

BUSINESS WEEKLY



RESTORING THE PRIMACY OF CHOSHEN MISHPAT UNDER THE AUSPICES OF HARAV CHAIM KOHN, SHLITA

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CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

ARBAAH MINIM ON CONSIGNMENT

Mendy decided to enter the *arbaah minim* (four species) business. He did not have much experience with *esrogim* and *lulavim*, so he decided to start simple with 100 closed sets.

He contacted a wholesaler, who sold whole sets in pre-sorted, closed packages.

"How much is each set when I buy 100 *mehudar* sets?" Mendy asked the wholesaler.

"We have a number of purchase options," replied the wholesaler. "It depends what arrangement you want."

"What are the options?" asked Mendy.

"If you buy 100 sets and pay up front," replied the wholesaler, "the price is \$40 per set. However, if you plan to pay only after Sukkos, it's \$42 per set."

"Do you have a consignment option?" asked Mendy. "I'm just starting, and don't know how much I will succeed in selling."

"We have a consignment option in which you pay after Sukkos only for the sets that you sell," replied the wholesaler. "That option costs \$55 for each set that you sell."

"Give me a day to consider," said Mendy. "B'e'H, I'll get back to you tomorrow."

The first option was clearly the cheapest, but Mendy didn't have the \$4,000 readily available and didn't know how much he would sell. He considered the other two options and consulted with his *chavrusa*, who had some experience selling *arbaah minim*.

"Personally, I would go for the simplest option," said the *chavrusa*, "but you're just starting. I'm concerned, though, that there may be *ribbis* with the other options since you're paying extra for delayed payment."

"I didn't think of that," acknowledged Mendy. "I'll check it out!"

Mendy called Rabbi Dayan and asked:

"Is there a *ribbis* problem with the other options?"

"In principle, when purchasing items, payment is due when taking title or possession of the item," replied Rabbi Dayan. "Therefore, the immediate payment price is usually viewed halachically as the true price. Charging a higher price for payment later or in installments, presents a problem of *ribbis*, since this is tantamount to a 'loan' (credit) to the buyer" (Y.D. 173:1).

"Thus, the 'true' wholesale price for the sets is \$40. The second arrangement, whereby the cost for payment after Sukkos is \$2 higher, is *ribbis d'Rabbanan* and not allowed (see, however, *Bris Yehuda* 22:8).

"Nonetheless, the third arrangement, sale on

The Business Halacha Institute wishes Klal Yisroel a חג כשר ושמה!



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לע"נ ר' שלמה ב"ר ברוך זוג' מרת רייכלה בת החבר יעקב הלוי ע"ה ווייל

PAYMENT OR TIP?

Q: On a recent visit to Eretz Yisrael, I hired a taxi to take me to the Galil, agreeing to pay the driver 120 shekel per hour. The trip took 13 hours and 45 minutes, and the driver said I owed him 1,615 shekel. That seemed wrong to me, because I had calculated that it should have been 1,650. The driver showed me that he had entered into the calculator on his phone 13.45×120 , and the result was 1,614.

I accepted the price, and then told him that although people generally don't tip taxi drivers in Eretz Yisrael, I would follow the *minhag* of my native land, and I handed over 1,650 shekel and told him he could keep the change as a tip.

Only later did it dawn on me that the driver had made a mathematical error: 45 minutes are equal to three-quarters of an hour, and instead of 13.45×120 , he should have entered 13.75×120 , and he would have arrived at the 1,650 I had initially thought it should be.

Now I had a serious *she'eilah*. I had given the driver 1,650, but I had specified that 35 shekel was a tip, not for the actual trip. My question was, at that point, whether I was obligated to contact him to pay the difference, or whether I could leave the matter alone, since I had paid the full amount due for the ride.

A: Rabbanim to whom this question was posed initially were divided over the answer. Some leaned toward ruling that since the passenger specified that the extra 35 shekel was a tip, he was still required to pay the driver the 35 shekel he underpaid for the ride.

Others reasoned, however, that the passenger was not required to fill in the additional 35 shekel,



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consignment, is allowed. This is certainly true in the case of 'true' consignment, in which case the retailer never takes legal title to the merchandise. He serves as the seller on behalf of the wholesaler, who retains liability for the merchandise, and title transfers directly from the wholesaler to the customer. There is clearly no *ribbis* in this arrangement, since the retailer doesn't buy the merchandise and doesn't owe any money to the wholesaler. The retailer simply transfers the wholesaler's selling price to the customer, retaining any additional amount that he charges the customer as his own profit.

