

BUSINESS WEEKLY

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



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



CASE FILE

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לע"נ הרב אהרן בן הרב גדליהו ע"ה

Submitted by the Beis Hora'ah

TORN TECHEILES

Zevulun came to shul one day wearing *tzitzis* that included a string of *techeiles* in each corner.

He proudly showed them to Naphtali. "Check out this *p'sil techeiles*," Zevulun said, holding up a corner. "Hand-dyed,

certified. Cost me altogether \$100!"

Naphtali looked, intrigued. "What is the dye made from?" he asked.

"The halachic consensus nowadays — of almost all *poskim* who approve *techeiles* — is that the dye is extracted from a snail called *murex trunculus*," explained Zevulun.

Naphtali looked at the strings. "I see that the knots are somewhat different than usual," he said, fingering the *techeiles* string.

"Yes, there are many different opinions how to wrap and tie the strings when using *techeiles*," replied Zevulun. "According to the *Rambam*, all the wrappings (except for the first and last) are with the *techeiles* strand, but according to most *Rishonim*, the wrappings alternate with groups (*chul'yo*s) of white and *techeiles* wraps."

"I see that the final knot got a little loose," Naphtali said. "I'll tighten it." He gave a sharp tug to tighten the knot, but the *techeiles* string caught on the edge of the table. *Snap*.

"Oh no!" exclaimed Zevulun, lifting the string. "You tore a *techeiles* strand!"

"But the *tzitzis* are still kosher, right?" Naphtali asked quickly.

"In principle..." Zevulun answered, inspecting it. "The *halachah* is that as long as the other side of the string remains intact, the *tzitzis* are still kosher. But you tore one of the expensive *techeiles* strands — these aren't easy to replace."

"But you don't need to replace the string; the *tzitzis* are kosher as is," Naphtali replied. "Furthermore, I didn't mean to damage it. I had good intentions and was trying to help by tightening the knot!"

"Still, you handled it without asking," replied Zevulun. "You should have been careful."

The two came before Rabbi Dayan and asked:

"Is Naphtali liable for the torn *techeiles* string?"

"Hagaon Harav Yitzchok Zilberstein, *shlita*, addresses a similar question in his work, *Chashukei Chemed* (Yevamos 5b)," replied Rabbi Dayan. "He concludes that Naphtali is liable for the string that he tore, even though he had good intent."

"The *Gemara* (B.K. 56a) teaches that if a person covered his friend's grain before an oncoming fire, but it was consumed anyway—and now that the grain was covered (*tamun*) it is excluded from halachic liability of *aish*, so that the owner is not entitled to damage compensation for the grain—the person who covered it is liable *b'dinei shamayim* for having caused incidental loss (*grama*) (C.M. 418:13,16).

"*Tosafos* (*ad loc.*) explains that even if the person had good intent to delay the fire and protect the grain, he should have considered the negative outcome of his action. Because he caused financial loss, he remains liable *b'dinei shamayim*.

"[However, *Ra'ah* and *Meiri* (cited in *Shitah M'kubetzes ad loc.*) seemingly learn that

TIMING IS EVERYTHING

Q: While shopping in a store, I filled my cart with some items. When I reached the checkout counter, however, the cashier told me that the

store was low on a particular item in my cart, and another customer had already requested it, so I couldn't purchase it. I was not happy about this development, but I didn't want to make a scene.

I'm wondering, though: Could I have refused to return it?

A: The key to answering your *she'eilah* lies in whether your lifting the item to place it into the cart was considered a final *kinyan*.

As we explained in our previous column, if a customer desires a particular object, and he lifts it with the intention of deciding whether to buy it or not, it is considered his possession, and the seller may not renege on his agreement to sell (*Shulchan Aruch, Choshen Mishpat* 200:11).

While the *Shulchan Aruch* implies that the person must have specific intent while lifting the item, to purchase it if he likes it, the *Sma* (ibid. 29) writes that many *Rishonim* maintain that even if he has no specific intent, he still makes a *kinyan* as long as three criteria were met: (1) Demand exceeds supply (*zvina charifa*); (2) The price is fixed; (3) He lifted it.

In such a case, the seller may not renege on the transaction, even though the customer may renege as long as he hasn't told the seller that he wants to buy it (*Imrei Yosher* 2:70). [If the buyer already decided to buy it even if he hasn't informed the seller, *middas chassidus* (righteous conduct) dictates that he should not renege, in keeping with the value of *vedover emes bilvavo* — one should "speak truth in his heart" (*Tur, Choshen Mishpat* 200).]

It would appear that in your case, because you did lift the items you wanted to buy, you already made a *kinyan* on them. It would therefore seem that the seller cannot nullify your *kinyan*.

But we must make another determination before coming to a final ruling on this matter: Whether this item is considered a *zvina charifa*, meaning that the item for sale

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CASE FILE

when the person intended for good, he is exempt, at least from liability *b'dinei shamayim*.]

