon picked up one book, he noticed that it was a Pesach machzor. He showed it to Yosef and said, "There's no stamp on this machzor. Could it belong to the library?"

Yosef took the machzor and looked it over. "The library does not own any machzorim like this," he said definitively. "Someone must have left it here on Chol Hamoad Pesach."

Yosef flipped through the pages, looking for some identification. "It looks like it was left for a while and the owner probably despaired," he said. "Since there are no identifying marks, the item is hefker (ownerless) and can be taken; I'm taking it for myself."

"What do you mean, you're taking it for

yourself?" said Aharon. "I picked it up first! If it has no identification and is hefker — then it's mine!"

"Why should it be yours?" said Yosef. "You gave it to me."

"I never gave it to you to keep; I just handed it to you to see," replied Aharon.

"I thought you might know about it! But if it's ownerless, I found it. I picked it up first!"

"You didn't find it at all," said Yosef. "You just picked it up to see what it was."

"So what? I picked up the machzor first," replied Aharon. "That's enough to make it mine, not yours."

"I don't think so," said Yosef. "You need intention to acquire it; you had no such intention."

"Let's ask Rabbi Dayan," Aharon suggested.

"Agreed," said Yosef.

The two came to Rabbi Dayan. "I picked

up a machzor thinking that it was the library's and passed it to Yosef," said Aharon. "It turns out that the machzor has no identification, so Yosef wants to take it. Whom does the machzor belong to?"

"There are seemingly contradictory sources," answered Rabbi Dayan. "On the one hand, the Gemara (Yevamos 52b) states that one who digs in an ownerless field (which belonged to a convert who died without heirs) but mistakenly thought that the field was his own, does not acquire it.

Although digging is an appropriate means of acquiring an ownerless field, the person thought the field was his own, so he had no intention to acquire it" (C.M. 275:24-25).

"On the other hand," continued Rabbi Dayan, "the Gemara (B.M. 10a-b) addresses the case of a person who fell on a metziah to acquire it. Falling on a metziah

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## Firing an Employee

I hired an employee and before his term of employment commenced I discovered that he is a thief.

**Q: Can I retract our employment agreement? What is the halachah if there are reports that he is a thief but it was never confirmed?**

**A:** If it was proven that he was a thief before you hired him even if you had a signed contract agreement with him that was

accompanied by a kinyan (proprietary act), since the agreement was made under false pretenses (mekach ta'us) it is not binding (Pischei Teshuvah, C.M. 232:5 citing Shvus Yaakov).

The right to fire an employee who is a thief applies even if the employee became a thief after his employment commenced so that there was no mekach ta'us at the time of the original employment agreement.

## FROM THE BHI HOTLINE

The rationale for the allowance to rescind a binding agreement is that it is obvious (umdina d'muchach) that no one would hire someone as an employee who is a thief (Divrei Malkiel 3:152).

However, it is necessary to understand why such an assumption does not apply to the case of someone who purchases an animal for slaughter that became treifah after the purchase. Although it is obvious that he was

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## STORYLINE CONTINUED

is not a valid means of acquisition. However, the Sages instituted that whoever approaches a metziah within 4 amos in a semi-public area acquires it through his proximity. The Rema rules according to the opinion that a person who fell on an item acquires it through his proximity, despite the fact that he indicated his intent not to acquire it through proximity, but through falling” (Rema, C.M. 268:1).

“How do we resolve these contradictory sources?” asked Yosef.

“Mishneh Lamelech explains that in the second case, where the person fell on the metziah, he intended to acquire it at that time, in one manner or another,” replied Rabbi Dayan. “The particular manner of acquisition — proximity or falling — is less critical. However, in the first case, where the person dug in ownerless land, he had no intention at all to acquire the field” (Pischei Teshuvah, C.M. 198:9).

“What about the opinion of the Shulchan Aruch?” asked Aharon.

“The Shulchan Aruch is more stringent,” replied Rabbi Dayan. “He rules in a few places that intention for the particular means of acquisition is also critical: the person who fell on the metziah does not acquire it through proximity” (C.M. 198:12; 200:8; 268:1).

“Thus,” concluded Rabbi Dayan, “since Aharon had no intention whatsoever of acquiring the machzor when he picked it up, he did not acquire it even according to the Rema, and it belongs to Yosef. I would recommend

posting a notice, though, to see whether someone claims the machzor, and return it, beyond the letter of the law” (see C.M. 259:5; Pischei Choshen, Kinyanim 1:13; Dvar Chok Umishpat, pp. 20-22).

## FROM THE BHI HOTLINE CONTINUED

not interested in purchasing an animal that turned out to be treifah, the sale is valid. Actually, the distinction is simple. In the context of an animal’s sale it is assumed that the seller and the buyer understand that the seller would not agree to sell the animal if the customer insisted on a stipulation that cancels the sale (i.e., if the animal is discovered to be a treifah), and thus the buyer suffers the loss.

However, in the case of a thief, there is no reason that an employee would not agree to a stipulation that he may be fired in such circumstances, and since the employee was the one who acted improperly, it is he who must suffer the loss of employment (Erech Shai 421).

Poskim emphasize, however, that an employer may not fire an employee just because there is an accusation that he is a thief, since that would make employment very difficult to maintain. Therefore, before an employer can fire an employee there must be strong circumstantial evidence that he is a thief, even if not proven definitively (Rema 421:6; Pischei Teshuvah 232:5), or if there are grounds to suspect him of theft; for example, if there are persistent rumors that he is a thief (Ohel Yitzchak, C.M. 53; and Divrei Chaim, Y.D. 2:6 regarding the firing of a shochet; and Beis Shlomo, Y.D. 14). The employer must provide the necessary evidence or suspicions to beis din to confirm that there are grounds for firing his employee (see Divrei Geonim 82:22 and Teshuras Shai 603).

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1937 Ocean Avenue Brooklyn, NY 11230

## Completing the Transaction # 4

## MONEY MATTERS

**Q: I over-ordered certain merchandise, and told my neighbor to come take the extra for free. If later I decide that I want the extra, can I retract my gift offer?**

**A:** The transaction of movable items is finalized through hagbaha, picking up. Thus, if the neighbor already picked up the merchandise with the intent to acquire it, the merchandise is his, even if it remains

meanwhile in your store or warehouse. Large or heavy items that are hard to pick up can be acquired through meshichah, dragging into one’s property or a semi-public area such an alleyway (C.M. 198:1-5).

However, if the neighbor has not yet picked up or dragged the item, it is legally possible to retract the offer. Nonetheless, one who retracts from a small gift offer is deemed

lacking trustworthiness (mechusar amanah), since the recipient certainly expects the gift. When the recipient was offered a large gift, though, he entertains the possibility that the giver might retract before the gift is finalized. If the gift was promised to a poor person, a charity or a Torah institution, it is considered a vow and must be upheld in any case (C.M. 204:8; 243:2).

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