"Moreover, even if the wholesaler offered a different "sale or return" option, whereby title and liability is transferred to the retailer, but he pays after Sukkos only for the sets he sold, it would still seem permissible. This is because here the wholesaler is not merely offering delayed payment at a higher price, but is offering the retailer an option to return the unsold merchandise. Merchandise with an option to return what remains is inherently worth more than merchandise without such an option.

"Thus, the wholesaler is essentially offering the retailer not two payment options," concluded Rabbi Dayan, "but rather two different purchase options: A standard sale, with no option to return, and a sale with the option to return. Although this second purchase option has built-in credit (payment after Sukkos), it is still allowed, since only one price is offered for this sale option" (see *Bris Yehuda* 22:5).

Verdict: Offering one price for immediate payment and a higher price for sale on credit is not allowed. However, a higher price for consignment or "sale or return" option is allowed, since it is a different kind of sale.



MONEY MATTERS

BAR METZRA #35
(Bordering Property)
All Properties

Based on writings of Harav Chaim Kohn, shlita

לע"נ ר' יחיאל מיכל ב"ר חיים וזוג' ח'י בת ר' שמואל חיים ע"ה

Q: A real estate developer sold all his lots to another developer. Can the *bar-metzra* of one lot demand that lot?

A: When a person sells all his properties to a single buyer, *Chazal* did not grant the *bar-metzra* rights to take the adjacent property (*C.M.* 175:36).

This is because it is uncommon to find a single customer willing to buy multiple properties, so that the potential delay in notifying the *bar-metzra* might cause the buyer to back out and be detrimental to the seller, which would not be "fair and good" (*Sma* 175:63).

Even if the *bar-metzra* offers to buy all the properties, *Chazal* did not grant him rights. However, some say that if the seller consents, the *bar-metzra* can take the property (*Sma* 175:64; *Pischei Choshen, Shutafim* 11:81).

Some maintain that this *halachah* applies only to three or more properties, since finding someone willing to buy two properties is not difficult, whereas others maintain that it applies even to two properties (*Shach* and *Pischei Teshuvah* 175:12; *Sma* 175:22, 62).



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because he had given the tip only because he thought he didn't owe any more money. Had he known that he would still owe another 35 shekel, he would never have given that tip, and thereby obligate himself to track down the driver to give him an additional 35 shekel. The *halachah* is that when someone gives a gift (a tip is considered a gift), if there is even a slight reason to believe that the giver had no intention to give the item or money as a gift, his gift is nullified (*Shulchan Aruch, C.M.* 207:4 and *Sma* 10).

Since it seems certain that the passenger would not have given a 35-shekel tip (i.e., a gift) had he known that the full price for the ride was 1,650 and he would still be in debt to the taxi driver for the ride, the gift is nullified. (This assumption is especially reliable in this case, because 1,650 shekel is a price that is easily paid with denominations that a person would have on him, whereas 1,615 shekel is not, since the 15 shekel would have to be paid in unwieldy coins. We therefore assume that he gave the 1,650 and didn't ask for change because he thought that 1,615 was the total owed, and had he known that in order to give a 35-shekel tip he would have had to go beyond the round number of 1,650, he would not have given the tip.)

Q: Since I received conflicting *piskei halachah* in response to my *she'eilah*, I did not want to take a chance of transgressing the prohibition of *lo saashok* (not to withhold payment from a worker), I tracked down the driver, explained the situation, and offered to pay the additional 35 shekel. He told me that he would be in Yerushalayim (where I was staying) the next Sunday, and he would contact me to collect the money. The driver never contacted me, and I returned to the United States. Am I required to track him down once again and go through the process of sending him the money that I pledged to give him?

A: It is even more obvious at this point that you do not owe the driver anything. In addition to the aforementioned reasons to absolve you from payment, we can add the assumption that the driver decided that it was not worth driving out to you to collect the additional 35 shekel, and he was *mochel* (forgave) that amount.

We can deduce this from the ruling that some poskim write that if a lender does not approach a borrower to collect a loan, it can be assumed that he forgave it (*Shiltei Gibborim*, cited in *Shach* 232:2). Although in that case, the accepted ruling is only to extend the payment deadline (see *Imrei Binah, Dinei Geviyas Chov* 2, and BHI issue #570), in this case, where the driver knew that you are a tourist who would soon leave the country and would not be able to pay him, his failure to come that Sunday to collect his money is proof that he forgave the debt – especially since he had already received the actual amount due for your trip to the Galil.

For questions on monetary matters, arbitrations, legal documents, wills, ribbis, & Shabbos, Please contact our confidential hotline at 877.845.8455 or ask@businesshalacha.com

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