"Similarly, *Nesivos* (291:14) writes that if someone hid another person's items to protect them from theft but forgot where he hid them, he is liable as one who damages, because in practice he caused loss.

"Harav Zilberstein notes that *Responso Mekor Chaim* (Sanalovitz) #29 rules otherwise, because the person intended for the owner's benefit, but even he acknowledges that *Tosafos* is against him. Furthermore, the rule that *adam mu'ad l'olam* — a person is always forewarned — seemingly includes even when he intends for good (C.M. 421:3).

"Regarding the fact that the *tzitzis* are still kosher, Harav Zilberstein refers to the discussion in the *poskim* whether a person who steals an expensive, *mehudar esrog* must pay its full cost or can suffice with the cost of a regular esrog, because the owner can thereby still fulfill the *mitzvah* through it. Most authorities maintain that he must pay its full value. Similarly, here, the person is not exempt from liability just because the *tzitzis* are still wearable (see *Pischei Teshuvah* C.M. 348:6).

"Harav Zilberstein concludes that the person has to pay the value of a single string," concluded Rabbi Dayan. "This is even if a single new string might look odd in a group of old strings so that the owner will want to replace all four strings."

Verdict: A person who inadvertently damaged something with good intent is still liable for the damage. Even if the item is still usable for its *mitzvah* purpose, he is liable for its monetary loss.



MONEY MATTERS

MONEY MATTERS Shabbos and Yom Tov

#7

Dry Cleaner

Based on writings of Harav Chaim Kohn, shlita

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

Q: May I bring my suit or dress to a non-Jewish dry cleaner on Friday, if they will clean it on Shabbos or Yom Tov?

A: There is a difference between a *po'el*, who works on a timely basis, and a *kablan*, who works on a flat-rate basis.

A *po'el* is considered as working on behalf of the employer, in lieu of the timely wages that he pays him. Therefore, a non-Jewish *po'el* may not work on Shabbos, even if the Jewish employer did not specifically require him to work on Shabbos (O.C. 243:1; *Mishnah Berurah* 243:5).

However, a *kablan* is considered as working for himself, at his discretion, to earn the flat fee. Therefore, it is permissible even if the non-Jew chooses to work on Shabbos, provided that: 1) It is not publicly evident that he is doing work belonging to a Jew, in which case there is concern that people might think that he was hired to work on Shabbos. 2) The Jew did not require him to work on Shabbos (O.C. 244:1).

Therefore, because the dry cleaner charges a flat fee, you can bring your clothing on Friday, even if they choose to clean it on Shabbos, provided that you do not demand that it be ready right after Shabbos (C.M. 244:24).

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is in great demand. If it is a *zvina charifa*, then lifting the object is considered a *kinyan*. But if it is *zvina metzia* — a readily available item, so there is little chance that the seller will want to renege — then according to some *poskim*, lifting the item is not considered a full *kinyan*. The seller may then decide to sell it to someone else. The logic here is straightforward: Because there is a supply of this item, the buyer has no reason to think that he had better acquire it immediately or the seller will renege. Only when there is limited supply and high demand is an item categorized as a *zvina charifa*.

A common contemporary example of a *zvina charifa* would be a uniquely beautiful *esrog*; a regular *esrog* is considered a *zvina metzia*. Because a potential buyer of a typical *esrog* does not feel any urgency to purchase it — there are many others of the same caliber — he lifts it not with the intention to acquire it now. Therefore, if an *oness* occurs while he is en route to a Rav to check it, he is not liable. The same would apply to any other standard item for sale.

In addition, the commonly accepted practice in stores nowadays is that a sale is not final until after payment is received (or the sale is recorded on the customer's account at the store). Therefore, even if the item is a *zvina charifa*, the buyer did not acquire it until the sale is completed, and if an *oness* occurred before then, he is not liable.

Another difference between cases in which the customer is considered the owner of the item and those in which he isn't, is when the seller offers to sell at a lower price if the buyer pays immediately. If, for example, the price of the item is \$1,000 but the buyer can remit payment for up to a month after purchase, and the seller offers to sell it for \$900 if he pays immediately, the halachic permissibility of such a deal depends on whether the sale is considered to have been completed at that point. If the item does *not* yet belong to the buyer, then if the seller mentions the possibility of charging a lower price, he may not then charge a higher price simply because he's willing to wait a month for payment — that would be a form of *ribbis*. But if the buyer already owns it and he owes the full price in exchange for it, and the seller gives him the option of a reduced price when paying sooner, it is permissible (*Yoreh Dei'ah* 173:3).

Therefore, if you have not yet purchased the item (because it is a *zvina metzia*), and the seller offered a lower price if you pay sooner, then if you choose to pay later, he may not charge you the higher price, because that extra charge would be *ribbis* (*Chelkas Binyamin* 173:37, who says that even though some *poskim* rule leniently in such cases if the seller states clearly that the lower price is a discount from the regular price—not that the higher charge is for delaying payment—one should act stringently).



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