

BUSINESS WEEKLY



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

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CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

BAGELS FOR SUPPER

Mr. Miller was heading out to the store during his lunch break. "Could you please pick up a dozen bagels for me while you're out?" asked his colleague, Mr. Feldman. "I'd like them for supper tonight."

"Sure," replied Mr. Miller.

When Mr. Miller got to the grocery store, he saw that bagels were featured on sale, significantly cheaper than the cost in the adjacent bagel store. He decided to buy the bagels there.

Mr. Miller returned with the package of bagels. "The grocery had an excellent sale on bagels," he said, "so I didn't go to the bagel store."

Mr. Feldman examined the bagels. There was reliable *kashrus* certification on the package, but it didn't say *pas Yisrael*. "It seems that these bagels are not *pas Yisrael*," he said.

"So what?" asked Mr. Miller. "You always buy bread and cake in the grocery store and are not careful to eat only *pas Yisrael*."

"That's true," replied Mr. Feldman. "But now we're in *Aseres Yemai Teshuvah*! Shulchan Aruch writes that even people who are not careful about *pas Yisrael* during the year should be so during *Aseres Yemai Teshuvah*."

"You're right," said Mr. Miller. "I forgot about that, but you didn't specify that you wanted me to buy only *pas Yisrael*! Bottom line, these bagels are kosher."

"I expected you to remember," replied Mr. Feldman. "In any case, I won't eat these bagels for supper tonight, nor will they last till after Yom Kippur."

"I don't know if they can be returned," said Mr. Miller. "What should we do about the money?"

He called Rabbi Dayan and asked:

"Does Mr. Feldman have to pay for the bagels?"

"Food bought that turns out to be non-kosher, such as an animal bought for slaughter which proves *treif*, is considered a *mekach ta'us* (erroneous purchase)," replied Rabbi Dayan. "Even if the prohibition is mid'Rabbanan, and even if only out of doubt, or on account of an accepted *chumrah* – stringency – of early sources – it is considered *mekach ta'us*" (C.M. 232:11-12; Sma 232:28; Pischei Choshen, Geneivah 12:19).

"However, if the accepted ruling is that the food is permissible, but some authorities prohibit it, the buyer cannot claim *mekach taus*

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

HELP ME DO TESHUVAH!

Part 2

Q: I stole from someone years ago, and I would like to pay him back, but I'm embarrassed to approach him and admit my sin. Is there a way for me to repay him without making such an admission?

A: In our previous essay, we determined that if the victim of a theft knew he was robbed, the thief does not fulfill his obligation of *hashavas hagezeilah* until he knows for certain that the victim realizes that the stolen item was returned (Shulchan Aruch, C.M. 355:1).

Before moving on to discuss the need to seek forgiveness from the victim, we will address another possible form of *hashavah*.

Some Rabbanim suggest that the thief may return the money by depositing it directly into the victim's bank account or his account in the grocery store, but whether this is considered a *hashavah* depends on the circumstances.

If the victim knew about the theft, this would not be a valid *hashavah*, because it is quite possible that the victim won't realize that his account balance rose. People generally don't keep track of each transaction in their accounts, and he might never realize that there was a *hashavah*.

Even if the victim was *not* aware of the theft — in which case the threshold for a *hashavah* is met when the stolen item is back in his possession, even if he doesn't know that it was returned — quietly depositing money in his account still might not work.

The *halachah* (ibid. 128:1) is that if someone pays another person's debt, and he then approaches the borrower and demands that he repay him, the borrower is not obligated to do so. A person who pays someone's debt is not considered to have benefited him directly. All he did was prevent the lender from demanding payment, which is not considered an added benefit (*Nedarim* 33a). Some *poskim* explain that the borrower could claim that had this person not repaid his loan, he might have been able to convince the lender to forgive the loan,



CASE FILE

because he wants to be stringent. He must pay, since the accepted *halachah* is that the food is permissible" (*Eishel Avraham*, O.C. 467:25).

"Nonetheless, if the halachic recommendation is to follow the stringent opinions *l'chatchilah*, such as couch pillows that contain *shaatnez* material inside them, some *poskim* write that since people avoid such items, it is considered defective merchandise. Others disagree, unless the buyer is known to be stringent" (*Mishmeres Shalom* 232:11-12, citing *Chayim Sha'al* 1:74:35; *Beis Shlomo*, Y.D. 1:14).

"The practice to be stringent about *pas Yisrael* during *Aseres Yemei Teshuvah* is codified in the *Shulchan Aruch* (O.C. 603:1). He even uses the language that one *needs* to be careful – *tzarich l'hizaher*. It seemingly falls into the category of a formally accepted *chumrah*, especially if Mr. Feldman is known to be careful about it, which would render the bagels a *mekach taus*.

