

BUSINESS WEEKLY



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

Issue #688 | Shemos | Jan 5, 2024 | 24 Teves 5784

לע"נ הרב יחיאל מיכל בן ר' משה אהרן אורליאן



CASE FILE

Rabbi Meir Orlian
Writer for the Business Halacha Institute

לע"נ הרב אהרן בן הרב גדליהו ע"ה

DECEASED TENANT

Mrs. Cohen, whose health was ailing, moved with her aide into a ground-floor apartment, with a one-year lease. Three months later, Mrs. Cohen took a turn for the worse and was *niftar* shortly afterwards.

After the *shivah*, the family began clearing out the apartment and removing Mrs. Cohen's belongings. By the *shloshim*, the apartment was cleared out. The aide moved on to another household.

Mrs. Cohen's family contacted the landlord: "We vacated the apartment," they said. "We are stopping payment for the remaining months."

"If I can rent the apartment out to someone else, that's fine," the landlord responded. "However, the rental market is a little sluggish now. I'm not sure that I'll get alternate tenants immediately. Even if I do, I may have to come down a little on the price. So I expect the estate to continue paying according to the lease until I know that I have a replacement tenant."

"But why should the estate continue to pay?" the family objected. "Our mother is not using the apartment anymore!"

"And what if she were away in Florida for three months — wouldn't she still have to pay?" the landlord asked.

"That's if she decided to go away," the family replied. "Furthermore, in that case her belongings would still be there. But we returned the apartment vacant to you. It's not her fault that she was *niftar*. Why should she be held liable?"

"I'm not blaming her," the landlord said, "but the contract is binding until the end of the rental term."

Mrs. Cohen's family and the landlord approached Rabbi Dayan and asked:

"Is Mrs. Cohen's estate liable for the remaining rental payments?"

"There is a dispute between the *Rashba* and *Mordechai* on this issue," Rabbi Dayan answered.

"*Rashba* (1:1028) maintains that the estate is liable for the duration of the rental term, unless the lease allows early termination of the rental, because a rental is like a sale for that period. Circumstances of *ones* (circumstances beyond control) do not undo a sale, and similarly a rental, whether the tenant actually lives there or not. Furthermore, the heirs cannot impose on the landlord to find other tenants.

"However, *Mordechai* (B.M. #345) cites *Maharam* that if the tenant hasn't paid yet, he



BHI HOTLINE

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

STICKY FINGERS

Q: I own a store and among my customers is a fellow who has "sticky fingers." On occasion, he comes into my store with periodicals, and I have strong reason to believe

that he did not pay for them and has no intention of doing so. When he finishes reading them, he leaves them in my store. I have asked him numerous times to stop doing this, but my requests have fallen on deaf ears. My question is: May I read those periodicals without paying for them?

A: If you know from which store he steals the periodicals, it is obvious that you are obligated to return them. Even though you were not the thief, you still have a *mitzvah* of *hashavas aveidah* (returning a lost object). In addition, the *halachah* is that if you know that an item is stolen but you don't know from whom, you are not allowed to buy it, because you are aiding someone in doing an *aveirah*; if he does not have a customer for his stolen items, he will have no motivation to continue stealing.

The only time you are allowed to buy a stolen item is to return it to its owner, who is obligated to pay you back for it (*Shulchan Aruch, Choshen Mishpat* 356:1-2 & 369:1).

Your query is only relevant, then, if you do not know from whom the periodicals were stolen and you have no way of determining that — and you do not compensate the thief for the periodicals, because if you do, you are encouraging him to continue stealing them.

The question is, since you have no way to return them, may you read them?

The *halachah* is that if someone finds a lost object before *yiush* (when the owner despairs of finding it), and he cannot find its owner, the object must be left sitting until Eliyahu Hanavi arrives and reveals whose it is (*Shulchan Aruch, Choshen Mishpat* 267:15).

Some *Poskim* say that if there was *yiush shelo m'daas* (the owner was not aware that it was missing, so he did not know to despair, but had he known, he would have despaired) the finder may use the lost object (*Shach* 260:26, following the opinion of the Rambam; other *Poskim* write that one should act stringently and not use the object — see *Shulchan Aruch HaRav, Metzia* 2).

JOIN US WEDNESDAY LUNCHTIME

Weekly Wednesday Shiur

On subjects and principles of
Choshen Mishpat

By: Harav **Chaim Kohn** Shlita
Dean, Business Halacha Institute

Subject: איגואה - Fair Pricing
Enroll now to receive weekly email
invites at shiur@businesshalacha

Or listen on Torahanytime
718-298-2077 Speaker Extension 13383





CASE FILE

is exempt, due to the *oness*. However, if he paid up-front, the landlord can retain what was paid, but must return the relatively small value of having the apartment unoccupied. He compares this to a worker whose employment is cut short due to unforeseen *oness*.

"*Beis Yosef* (C.M. 312:22) sides with the *Rashba*, that the estate is liable, whereas *Rema* (334:1) sides with the *Mordechai* that the estate is exempt, but rules that if the tenant paid upfront, the landlord does not have to return anything, in deference to the *Rashba*.

"*Shach* (334:2) also sides with *Maharam*, and explains that rental is like a sale only for certain matters; that each month stands alone; and that even a sale can sometimes be undone if the seller should have stipulated.