"Furthermore, the rules of agency – *shelichus* – are more demanding than the rules of *mekach taus*. The sender can claim that he appointed the agent for his benefit, not his detriment. For example, if the agent was overcharged, even less than a sixth, which would normally not invoke a claim of *onaah*, the transaction of the agent can be voided" (*Kesubos* 99b; C.M. 227:29-30).

"Thus, even if we were to rule that such bagels would not be considered a *mekach taus*, the agency would be void, and Mr. Feldman would not have to pay, since you bought something that he does not want.

"Therefore," concluded Rabbi Dayan, "Mr. Feldman does not have to pay for the bagels."

Verdict: Food, which according to the accepted ruling should not be eaten, even if because of a dispute or widely accepted stringency, is considered a *mekach taus*, and agency for such a transaction is void.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS
Dayanim (Judges) #16
Hataras Nedarim

לע"נ ר' יחיאל מיכל ב"ר חיים זוגו' חי' בת ר' שמואל חיים ע"ה

Q: Who can serve on a *beis din* for *hataras nedarim*?

A: *Hataras nedarim* requires a panel of three, like a *beis din*, but it does not require an actual *beis din*. Thus, relatives of the litigants cannot serve as *Dayanim* in a *beis din*, and, similarly, two *Dayanim* who are related cannot serve together on the panel of a *beis din*, but relatives can serve on the panel for *hataras nedarim* (C.M. 7:9; Y.D. 228:3).

Nonetheless, *Shulchan Aruch* rules that a husband cannot serve on the panel for *hataras nedarim* of his wife (Y.D. 234:57).

Women and children below bar mitzvah cannot serve on the panel for *hataras nedarim*. It is preferable that that a teenager be visibly physically mature (*Pischei Teshuvah*, Y.D. 228:2; *Aruch Hashulchan* 228:10).

It is questionable whether a thief or someone disqualified on account of being "wicked" can serve on the panel for *hataras nedarim* (*Kol Nidrei* 14:3; *Minchas Shlomo*, *Nedarim* 77a).

All three members of the panel should have at least a rudimentary understanding of *hataras nedarim* (*Shach* 228:2; *Aruch Hashulchan* 228:4).



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or perhaps one of his friends would have repaid it (see *Tosafos* 58a, s.v. *Ee Nami*).

Therefore, if someone's account in the bank or grocery has gone into overdraft, and someone pays his debt, the recipient is not required to repay the depositor. Since the account holder has not received a new benefit from the depositor, he is not required to repay him, even though he is now debt-free because of that payment.

If, on the other hand, someone deposits money into an account that was not overdrawn, and the account holder can now withdraw money from the bank or buy groceries, he is entitled to request that the recipient repay him for the benefit he derived from his deposit.

In our case, then, if the victim's account in the bank or grocery are in arrears, the thief cannot fulfill his obligation of *hashavah* by depositing money in the victim's account, but if the deposit creates a positive balance, then it is considered a *hashavah*.

We now move onto the issue of seeking forgiveness from the victim.

The Rambam (*Hilchos Teshuvah* 2:9) includes theft in a list of sins for which paying back the victim does not suffice; the thief must also ask for the victim's forgiveness (see BHI issue #171).

Although we wrote in the previous column that a person may not delay returning what he stole, if he does not have the opportunity to seek forgiveness immediately, he may delay that until Erev Yom Kippur (*Bach* *ibid.* and *Mishnah Berurah* *ibid.* 1; see *Aruch Hashulchan* *ibid.* 2).

Some *poskim* differentiate between cases in which the victim knew about the theft and cases in which he didn't. In the latter, the victim didn't suffer any distress, so it is sufficient to return the money to the victim in one of the manners we discussed in these two essays, and the thief doesn't need to seek his forgiveness. But if the victim did know about the theft and experienced distress because of it, the thief is required to seek forgiveness (*Pele Yoetz*, entry for *Teshuvah*; *Shu"t Igros Moshe*, C.M. 1:88; see *She'eilos Shmuel* 41). Difficult as that might be, it is better to be embarrassed in this world and be forgiven rather than be shamed in Olam Haba. If he finds it too difficult to face his victim when he admits his guilt and asks for his forgiveness, he can do so through a *shaliach* (agent) or in writing (*Pele Yoetz*, *loc. cit.*).

Other *poskim* argue that even if the victim did not know that he was robbed, if he suffered financial loss because he didn't have those funds and couldn't invest them, the thief must seek his forgiveness (*Pischei Teshuvah* — *Isserlin*, *Orach Chaim* 606:1). That would seem to be especially significant if the theft was of a large sum, which the victim could certainly have invested had it been in his possession.

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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