"Other *Achronim* side with the *Rashba* (*Tzemach Tzedek* C.M. #45; *Machaneh Ephraim*, *Sechirus* #5; *Minchas Pittim* 334:1).

"Due to this dispute, the money remains with whomever is in possession. Thus, if Mrs. Cohen did not pay up front, the landlord cannot collect from the estate (*Aruch Hashulchan* 334:11; *Pischei Choshen*, *Sechirus* 6:8).

"Civil law varies from state to state regarding the requirement of the estate to pay for the remainder of the rental term, if the landlord does not rent the property to new tenants.

"Therefore, there might be a clause in the lease or a local common commercial practice about this issue," concluded Rabbi Dayan, "which is binding also according to *halachah*, especially when the *halachah* is subject to dispute (see Money Matters in this issue; *Shach* 73:36; *Maharsham* 3:128)."

Verdict: *Rishonim* dispute whether the estate is liable for the duration of the rental. Therefore, whoever is in possession of the money has the upper hand, unless stated in the lease or there is a common practice otherwise.



MONEY MATTERS

Based on writings of Harav Chaim Kohn, shlita

MONEY MATTERS Minhag Hamedinah

Common Commercial Practice #1

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

Q: What is the role of minhag hamedinah (common commercial practice) in halachah?

A: Regarding *sechirus po'alim* (employment), the *Mishnah* (B.M. 83a) explicitly teaches that *hakol k'minhag hamedinah* (everything is in accordance with the common commercial practice). This relates to terms of employment, hours, wages, etc., when not specified in the contract (C.M. 331:2).

Talmud Yerushalmi (B.M. 7:1) comments on this, *minhag mevatel halachah* (when doubt or conflict arises, the common commercial practice supersedes the default *halachah* that applies in the absence of a common practice). This is because presumably the parties contracted in accordance with the *minhag* (see *Chazon Ish* B.B. 5:5).

Chasam Sofer (C.M. #12) maintains that the power of *minhag hamedinah* is *d'oraysa*. In the coming series, *b'ezras Hashem*, we will address the laws of *minhag hamedinah*, some of its applications, and its parameters.

There is a distinction between a practice established by a formal agreement of the townspeople and one that evolved on its own from their behavior, as will be explained.



BHI HOTLINE

We might think that your case is comparable to *yiush shelo m'daas*, because had the store owner known that the periodicals were stolen, he would likely have despaired of recovering them. Furthermore, your reading them would be a case of *zeh ne'heneh vezo lo chaseir* (the store owner is not losing anything from your enjoying the periodicals).

In truth, however, your case is not comparable to *yiush shelo m'daas*, because that applies to lost objects — not to stolen objects. The *halachah* is that a person — even a different person who did not steal the object — is not permitted to derive benefit from it, even after *yiush*. (C. M. 369:2).

If the thief sold the object after *yiush*, the combination of change of ownership and *yiush* effectively makes the object permissible for use, because the buyer was not transgressing any prohibition when he bought it if he did not know that it was stolen, which makes it comparable to finding an object after *yiush* (*Rema* *ibid.*).

In your case, however, there was no *yiush*, because the owners of the stores from which the thief stole the periodicals don't know that he'd stolen them, and you also may not make a *kinyan* once you are aware that it is stolen, because one may not acquire an object that is an *issur hana'ah* (something from which we may not derive benefit) (*Shulchan Aruch HaRav*, *Gezeilah* 11). Furthermore, when it comes to theft, you may not derive a benefit that the owner generally doesn't mind your deriving, because it is inappropriate to benefit from stolen goods (see *Tosafos*, *Bava Kamma* 113a, s.v. *Ein*, and *Imrei Yaakov* p. 115).

This *issur hana'ah* only applies, however, if you know for a fact that the periodicals were stolen, or there is a strong reason to believe that they are stolen. If there is a chance that they might rightly belong to the person you suspect is a thief, you are permitted to derive benefit from them (see *Shulchan Aruch* 369:3, with *Sma* 5 and *Taz*, as well as *Shulchan Aruch HaRav*, *Gezeilah* 20).

One more note: If someone finds an object, or an object was placed into his care (a *pikadon*), and it is getting ruined, the *mitzvah* of *hashavas aveidah* dictates that he should sell it in order to preserve the owner's money (see *Shulchan Aruch* 292:17). Because in your case the periodicals will become outdated and worthless after a number of days, if you were planning to buy your own copies anyway, perhaps the best thing is for you to put their monetary value aside, to be returned to the owners when Eliyahu Hanavi identifies them; you may then keep them for yourself.

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

To subscribe send an email to subscribe@businesshalacha.com or visit us on the web at www.businesshalacha.com



Sponsored by

READ
PROPERTY GROUP
REAL ESTATE & DEVELOPMENT

WOULD YOU LIKE THE ZCHUS OF SENDING
THIS NEWSLETTER TO YIDDEN WORLDWIDE?
CALL 718 233 3845 X 201. OR EMAIL :
OFFICE@BUSINESSHALACHA.COM

DISTRIBUTION IN LAKEWOOD IS
לעילוי נשמת ר' מאיר ב"ר ישראל ז"ל